FEDERAL ACQUISITION CIRCULAR

September 30, 1997 FAC 97-02

Federal Acquisition Circular (FAC) 97-02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The policies, provisions, and clauses of this final rule are effective for all solicitations issued on or after October 10, 1997. However, agencies may delay implementation of this final rule until January 1, 1998, at which time it becomes mandatory for all solicitations issued on or after that date. Agencies using the new policies, provisions, and clauses before January 1, 1998, shall ensure that the cover page of the solicitation for each acquisition subject to this rule, and issued before January 1, 1998, contains a notice that this rule applies to that acquisition. Any solicitation issued before January 1, 1998, that does not contain such a solicitation notice or the new provisions and clauses is automatically conducted in accordance with the FAR excluding changes made by this final rule.

The final rule revises Part 15, Contracting by Negotiation. The final rule infuses innovative techniques into the source selection process, simplifies the acquisition process, incorporates changes in pricing and unsolicited proposal policy, and facilitates the acquisition of best value products and services. The final rule emphasizes the use of effective and efficient acquisition methods and eliminates unnecessary burdens imposed on industry and Government. In addition, the rule revises the sequence in which Part 15 information is presented to facilitate use of the regulation.

Replacement pages:

i thru iv	14-11 and 14-12	31-17 and 31-18	48-3 and 48-4
vii and viii	14-15 and 14-16	31-27 and 31-28	49-5 and 49-6
1-3 thru 1-8	14-19 and 14-20	31-31 and 31-32	49-9 and 49-10
2-1 thru 2-4	14-23	31-37 and 31-38	49-15 and 49-16
3-3 thru 3-6	15-1 thru 15-40	32-9 and 32-10	50-3 and 50-4
3-11 and 3-12	(15-41 — 15-46 removed)	33-3 thru 33-8	52-1 thru 52-8
4-1 and 4-2	16-1 and 16-2	34-1 and 34-2	52-35 and 52-36
4-13	16-7 thru 16-10	35-3 and 35-4	52-51 thru 52-72.1
5-1 thru 5-4	16-15 thru 16-18	36-1 and 36-2	(52-73 — 52-76 removed)
5-9 and 5-10	17-3 and 17-4	36-5 thru 36-10	52-83 thru 52-88
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7-7 and 7-8	24-1 and 24-2	42-1 and 42-2	52-245
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11-1 and 11-2	27-3 thru 27-6	42-11 thru 42-14	52-335 and 52-336
11-9	27-27 and 27-28	42-27 thru 42-29	Matrix Pages:
			11 thru 19
12-1 thru 12-4	28-3 and 28-4	43-3 and 43-4	39 and 40
12-7 and 12-8	31-1 and 31-2	44-3 thru 44-6	53-1 thru 53-11
13-3 thru 13-6	31-5 thru 31-8	45-3 and 45-4	53-207 thru 53- 208.2
14-1 thru 14-6	31-11 and 31-12	45-7 and 45-8	OFs 307 308 & 309.

phrase were corrected.

Replacement pages: 16-9 and 16-10.

16.603-4 [Text reinstated]

2. Section 16.603-4 is amended at paragraph (b)(3) by correctly reinstating the second sentence which was added by FAC 90-32 at 60 FR 48217; September 18, 1995.

Replacement pages: 16-17 and 16-18.

41.501 [Corrected]

2. Section 41.501 is corrected in paragraph (d)(3) by revising the reference "paragraphs (f) and (i)" to read "paragraphs (d)(6) and (d)(4).

Replacement page: 41-7.

52.247-64 [Corrected]

3. In the Editorial and Technical Corrections document appearing in the issue of July 25, 1997 (62 FR 40238), in the third column under section 52.247-64, the telephone number in paragraph (f) is corrected.

Replacement pages: 52-335 and 52-336.

1-3 thru 1-8	1-3 thru 1-8
2-1 thru 2-4	2-1 thru 2-4
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50-3 and 50-4	50-3 and 50-4

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Matrix 39 and 40	Matrix 39 and 40
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53-125	None
53-199	None
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Forms Authorized for Local Reproduction

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SF 1448	None
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None	OF 308
None	OF 309

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*Subchapter H is available in Volume II of the FAR

sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

(d) *Fulfill public policy objectives.* The System must support the attainment of public policy goals adopted by the Congress and the President. In attaining these goals, and in its overall operations, the process shall ensure the efficient use of public resources.

1.102-3 Acquisition Team.

The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified beginning with the customer and ending with the contractor of the product or service. By identifying the team members in this manner, teamwork, unity of purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

1.102-4 Role of the Acquisition Team.

(a) Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the Guiding Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

(b) The authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the System, consistent with law.

(c) The Team must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member. The contractor community is encouraged to do likewise.

law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

1.103 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83, and OFPP Policy Letter 85-1, Federal Acquisition Regulations System, dated August 19, 1985.

(b) The FAR is prepared, issued, and maintained, and the FAR System is prescribed jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities.

1.104 Applicability.

The FAR applies to all acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1.105 Issuance.

1.105-1 Publication and code arrangement.

(a) The FAR is published in—

(1) The daily issue of the *Federal Register*;

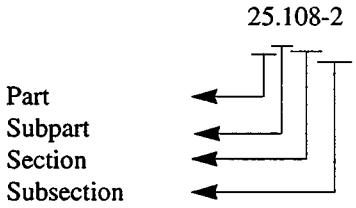
(2) Cumulated form in the *Code of Federal Regulations* (CFR); and

(3) A separate loose-leaf edition.

(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see Subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (*e.g.*, part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level shall consist of parenthetical alpha numerics reading from highest to lowest indenture as follows: lower case alphabet, Arabic numbers, lower case Roman numerals, and upper case alphabet. The following example is illustrative:

(a)(1)(i)(A)

Subdivisions, below the 4th level, shall repeat the sequence.

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

(i) Part would be "FAR Part 9" outside the FAR and "Part 9" within the FAR.

(ii) Subpart would be "FAR Subpart 9.1" outside the FAR and "Subpart 9.1" within the FAR.

(iii) Section would be "FAR 9.106" outside the FAR and "9.106" within the FAR.

(iv) Subsection would be "FAR 9.106-4" outside the FAR and "9.106-4" within the FAR.

(v) Paragraph would be "FAR 9.106-4(d)" outside the FAR and "9.106-4(d)" within the FAR.

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

1.105-3 Copies.

Copies of the FAR in *Federal Register*, loose-leaf, CD-ROM, and CFR form may be purchased from the—

approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.4	9000-0003
4.102	9000-0033
4.5	9000-0137
4.7	9000-0034
4.9	9000-0097
5.405	9000-0036
7.2	9000-0082
8.5	9000-0113
9.1	9000-0011
9.2	9000-0020
14.201	9000-0034
14.202-4	9000-0040
14.202-5	9000-0039
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14.205-4(c)	9000-0037
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15.209	9000-0034
15.4	9000-0013
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15.407-2	9000-0078
15.408	9000-0115
19.7	9000-0006
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22.14	1215-0072
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42.13	9000-0076
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45	9000-0075
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52.232-14	9000-0010
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52.232-16	9000-0010
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52.232-22	9000-0074
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52.243-1	9000-0026
52.243-2	9000-0026
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52.245-10	9000-0075
52.245-11	9000-0075
52.245-16	9000-0075
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52.245-18	9000-0075
52.246-2	9000-0077
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52.246-7	9000-0077
52.246-8	9000-0077
52.246-10	9000-0077
52.246-12	9000-0077
52.246-15	9000-0077
52.247-2	9000-0053
52.247-29	9000-0061
52.247-30	9000-0061
52.247-31	9000-0061
52.247-32	9000-0061
52.247-33	9000-0061
52.247-34	9000-0061
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52.247-36	9000-0061
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52.247-38	9000-0061
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52.247-40	9000-0061
52.247-41	9000-0061
52.247-42	9000-0061
52.247-43	9000-0061
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52.247-51	9000-0057
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SF 1416	9000-0045
SF 1417	9000-0037
SF 1418	9000-0119
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SF 1424	9000-0015
SF 1426	9000-0015
SF 1427	9000-0015
SF 1428	9000-0015
SF 1429	9000-0015
SF 1430	9000-0015
SF 1431	9000-0015
SF 1432	9000-0015
SF 1433	9000-0015
SF 1434	9000-0015
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SF 1449	9000-0136

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

Subpart 1.2—Administration

1.201 Maintenance of the FAR.

1.201-1 The two councils.

(a) Subject to the authorities discussed in 1.102, revisions to the FAR will be prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). Members of these councils shall—

(1) Represent their agencies on a full-time basis;

(2) Be selected for their superior qualifications in terms of acquisition experience and demonstrated professional expertise; and

(3) Be funded by their respective agencies.

(b) The chairperson of the CAA Council shall be the representative of the Administrator of General Services. The other members of this council shall be one each representative from the—

(1) Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, Labor, State, Transportation, and Treasury; and

(2) Environmental Protection Agency, Small Business Administration, and Department of Veterans Affairs.

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense. Membership shall include representatives of the military Departments, the Defense Logistics Agency, and the National Aeronautics and Space Administration.

(d) Responsibility for processing revisions to the FAR is apportioned by the two councils so that each council has cognizance over specified parts or subparts.

(e) Each council shall be responsible for—

(1) Agreeing on all revisions with the other council;

(2) Submitting to the FAR Secretariat (see 1.201-2) the information required under paragraphs 1.501-2(b) and

Secretariat for publication in the *Federal Register* and printing for distribution.

1.201-2 FAR Secretariat.

(a) The General Services Administration is responsible for establishing and operating the FAR Secretariat to print, publish, and distribute the FAR through the *Code of Federal Regulations* system (including a loose-leaf edition with periodic updates).

(b) Additionally, the FAR Secretariat shall provide the two councils with centralized services for—

(1) Keeping a synopsis of current FAR cases and their status;

(2) Maintaining official files;

(3) Assisting parties interested in reviewing the files on completed cases; and

(4) Performing miscellaneous administrative tasks pertaining to the maintenance of the FAR.

1.202 Agency compliance with the FAR.

Agency compliance with the FAR (see 1.304) is the responsibility of the Secretary of Defense (for the military departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities).

Subpart 1.3—Agency Acquisition Regulations

1.301 Policy.

(a)(1) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors.

(2) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements). However, publication is not required for issuances that merely implement or supplement higher level issuances that have previously undergone the public comment process, unless such implementation or supplementation results in an additional significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. Issuances under 1.301(a)(2) need not be publicized for public comment.

(c) When adopting acquisition regulations, agencies shall ensure that they comply with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) as implemented in 5 CFR 1320 (see 1.106) and the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Normally, when a law requires publication of a proposed regulation, the Regulatory Flexibility Act applies and agencies must prepare written analyses, or certifications as provided in the law.

(d) Agency acquisition regulations implementing or supplementing the FAR are, for—

(1) The military departments and defense agencies, issued subject to the authority of the Secretary of Defense;

(2) NASA activities, issued subject to the authorities of the Administrator of NASA; and

(3) The civilian agencies other than NASA, issued by the heads of those agencies subject to the overall authority of the Administrator of General Services or independent authority the agency may have.

1.302 Limitations.

Agency acquisition regulations shall be limited to—

(a) Those necessary to implement FAR policies and procedures within the agency; and

(b) Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

1.303 Publication and codification.

(a) Agency-wide acquisition regulations shall be published in the *Federal Register* as required by law, shall be codified under an assigned chapter in Title 48, *Code of Federal Regulations*, and shall parallel the FAR in format, arrangement, and numbering system (but see 1.105-1(c)). Coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the

2.201 Contract clause.

2.000 Scope of part.

This part defines words and terms commonly used in this regulation. Other terms are defined in the part or subpart with which they are particularly associated (see the Index for locations).

Subpart 2.1—Definitions

2.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless—

(a) The context in which they are used clearly requires a different meaning or

(b) A different definition is prescribed for a particular part or portion of a part.

"Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

"Affiliates" means associated business concerns or individuals if, directly or indirectly—

(a) Either one controls or can control the other; or

(b) A third party controls or can control both.

"Agency head" (see "head of the agency").

"Best value" means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

"Commercial component" means any component that is a commercial item.

"Commercial item" means—

(a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(1) Has been sold, leased, or licensed to the general public; or

(2) Has been offered for sale, lease, or license to the general public;

(b) Any item that evolved from a item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(c) Any item that would satisfy a criterion expressed in paragraphs (a) or (b) of this definition, but for—

(1) Modifications of a type customarily available in the commercial marketplace; or

(2) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;

(e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services—

(1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(g) Any item, combination of items, or service referred to in paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

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

"Contract administration office" means an office that performs—

(a) Assigned postaward functions related to the administration of contracts; and

(b) Assigned preaward functions.

"Contracting" means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

"Contracting activity" means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

"Contracting office" means an office that awards or executes a contract for supplies or services and performs postaward functions not assigned to a contract administration office.

"Contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. "Administrative contracting officer (ACO)" refers to a contracting officer who is administering contracts. "Termination contracting officer (TCO)" refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation to administrative contracting officer or termination contracting officer does not—

military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

"Facsimile" means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; *e.g.*, facsimile bid, the terms refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

"Federal Acquisition Computer Network (FACNET) Architecture" means the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) operational capability for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

"Federal agency" means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

"Full FACNET" means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, were entered into by the agency during the preceding fiscal year using an interim FACNET certified electronic automated information system.

"Governmentwide FACNET" means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, entered into by the executive agencies during the preceding fiscal year were made through electronic automated information systems with full FACNET certification.

"Head of the agency" (also called "agency head") means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency; and the term

municated, and includes electronically transmitted and stored information.

"Information technology" means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(a) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency which—

(1) Requires the use of such equipment; or

(2) Requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(b) The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(c) The term "information technology" does not include any equipment that is acquired by a contractor incidental to a contract.

"Interim FACNET" means a contracting office has been certified as having implemented the electronic automated information systems capability to provide widespread public notice of contracting opportunities, issue solicitations, and receive responses to solicitations and associated requests for information. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

"Major system" means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major system if—

(a) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $115,000,000 (based on fiscal year 1990 constant dollars) or the eventual total expenditure for the acquisition exceeds $540,000,000 (based on fiscal year 1990 constant dollars);

head of the agency responsible for the system (10 U.S.C. 2302 and 41 U.S.C. 403).

"Market research" means collecting and analyzing information about capabilities within the market to satisfy agency needs.

"May" denotes the permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act described.

"Micro-purchase" means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed $2,500, except that in the case of construction, the limit is $2,000.

"Micro-purchase threshold" means $2,500.

"National defense" means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space.

"Nondevelopmental item" means—

(a) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(b) Any item described in paragraph (a) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(c) Any item of supply being produced that does not meet the requirements of paragraphs (a) or (b) solely because the item is not yet in use.

"Offer" means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids;" responses to requests for proposals (negotiation) are offers called "proposals;" responses to requests for quotations (negotiation) are not offers and are called "quotes." For unsolicited proposals, see Subpart 15.6.

"Possessions" include the Virgin Islands, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the Guano Islands, but does not include Puerto Rico, leased bases, or trust territories.

"Senior procurement executive" means the individual appointed pursuant to section 16(3) of the Office of Federal

with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

"Simplified acquisition procedures" means the methods prescribed in Part 13 for making purchases of supplies or services.

"Simplified acquisition threshold" means $100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), the term means $200,000.

"Supplies" means all property except land or interest in land. It includes (but is not limited to) public works, build-

the 50 States and the District of Columbia.

Subpart 2.2—Contract Clause

2.201 Contract clause.

The contracting officer shall insert the clause at 52.202–1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the simplified acquisition threshold. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, provided they are consistent with the clause and the FAR.

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(b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

3.103-3 The need for further certifications.

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

3.104 Procurement integrity.

3.104-1 General.

(a) This FAR section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the Fiscal Year 1990/1991 National Defense Authorization Act, Public Law 101-189, section 815 of the Fiscal Year 1991 National Defense Authorization Act, Public Law 101-510, and section 4304 of the Fiscal Year 1996 National Defense Authorization Act, Public Law 104-106 (hereinafter, the Office of Federal Procurement Policy Act, as amended, is referred to as "the Act"). Agencies may supplement 3.104 and any clauses required by 3.104, and may use agency specific definitions to identify individuals who occupy positions specified in 3.104-4(d)(1)(ii). Such supplementation and definitions must be approved at a level not lower than the senior procurement executive of the agency, unless a higher level of approval is required by law for that agency.

(b) Agency employees are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 10 U.S.C. 2207, 5 U.S.C. 7353, and 5 CFR Part 2635;

(2) Section 208 of Title 18, United States Code, and 5 CFR Part 2635 preclude a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person from whom the employee is seeking employment;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR Parts 2637 and 2641, which prohibit certain activities by former Government employees, including

(5) Other laws such as the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905) may preclude release of information both before and after award (see 3.104-5); and

(6) Use of nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are covered by 5 CFR 2635.703.

3.104-2 Applicability.

(a) The restrictions at 3.104-4(a) and (b) apply beginning January 1, 1997, to the conduct of every Federal agency procurement using competitive procedures for the acquisition of supplies or services from non-Federal sources using appropriated funds.

(b) The requirements of 3.104-4(c) apply beginning January 1, 1997, in connection with every Federal agency procurement using competitive procedures, for a contract expected to exceed the simplified acquisition threshold. Such requirements do not apply after the contract has been awarded or the procurement has been canceled.

(c) The post-employment restrictions at 3.104-4(d) apply to any former official of a Federal agency, for services provided or decisions made on or after January 1, 1997.

(d) Former officials of a Federal agency whose employment by a Federal agency ended before January 1, 1997, are subject to the restrictions imposed by 41 U.S.C. 423 as it existed before Public Law 104-106. Solely for the purpose of continuing those restrictions on those officials to the extent they were imposed prior to January 1, 1997, the provisions of 41 U.S.C. 423 as it existed before Public Law 104-106 apply through December 31, 1998.

3.104-3 Definitions.

As used in this section—

"Agency ethics official" means the designated agency ethics official described in 5 CFR 2638.201 and any other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104-7 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

"Compensation" means wages, salaries, honoraria, commissions, professional fees, and any other form of

the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section).

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215-1(e).

"Decision to award a subcontract or modification of subcontract" means a decision to designate award to a particular source.

"Federal agency" has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

"Federal agency procurement" means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency shall constitute a separate procurement for purposes of the Act.

"In excess of $10,000,000" means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(4) A special Government employee, as defined in 18 U.S.C. 202.

"Participating personally and substantially in a Federal agency procurement" is defined as follows:

(1) "Participating personally and substantially in a Federal agency procurement" means active and significant involvement of the individual in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) "Participating personally" means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(3) "Participating substantially" means that the employee's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an individual will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives.

(ii) The performance of general, technical, engineering, or scientific effort having broad application not

ment studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

"Source selection evaluation board" means any board, team, council, or other group that evaluates bids or proposals.

"Source selection information" means any of the following information which is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to a Federal agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as "*Source Selection Information—See FAR 3.104*" based on a case-by-case determination by the head of the agency or designee, or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

3.104-4 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required of agency officials when contacted by offerors regarding non-Federal employment (subsection 27(c) of the Act).* If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

(1) Promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(i) Reject the possibility of non-Federal employment; or

(ii) Disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104-6) until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, on the grounds that—

(A) The person is no longer a bidder or offeror in that Federal agency procurement; or

(B) All discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).* (1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the

tor; or

(iii) Personally made for the Federal agency—

(A) A decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) A decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

(C) A decision to approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(D) A decision to pay or settle a claim in excess of $10,000,000 with that contractor.

(2) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the head of the agency or designee, or the contracting officer, to receive such information.

(b) Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) In determining whether particular information is source selection information, see the definition in 3.104-3 and consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information under paragraph (10) of the definition shall mark the cover page and each page that the individual believes contains source selection information with the legend "*Source Selection Information—See FAR 3.104.*" Although the information in paragraphs (1) through (9) of the definition in 3.104-3 is considered to be source selection marked, the contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and the information may be released.

(2) If, after reviewing any justification submitted by the contractor, the contracting officer determines that the marking is not justified, the contracting officer shall notify the contractor in writing.

(3) Information marked by the contractor as proprietary, otherwise marked as contractor bid or proposal information, or marked in accordance with 52.215-1(e), shall not be released until—

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier. Thereafter, the contracting officer may release the information.

(4) With respect to technical data that are marked proprietary by a contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(e) Nothing in this section restricts or prohibits—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) Nothing in this section shall be construed to authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller

4.103 Contract clause.

Subpart 4.2—Contract Distribution

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Subpart 4.10—Contract Line Items

4.1001 Policy.

4.000 Scope of part.

This part prescribes policies and procedures relating to the administrative aspects of contract execution, contractor-submitted paper documents, distribution, reporting, retention, and files.

Subpart 4.1—Contract Execution

4.101 Contracting officer's signature.

Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

4.102 Contractor's signature.

(a) *Individuals*. A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual,

(c) *Corporations*. A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign. The contracting officer shall ensure that the person signing for the corporation has authority to bind the corporation.

(d) *Joint venturers*. A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.

(e) *Agents*. When an agent is to sign the contract, other than as stated in paragraphs (a) through (d) above, the agent's authorization to bind the principal must be established by evidence satisfactory to the contracting officer.

4.103 Contract clause.

The contracting officer shall insert the clause at 52.204-1, Approval of Contract, in solicitations and contracts if required by agency procedures.

Subpart 4.2—Contract Distribution

4.201 Procedures.

Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall—

(a) Distribute simultaneously one signed copy or reproduction of the signed contract to the contractor and the paying office;

(b) When a contract is assigned to another office for contract administration (see Subpart 42.2), provide to that office—

(1) One copy or reproduction of the signed contract and of each modification; and

(2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur;

(c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative

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referencing stock numbers 008-007-03189-9 and 008-007-03190-2 for Volumes I and II, respectively); and

(f) Provide copies of contracts and modifications to those organizations required to perform contract administration support functions (*e.g.*, when manufacturing is performed at multiple sites, the contract administration office cognizant of each location).

4.202 Agency distribution requirements.

Agencies shall limit additional distribution requirements to the minimum necessary for proper performance of essential functions. When contracts are assigned for administration to a contract administration office located in an agency different from that of the contracting office (see Part 42), the two agencies shall agree on any necessary distribution in addition to that prescribed in 4.201 above.

4.203 Taxpayer identification number information.

(a) If the contractor has furnished a taxpayer identification number (TIN) when completing the solicitation provision at 52.204-3, Taxpayer Identification, the contracting officer shall, unless otherwise provided in agency procedures, attach a copy of the completed solicitation provision as the last page of the copy of the contract sent to the paying office.

(b) If the TIN or corporate status is derived from a source other than the provision at 52.204-3, the last page of the contract forwarded to the paying office will be annotated to state the contractor's TIN and corporate status.

Subpart 4.3—Paper Documents

4.300 Scope of subpart.

This subpart provides policies and procedures on contractor-submitted paper documents.

4.301 Authority.

The authority for this subpart is established in Executive Order 12873, Sections 402(d) and 504, October 20, 1993, as amended by Executive Order 12995, March 25, 1996.

to reporting contract and payment information to the Internal Revenue Service (IRS).

4.901 Definitions.

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

"Corporate status," as used in this subpart, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (*e.g.*, sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

4.902 Contract information.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by $50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of $25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and the Taxpayer Identification Number (TIN) of contractor;

(2) Name and TIN of common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see subpart 4.6 and implementing instructions).

4.903 Payment information.

(a) 26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Federal Government

(2) Payments for bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(3) Payments of income required to be reported on an IRS Form W-2 (*e.g.*, contracts for personal services).

(4) Payments to a hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(5) Payments to a hospital or extended care facility owned and operated by the United States, a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(6) Payments for any contract with a state, the District of Columbia, a possession of the Untied States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(c) The following information is required to provide reports to the IRS:

(1) Name, address, and TIN of contractor.

(2) Corporate status (see 4.901).

(d) Transmit to paying offices the information specified in 4.203.

4.904 Solicitation provision.

The contracting officer shall insert the provision at 52.204-3, Taxpayer Identification, in solicitations, unless the TIN of each offeror has previously been obtained and is known.

Subpart 4.10—Contract Line Items

4.1001 Policy.

Contracts may identify the items or services to be acquired as separately identified line items. Contract line items should provide unit prices or lump sum prices for separately identifiable contract deliverables, and associated delivery schedules or performance periods. Line items may be further subdivided or stratified for administrative purposes (*e.g.*, to provide for traceable accounting classification citations).

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5.101 Methods of disseminating information.
5.102 Availability of solicitations.

Subpart 5.2—Synopses of Proposed Contract Actions

5.201 General.
5.202 Exceptions.
5.203 Publicizing and response time.
5.204 Presolicitation notices.
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Subpart 5.3—Synopses of Contract Awards

5.301 General.
5.302 Preparation and transmittal of synopses of awards.
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Subpart 5.4—Release of Information

5.401 General.
5.402 General public.
5.403 Requests from Members of Congress.
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Subpart 5.5—Paid Advertisements

5.501 Definitions.
5.502 Authority.
5.503 Procedures.
5.504 Use of advertising agencies.

5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

5.001 Definition.

"Contracting action," as used in this part, means an action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(c) Assist small business concerns, small disadvantaged business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

Subpart 5.1—Dissemination of Information

5.101 Methods of disseminating information.

The Commerce Business Daily (CBD) is the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published in five or six daily editions weekly, as necessary.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers shall disseminate information on proposed contract actions as follows—

(1) For proposed contract actions expected to exceed $25,000, by synopsizing in the Commerce Business Daily (CBD) (see 5.201); and

(2) For proposed contract actions expected to exceed $10,000, but not expected to exceed $25,000, by displaying in a public place, including on an electronic bulletin board, or any other appropriate electronic means located at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c) and (f). The notice shall include a statement that all responsible sources may submit a quotation which, if timely received, shall be considered by the agency. Such information shall be posted not later than the date the solicitation is issued, and shall remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(c) and (f) may be employed. For example, the requirements for 5.207(c) and (f) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, or when oral or FACNET solicitations are used.

(iii) Contracting officers shall post solicitations expected to exceed $25,000 if required by agency regulations.

(1) Preparing periodic handouts listing proposed contracts, and displaying them as in 5.101(a)(2).

(2) Assisting local trade associations in disseminating information to their members.

(3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.

(4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:

(i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see 5.205(d)).

(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in the District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia (44 U.S.C. 3701).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with 44 U.S.C. 3702 (see 5.502(a)).

5.102 Availability of solicitations.

(a) The contracting officer shall—

(1) Maintain a reasonable number of copies of solicitations publicized in the CBD, including specifications and other pertinent information (upon request, potential sources not initially solicited shall be mailed or provided copies of solicitations, if available);

(2) Provide copies of a limited solicitation to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6;

(3) Provide copies on a "first-come-first-served" basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(4) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, the solicitation; and

(iii) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(5) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted.

(6) Agencies may require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation documents.

(7) If electronic commerce is employed in the solicitation process, availability of the RFP may be limited to the electronic medium.

(b) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

Subpart 5.2—Synopses of Proposed Contract Actions

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies shall furnish for publication in the Commerce Business Daily (CBD) notices of proposed contract actions as specified in paragraph (b) of this section.

(b) For acquisitions of supplies and services other than those covered by the exceptions in 5.202, and special situations in 5.205, the contracting officer shall transmit a notice to the CBD (synopsis) (see 5.207) for each proposed—

(1) Contract actions meeting the thresholds in 5.101(a)(1);

(2) Effort to locate private commercial sources for cost comparison purposes under OMB Circular A-76 (see 5.205(d));

(3) Modification to an existing contract for additional supplies or services that meets the thresholds in 5.101(a)(1); or

(4) Contract action in any amount when advantageous to the Government.

(c) The primary purposes of the CBD notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d) Subscriptions to the CBD must be placed with the—

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and shall include—

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(g) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of the Assistant Attorney General, Antitrust Division.

Subpart 3.4—Contingent Fees

3.400 Scope of subpart.

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those permitted by 10 U.S.C. 2306(b) and 41 U.S.C. 254(a).

3.401 Definitions.

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

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

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

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

(a) Require in every negotiated contract a warranty by the contractor against contingent fees;

(b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and

(c) Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

3.403 Applicability.

This subpart applies to all contracts. Statutory requirements for negotiated contracts are, as a matter of policy, extended to sealed bid contracts.

3.404 Contract clause.

The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see Parts 2 and 12).

3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees shall report the matter promptly to the contracting officer or appropriate higher authority in accordance with agency procedures.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) above, the chief of the contracting office shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the Government's right to annul the contract or to recover the fee.

(3) Initiate suspension or debarment action under Subpart 9.4.

(4) Refer suspected fraudulent or criminal matters to the Department of Justice, as prescribed in agency regulations.

retained in the contract file.

Subpart 3.5—Other Improper Business Practices

3.501 Buying-in.

3.501-1 Definition.

"Buying-in" means submitting an offer below anticipated costs, expecting to—

(a) Increase the contract amount after award (*e.g.*, through unnecessary or excessively priced change orders); or

(b) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

3.501-2 General.

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of—

(1) Change orders; or

(2) Follow-on contracts subject to cost analysis.

(b) The Government should minimize the opportunity for buying-in by seeking a price commitment covering as much of the entire program concerned as is practical by using—

(1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multiyear quantity; or

(2) Priced options for additional quantities that, together with the firm contract quantity, equal the program requirements (see Subpart 17.2).

(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses (*e.g.*, amortization of nonrecurring costs (see 15.408, Table 15-2, paragraph A, column (2) under "Formats for Submission of Line Item Summaries") and treatment of unreasonable price quotations (see 15.405).

3.502 Subcontractor kickbacks.

3.502-1 Definitions.

"Kickback," as used in this section, means any money, fee, commission, credit, gift, gratuity, thing of value, or

partnership, business association or any kind, trust, joint-stock company, or individual.

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

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

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

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

"Subcontractor," as used in this section—

(a) Means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

(b) Includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

3.502-2 Subcontractor kickbacks.

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act—

(a) Prohibits any person from—

(1) Providing, attempting to provide, or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The contract action is made under the conditions described in 6.302-2 (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;

(3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(f)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The contract action is for utility services other than telecommunications services and only one source is available;

(6) The contract action is an order placed under Subpart 16.5;

(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see 6.003) and publication of any notice complying with 5.207 would improperly disclose the originality of thought or innovativeness of the proposed

(10) The contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(11) The contract action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action;

(12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to contract actions subject to the Trade Agreements Act (see Subpart 25.4). This exception also does not apply to North American Free Trade Agreement contract actions, which will be synopsized in accordance with agency regulations;

(13) The contract action is for an amount expected to exceed $25,000 but not expected to exceed the simplified acquisition threshold and is made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET and the contract action will be made through FACNET;

(14) The contract action is for an amount at or below $250,000 and is made through FACNET after Governmentwide FACNET has been certified pursuant to 4.505-3; or

(15) The contract action is made under conditions described in 6.302-3 with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

(b) The head of the agency determines in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

5.203 Publicizing and response time.

Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:

(a) A notice of contract action shall be published in the Commerce Business Daily at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

be greater than $25,000, but not greater than the simplified acquisition threshold; or (2) each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000 (see Part 12). The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Except for the acquisition of commercial items (see 5.203(b)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies shall allow at least a 45 day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development if the contract action is expected to exceed the simplified acquisition threshold.

(f) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these time frames. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the contract action under the authority of 5.202(a)(2).

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see Subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers shall be no less than 40 days. However, if the acquisition is still required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may publish in the CBD, advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices shall be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices shall be titled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers shall synopsize all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see Part 35) or before changing its basic purpose and mission, the sponsor shall place at least three notices over a 90-day period in the *Commerce Business Daily* and the *Federal Register*, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice shall indicate the scope and nature of the effort to be performed and request comments. Notice is not required where action is required by law.

(c) *Special notices.* Contracting officers may publish in the CBD special notices of procurement matters such as business fairs, long-range procurement estimates, pre-bid/pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review. Special notices shall be transmitted to the CBD in accordance with 5.207.

46 Water purification and sewage treatment equipment.
47 Pipe, tubing, hose, and fittings.
48 Valves.
49 Maintenance and repair shop equipment.
51 Hand tools.
52 Measuring tools.
53 Hardware and abrasives.
54 Prefabricated structures and scaffolding.
55 Lumber, millwork, plywood, and veneer.
56 Construction and building materials.
58 Communication, detection, and coherent radiation equipment.
59 Electrical and electronic equipment components.
60 Fiber optics materials, components, assemblies, and accessories.
61 Electric wire, and power and distribution equipment.
62 Lighting fixtures and lamps.
63 Alarm, signal, and security detection systems.
65 Medical, dental, and veterinary equipment and supplies.
66 Instruments and laboratory equipment.
67 Photographic equipment.
68 Chemicals and chemical products.
69 Training aids and devices.
70 General-purpose information technology equipment.
71 Furniture.
72 Household and commercial furnishings and appliances.
73 Food preparation and serving equipment.
74 Office machines, text processing systems, and visible record equipment.
75 Office supplies and devices.
76 Books, maps, and other publications.
77 Musical instruments, phonographs, and home-type radios.
78 Recreational and athletic equipment.
79 Cleaning equipment and supplies.
80 Brushes, paints, sealers, and adhesives.
81 Containers, packaging, and packing supplies.
83 Textiles, leather, furs, apparel and shoe findings, tents, and flags.
93 Nonmetallic fabricated materials.
94 Nonmetallic crude materials.
95 Metal bars, sheets, and shapes.
96 Ores, minerals, and their primary products.
99 Miscellaneous.

(3) Only one classification code shall be reported. If more than one code is applicable, the contracting officer shall use the code which describes the predominant product or service being procured. The FPDS Product and Service Codes Manual, October 1988, may be used to identify a specific product or service within each code.

(h) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of contract actions in the CBD. Cancellations of solicitations shall be made in accordance with 14.209 and 14.404-1.

Subpart 5.3—Synopses of Contract Awards

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the Commerce Business Daily (CBD) awards exceeding $25,000 that (1) are subject to the Trade Agreements Act (see 25.402 and 25.403), or (2) are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required under paragraph (a) of this section if—

(1) The notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;

(3) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

$25,000 but not greater than the simplified acquisition threshold, the contract action is made by a contracting office that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET, and the contract action has been made through FACNET; or

(8) The award is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302-3.

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers shall submit synopses in sufficient time to permit their publication in the CBD not later than 60 days after award.

5.302 Preparation and transmittal of synopses of awards.

Contracting officers shall transmit synopses of contract awards in the same manner as prescribed in 5.207.

5.303 Announcement of contract awards.

(a) *Public announcement.* Contracting officers shall make information available on awards over $3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of award. Contracts excluded from this reporting requirement include (1) those placed with the Small Business Administration under Section 8(a) of the Small Business Act, (2) those placed with foreign firms when the place of delivery or performance is outside the United States or its possessions, and (3) those for which synopsis was exempted under 5.202(a)(1). Agencies shall not release information on awards before the public release time of 5:00 p.m. Washington, DC time.

(b) *Local announcement.* Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the simplified acquisition threshold, they shall include—

(1) For awards after sealed bidding, a statement that the contract was awarded after competition by sealed bidding, the number of offers solicited and received, and the basis for selection (*e.g.*, the lowest responsible bidder); or

(a) A high level of business security must be maintained in order to preserve the integrity of the acquisition process. When it is necessary to obtain information from potential contractors and others outside the Government for use in preparing Government estimates, contracting officers shall ensure that the information is not publicized or discussed with potential contractors.

(b) Contracting officers may make available maximum information to the public, except information—

(1) On plans that would provide undue or discriminatory advantage to private or personal interests;

(2) Received in confidence from an offeror;

(3) Otherwise requiring protection under Freedom of Information Act (see Subpart 24.2) or Privacy Act (see Subpart 24.1); or

(4) Pertaining to internal agency communications (*e.g.*, technical reviews, contracting authority or other reasons, or recommendations referring thereto).

(c) This policy applies to all Government personnel who participate directly or indirectly in any stage of the acquisition cycle.

5.402 General public.

Contracting officers shall process requests for specific information from the general public, including suppliers, in accordance with Subpart 24.1 or 24.2, as appropriate.

5.403 Requests from Members of Congress.

(a) *Individual requests.* Contracting officers shall give Members of Congress, upon their request, detailed information regarding any particular contract. When responsiveness would result in disclosure of classified matter, business confidential information, or information prejudicial to competitive acquisition, the contracting officer shall refer the proposed reply, with full documentation, to the agency head and inform the legislative liaison office of the action.

(b) *Inclusion on solicitation mailing lists.* Upon request of a Congressional Committee or Subcommittee Chairperson, contracting officers shall place any member of a Committee or Subcommittee on the applicable solicitation mailing lists to receive automatic distribution of solicitations in the specific area of interest.

6.100 Scope of subpart.
6.101 Policy.
6.102 Use of competitive procedures.

Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.
6.201 Policy.
6.202 Establishing or maintaining alternative sources.
6.203 Set-asides for small business concerns.
6.204 Section 8(a) competition.

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.
6.301 Policy.
6.302 Circumstances permitting other than full and open competition.
6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
6.302-2 Unusual and compelling urgency.
6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services
6.302-4 International agreement.
6.302-5 Authorized or required by statute.
6.302-6 National security.
6.302-7 Public interest.
6.303 Justifications.
6.303-1 Requirements.
6.303-2 Content.
6.304 Approval of the justification.
6.305 Availability of the justification.

Subpart 6.4—Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Subpart 6.5—Competition Advocates

6.501 Requirement.
6.502 Duties and responsibilities.

6.000 Scope of part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. As used in this part, full and open competition is the process by which all responsible offerors are allowed to compete. This part does not deal with the results procedures of Part 13 (but see 13.602 for requirements pertaining to sole source acquisitions of commercial items under Subpart 13.6);

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see 17.207(f)), that are within the scope and under the terms of an existing contract;

(d) Orders placed under requirements contracts or definite-quantity contracts;

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when—

(1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order; or

(f) Orders placed against task order and delivery order contracts entered into pursuant to Subpart 16.5.

6.002 Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 Definitions.

"Full and open competition," when used with respect to a contract action, means that all responsible sources are permitted to compete.

"Procuring activity," as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term "procuring activity" shall be synonymous with "contracting activity" as defined in Subpart 2.1.

"Sole source acquisition" means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

"Unique and innovative concept," when used relative to an unsolicited research proposal, means that, in the opinion and to the knowledge of the Government evaluator, the mer-

Subpart 6.1—Full and Open Competition

6.100 Scope of subpart.

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 Policy.

(a) 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently (10 U.S.C. 2304 and 41 U.S.C. 253).

6.102 Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) *Sealed bids.* (See 6.401(a).)

(b) *Competitive proposals.* (See 6.401(b).) If sealed bids are not appropriate under paragraph (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under paragraph (c) or (d) of this section.

(c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (*e.g.*, two-step sealed bidding).

(d) *Other competitive procedures.* (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C. 541, *et seq.*) is a competitive procedure (see Subpart 36.6 for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of

dure.

Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.

This subpart prescribes policy and procedures for providing for full and open competition after excluding one or more sources.

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102 after agencies have excluded a source or sources from participation in a contract action under the circumstances described in 6.202 or 6.203 below.

6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) (see Subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

6.203 Set-asides for small business concerns.

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to set-asides.

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100-656, contracting officers may limit competition to eligible 8(a) contractors (see Subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

6.301 Policy.

(a) 41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to 10 U.S.C. 2304(c). Other executive agencies are subject to 41 U.S.C. 253(c). Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officer shall justify the use of such authority in writing, and obtain approval at a level higher than the contracting officer or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102(a) or (b), if appropriate, or any other procedures authorized by this regulation.

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(1) or 41 U.S.C. 253(c)(1).

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that—

(A) Demonstrates a unique and innovative concept, or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and

(C) Does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 2304(d)(1)(A) and 41 U.S.C. 253(d)(1)(A).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in—

nal source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(B) Unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by—

(i) Unique supplies or services available from only one source or only one supplier with unique capabilities; or

(ii) For DOD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When acquiring utility services (see 41.101), circumstances may dictate that only one supplier can furnish the service (see 41.202); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)

(d) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered.

6.302-2 Unusual and compelling urgency.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(2) or 41 U.S.C. 253(c)(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where—

(1) An unusual and compelling urgency precludes full and open competition; and

(2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(3) or 41 U.S.C. 253(c)(3).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order—

7.105 Contents of written acquisition plans.

In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions should be made (see subparagraph (b)(18) of this section). The plan shall address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner shall follow the applicable instructions in paragraphs (a) and (b) of this section, together with the agency's implementing procedures. Acquisition plans for service contracts shall describe the strategies for implementing performance-based contracting methods or shall provide rationale for not using those methods (see Subpart 37.6).

(a) *Acquisition background and objectives*—(1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.

(2) *Applicable conditions.* State all significant conditions affecting the acquisition, such as—

(i) Requirements for compatibility with existing or future systems or programs; and

(ii) Any known cost, schedule, and capability or performance constraints.

(3) *Cost.* Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:

(i) *Life-cycle cost.* Discuss how life-cycle cost will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.

(ii) *Design-to-cost.* Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual requirements to be imposed.

(iii) *Application of should-cost.* Describe the application of should-cost analysis to the acquisition (see 15.407-4).

(6) *Trade-offs.* Discuss the expected consequences of trade-offs among the various cost, capability or performance, and schedule goals.

(7) *Risks.* Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

(8) *Acquisition streamlining.* If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to—

(i) Encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements;

(ii) Select and tailor only the necessary and cost-effective requirements; and

(iii) State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory.

(b) *Plan of action*—(1) *Sources.* Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies or services (see Part 8). Include consideration of small business, small disadvantaged business, and women-owned small business concerns (see Part 19). Address the extent and results of the market research and indicate their impact on the various elements of the plan (see Part 10).

(2) *Competition.* (i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery

(3) *Source-selection procedures.* Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see Subpart 15.3).

(4) *Contracting considerations.* For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or FAR deviations required (see Subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see Subpart 7.4) and why; and any other contracting considerations.

(5) *Budgeting and funding.* Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see Subpart 32.7).

(6) *Product or service descriptions.* Explain the choice of product or service description types (including performance-based contracting descriptions) to be used in the acquisition.

(7) *Priorities, allocations, and allotments.* When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see Subpart 11.6).

(8) *Contractor versus Government performance.* Address the consideration given to OMB Circular No. A-76 (see Subpart 7.3).

(9) *Inherently governmental functions.* Address the consideration given to OFPP Policy Letter 92-1 (see Subpart 7.5).

(10) *Management information requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

(13) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial items;

(ii) The reliability, maintainability, and quality assurance requirements, including any planned use of warranties (see Part 46);

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see Part 27); and

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

(14) *Government-furnished property.* Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see Part 45).

(15) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

(16) *Environmental and energy conservation objectives.* Discuss all applicable environmental and energy conservation objectives associated with the acquisition (see Part 23), the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.

(17) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will

comparison under a new start.

(2) Firm offers shall be required for the period covered by the cost comparison, by using—

(i) A base contract period and any applicable priced options to total the amount of time represented by the cost estimate for Government performance (see Subpart 17.2); or

(ii) A multiyear contract when appropriate (see Subpart 17.1).

(3) Solicitations shall not, unless a proper determination to the contrary is made, limit award to U.S. offerors.

(d) *Integrity of cost comparison.* (1) The confidentiality of—

(i) The cost estimate for Government performance; and

(ii) The bids in sealed-bid cost comparisons shall be maintained until the time of bid opening, to ensure that they are completely independent.

(2) For cost comparisons conducted using the results of negotiation procedures, confidentiality and independence shall be maintained until after negotiations are completed and the most advantageous offer has been selected.

(3) Personnel who have knowledge of the cost figures in the cost estimate for Government performance shall not participate in the offer-evaluation process unless the contract file is adequately documented to show that no other qualified personnel were available.

7.305 Solicitation provisions and contract clause.

(a) The contracting officer shall, when contracting by sealed bidding, insert in solicitations issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-1, Notice of Cost Comparison (Sealed-Bid).

(b) The contracting officer shall, when contracting by negotiation, insert in requests for proposals issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-2, Notice of Cost Comparison (Negotiated).

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in con-

tation differs from conventional contracting procedures as follows:

(a) *Sealed bidding.* (1) At the public bid opening, after recording of bids, the contracting officer shall—

(i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered;

(ii) Enter on the cost comparison form the price of the apparent low bidder;

(iii) Announce the result, based on the initial cost comparison form, stating that this result is subject to required agency processing, including evaluation for responsiveness and responsibility, completion and audit of the cost comparison form (see Supplement, Part IV, Illustration 1), and resolution of any requests for review under the appeals procedure (see 7.307);

(iv) State that no final determination for performance by the Government or under contract will be made during the public review period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex; the public review period begins when the documents identified in (a)(1)(v) below are available to interested parties), plus any additional time required for the appeals procedure; and

(v) Make available for this public review by interested parties the abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance.

(2) After evaluation of bids (see Subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(4) The contracting officer shall make the completed and approved cost comparison analysis available to interested parties upon request.

the preparer of the cost estimate for Government performance for completion. The preparer shall give due consideration to all types of costs which could add or subtract from the cost of either mode of performance.

(1) If the result of the cost comparison favors performance under contract and the responsible agency official approves the result, the contracting officer shall award a contract in accordance with agency procedures. Concurrently with the award, the contracting officer shall publicly—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost comparison form and detailed supporting data are available for review;

(iii) Announce the contractor's name; and

(iv) Advise interested parties that contractor preparations for performance are conditioned upon completion of the public review period specified in the solicitation plus any additional period required by the appeals procedure.

(2) If the result of the cost comparison favors Government performance, the contracting officer shall—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost comparison form and detailed supporting data relative to the Government cost estimate are available for public review (see paragraph (b)(3) of this section); and

(iii) Announce the price of the offer most advantageous to the Government.

(3) The public review period shall begin with the contracting officer's announcement of the cost comparison result and availability of the cost comparison forms and detailed supporting data to interested parties. The review period shall last for the period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex). Upon completion of the public review period and resolution of any questions raised under 7.307, the responsible agency official shall provide the contracting officer written notification of the final cost comparison decision. The contracting officer shall then, in the case of subparagraph (b)(1) of this section, give the contractor notice to commence or cancel the contract as appropriate or, in the initial result by an official at a higher level than the official who approved that result. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

(b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in Subpart 33.1, Protests. Directly affected parties may request review of any discrepancy in the cost comparison. Any such requests shall be made in writing to the contracting officer, who shall forward them in accordance with agency procedures. Such requests shall be considered only if based on specific objections and received within the public review period stated in the solicitation.

Subpart 7.4—Equipment Lease or Purchase

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

7.401 Acquisition considerations.

(a) Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered:

(1) Estimated length of the period the equipment is to be used and the extent of use within that period.

(2) Financial and operating advantages of alternative types and makes of equipment.

(3) Cumulative rental payments for the estimated period of use.

(4) Net purchase price.

(5) Transportation and installation costs.

(6) Maintenance and other service costs.

(7) Potential obsolescence of the equipment because of imminent technological improvements.

(b) The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

tity (see 12.104). The delivery schedule may—

(1) Be the same whether or not testing and approval is waived; or

(2) Provide for earlier delivery when testing and approval is waived and the Government desires earlier delivery. In the latter case, any resulting difference in delivery schedules shall not be a factor in evaluation for award. The clause at 52.209-4, First Article Approval—Government Testing, shall contain the delivery schedule for the first article;

(g) Provide for the submission of contract numbers, if any, to document the offeror's eligibility under 9.306(c);

(h) State whether the approved first article will serve as a manufacturing standard; and

(i) Include, when the Government is responsible for first article testing, the Government's estimated testing costs as a factor for use in evaluating offers (when appropriate).

(j) Inform offerors that the prices for first articles and first article tests in relation to production quantities shall not be materially unbalanced (see 15.404-1(g)) if first article test items or tests are to be separately priced.

9.307 Government administration procedures.

(a) Before the contractor ships the first article, or the first article test report, to the Government laboratory or other activity responsible for approval at the address specified in the contract, the contract administration office shall provide that activity with as much advance notification as is feasible of the forthcoming shipment, and—

(1) Advise that activity of the contractual requirements for testing and approval, or evaluation, as appropriate;

(2) Call attention to the notice requirement in paragraph (b) of the clause at 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing; and

(3) Request that the activity inform the contract administration office of the date when testing or evaluation will be completed.

(b) The Government laboratory or other activity responsible for first article testing or evaluation shall inform the contracting office whether to approve, conditionally approve, or disapprove the first article. The contracting officer shall then notify the contractor of the action taken and furnish a copy of the notice to the contract administration

9.308 Contract clauses.

9.308-1 Testing performed by the contractor.

(a)(1) The contracting officer shall insert the clause at 52.209-3, First Article Approval—Contractor Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require—

(i) First article approval; and

(ii) That the contractor be required to conduct the first article testing.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use the clause with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use the clause with its Alternate II.

(b)(1) The contracting officer shall insert a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require—

(i) First article approval; and

(ii) That the contractor be required to conduct the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, with its Alternate II.

9.308-2 Testing performed by the Government.

(a)(1) The contracting officer shall insert the clause at 52.209-4, First Article Approval—Government Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require first article approval and that the Government will be responsible for conducting the first article test.

stantially the same as the clause at 52.209-4, First Article Approval—Government Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require first article approval and that the Government be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate II.

Subpart 9.4—Debarment, Suspension, and Ineligibility

9.400 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in 9.406-2 and 9.407-2;

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of "ineligible" in 9.403); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of ineligible contractors (9.404) and the effect of this listing (9.405(b)), it does not prescribe policies and procedures governing declarations of ineligibility.

9.401 Applicability.

In accordance with Public Law 103-355, Section 2455 (31 U.S.C. 6101, note), and Executive Order 12689, any debarment, suspension or other Governmentwide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995, shall be recognized by and effective for Executive Branch agencies as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

9.403 Definitions.

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Contractor," as used in this subpart, means any individual or other legal entity that—

Documents

11.101 Order of precedence for requirements documents.
11.102 Standardization program.
11.103 Market acceptance.
11.104 Items peculiar to one manufacturer.
11.105 Purchase descriptions for service contracts.

Subpart 11.2—Using and Maintaining Requirements Documents

11.201 Identification and availability of specifications.
11.202 Maintenance of standardization documents.
11.203 Customer satisfaction.
11.204 Solicitation provisions and contract clauses.

Subpart 11.3—Acceptable Material

11.301 Policy.
11.302 Contract clause.

Subpart 11.4—Delivery or Performance Schedules

11.401 General.
11.402 Factors to consider in establishing schedules.
11.403 Supplies or services.
11.404 Contract clauses.

Subpart 11.5—Liquidated Damages

11.501 General.
11.502 Policy.
11.503 Procedures.
11.504 Contract clauses.

Subpart 11.6—Priorities and Allocations

11.600 Scope of subpart.
11.601 Definitions.
11.602 General.
11.603 Procedures.
11.604 Solicitation provision and contract clause.

Subpart 11.7—Variation in Quantity

11.701 Supply contracts.
11.702 Construction contracts.
11.703 Contract clauses.

Subpart 11.8—Testing

11.801 Preaward in-use evaluation.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

inal manufacturing process; *provided* that the supplies meet contract requirements, including, but not limited to, performance, reliability, and life expectancy.

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

"Recovered material" has the meaning provided such term in 23.402.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see Part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate com-

U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with Subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, Executive Order 12873, dated October 20, 1993, and Executive Order 12902, dated March 8, 1994, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Requiring activities shall prepare plans, drawings, specifications, standards (including voluntary standards), and purchase descriptions that consider the requirements set forth in Part 23. Environmental objectives, such as pollution prevention (*e.g.*, promoting waste reduction, source reduction, energy efficiency and maximum practicable recovered material content) (see Part 23) shall be considered when describing Government requirements for supplies and services, and when developing source selection factors for competitive negotiated acquisitions (see 15.304), when appropriate.

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements series for the non-repetitive acquisition of items.

(b) Agencies should prepare product descriptions to achieve maximum practicable use of recovered material, other materials that are environmentally preferable, and products that are energy-efficient (see Subparts 23.4 and 23.7).

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual and, for DOD components, DOD 4120.3-M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407. DOD 4120.3-M may be obtained from DOD Single Stock Point, Standardization Document Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094.

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103-355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

value may be retained without compensating the contractor; and

(2) Excess quantities of items totaling over $250 in value may, at the Government's option, be either returned at the contractor's expense or retained and paid for at the contract unit price.

11.702 Construction contracts.

Construction contracts may authorize a variation in estimated quantities of unit-priced items. When the variation between the estimated quantity and the actual quantity of a unit-priced item is more than plus or minus 15 percent, an equitable adjustment in the contract price shall be made upon the demand of either the Government or the contractor. The contractor may request an extension of time if the quantity variation is such as to cause an increase in the time necessary for completion. The contracting officer must receive the request in writing within 10 days from the beginning of the period of delay. However, the contracting officer may extend this time limit before the date of final settlement of the contract. The contracting officer shall ascertain the supplies.

(b) The contracting officer may insert the clause at 52.211-17, Delivery of Excess Quantities, in solicitations and contracts when a fixed-price supply contract is contemplated.

(c) The contracting officer shall insert the clause at 52.211-18, Variation in Estimated Quantity, in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items.

Subpart 11.8—Testing

11.801 Preaward in-use evaluation.

Supplies may be evaluated under comparable in-use conditions without a further test plan, provided offerors are so advised in the solicitation. The results of such tests or demonstrations may be used to rate the proposal, to determine technical acceptability, or otherwise to evaluate the proposal (see 15.305).

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12.102 Applicability.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.
12.202 Market research and description of agency need.
12.203 Procedures for solicitation, evaluation, and award.
12.204 Solicitation/contract form.
12.205 Offers.
12.206 Use of past performance.
12.207 Contract type.
12.208 Contract quality assurance.
12.209 Determination of price reasonableness when contracting by negotiation.
12.210 Contract financing.
12.211 Technical data.
12.212 Computer software.
12.213 Other commercial practices.
12.214 Cost Accounting Standards.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.
12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
12.302 Tailoring of provisions and clauses for the acquisition of commercial items.
12.303 Contract format.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.
12.402 Acceptance.
12.403 Termination.
12.404 Warranties.

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.
12.501 Applicability.
12.502 Procedures.
12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.
12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

12.001 Definition.

"Subcontract," as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

Agencies shall—

(a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements;

(b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

12.102 Applicability.

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of this chapter. When a policy in another part of this chapter is inconsistent with a

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Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

Public Law 103-355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

12.202 Market research and description of agency need.

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see Part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in Subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the stream-

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203(a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Consistent with the requirements at 5.203(b) and (h), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items.

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in Subpart 9.1, 13.106-2, or Subpart 15.3, as applicable.

12.207 Contract type.

Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see Subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with

item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

12.209 Determination of price reasonableness when contracting by negotiation.

When contracting by negotiation for commercial items, the policies and procedures in Subpart 15.4 shall be used to establish the reasonableness of prices.

12.210 Contract financing.

Customary market practice for some commercial items may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in Part 32.

12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see Part 27 or agency FAR supplements).

12.212 Computer software.

(a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

tions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) generally will not apply to commercial items. If CAS does apply pursuant to 48 CFR 9903.201 (FAR Appendix), the contracting officer shall insert the appropriate provisions and clauses as prescribed in that section.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Public Law 103-355 (41 U.S.C 264, note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) The provision at 52.212-1, Instructions to Offerors—Commercial Items. This provision provides a single, streamlined set of instructions to be used when solic-

representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4;

(3) The clause at 52.212-4, Contract Terms and Conditions—Commercial Items. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27a, SF 1449). The contracting officer may tailor this clause in accordance with 12.302; and

(4) The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212-5(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to Part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items (see 12.602); or

(2) Include a similar provision containing all evaluation factors required by 13.106-2, Subpart 14.2 or Subpart 15.3, as an addendum (see 12.302(d)).

(d) Use of required provisions and clauses. Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(e) Discretionary use of FAR provisions and clauses. The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. If the provision at 52.212-2 is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in Part 23 regarding the use of recovered material when appropriate for the item being acquired.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

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

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212-1, Instructions to Offerors—Commercial Items, and the clause at 52.212-4, Contract Terms and Conditions— Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring 52.212-4, Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

(1) Assignments;

(2) Disputes;

(3) Payment (except as provided in Subpart 32.11);

(4) Invoice;

(5) Other compliances; and

(iii) The warranty is cost-effective.

(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212-4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

(3) Express warranties shall be included in the contract by addendum (see 12.302).

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.

As required by Section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), this subpart lists provisions of laws that are not applicable to contracts for the acquisition of commercial items, or are not applicable to subcontracts, at any tier, for the acquisition of a commercial item. This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.501 Applicability.

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items. --

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under Subpart 19.8, Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in 12.503 has been revised in the clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).

(2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).

(3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 5.203).

(4) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see 23.501).

(b) Certain requirements of the following laws have been eliminated for executive agency contracts for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a clause under the Federal Water Pollution Control Act (see 23.105).

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 22.305).

(3) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 3.502).

(4) 42 U.S.C. 7606, Requirement for a clause under the Clean Air Act (see 23.105).

(5) 49 U.S.C. 40118, Requirement for a certificate and clause under the Fly American provisions (see 47.405).

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.403).

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

(2) 19 U.S.C. 1202, Tariff Act of 1930 (see Subpart 25.6).

(3) 19 U.S.C. 1309, Supplies for Certain Vessels and Aircraft (see Subpart 25.6).

(4) 19 U.S.C. 2701, *et seq.*, Authority to Grant Duty Free Treatment (see Subpart 25.6).

(5) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see Subpart 3.8).

(6) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).

(7) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see Subpart 27.4).

(8) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see Subpart 3.4).

(9) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see 15.209(b)).

(10) 41 U.S.C. 351, Service Contract Act of 1965, as amended (see Subpart 22.10).

(11) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see Subpart 5.2).

(12) 41 U.S.C. 418a, Rights in Technical Data (see Subpart 27.4).

(13) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see Subpart 23.5).

(14) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see Subpart 47.5)(inapplicability effective May 1, 1996).

(15) 49 U.S.C. 40118, Fly American provisions (see Subpart 47.4).

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see Subpart 23.1).

(2) 40 U.S.C. 327, *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see Subpart 22.3).

(3) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see Subpart 23.1).

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.

This subpart provides optional procedures for (a) streamlined evaluation of offers for commercial items; and (b) streamlined solicitation of offers for commercial items for use where appropriate. These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106-2 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in Part 13, contracting officers are not required to describe the relative importance of evaluation factors.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in 13.106-2 or Subpart 15.3, as applicable. The contracting officer shall ensure the instructions provided in

5.101 and 5.205 to determine if public display and synopsis requirements apply.

(g) When a quotation, oral or written, is to be rejected because a small business firm is determined to be nonresponsible (see Subpart 9.1), see Subpart 19.6 with respect to certificates of competency.

13.105 Small business set-asides.

(a) Each acquisition (non-FACNET and FACNET) of supplies or services that has an anticipated dollar value exceeding $2,500 and not exceeding $100,000, is reserved exclusively for small business concerns and shall be set aside in accordance with Subpart 19.5.

(b) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by Part 19. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

13.106 Soliciting competition, evaluation of quotes, and award.

13.106-1 Purchases at or below the micro-purchase threshold.

(a) *Soliciting competition, evaluation of quotes, and award.* (1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases (as defined in 2.101) may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603-3(b) considers the price reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases at or below the micro-purchase threshold may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with 1.603-3(b) suspects or has information to indicate that the price may not be reasonable (*e.g.*, comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (*e.g.*, a supply or service that is not the same as, or is not similar to,

(b) *Documentation.* Minimize the documentation to support micro-purchases.

13.106-2 Purchases exceeding the micro-purchase threshold.

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, based, as appropriate, on either price alone or price and other factors (*e.g.*, past performance and quality) including the administrative cost of the purchase. Contracting officers are encouraged to use best value. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) For acquisitions not exceeding the simplified acquisition threshold where FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means (*e.g.*, orally, or in writing). The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET. When a synopsis is required, sufficient information to permit suppliers to develop quotations or offers may be incorporated into a combined synopsis/ solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. For commercial item acquisitions, also see 12.603.

(3) For acquisitions not exceeding $25,000, requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. Paper solicitations for contract actions not expected to exceed $25,000 should be issued only when obtaining electronic or oral quotations is not considered economical or practicable. Written solicitations shall be issued for construction contracts over $2,000.

(4) If a synopsis is not required (*e.g.*, the acquisition does not exceed $25,000 or an exemption to the synopsis requirement applies) and FACNET is not being used, solicitation of at least three sources generally may be considered to promote competition to the maximum extent practicable. In such circumstances, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. If practicable, two sources not included in the previous solicitation

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(5) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.

(6) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to Subpart 13.6, the requirements at 13.602(a) apply.

(7) Contracting officers shall not limit competition to suppliers of well-known and widely distributed makes or brands (see 11.104), or solicit quotations or offers on a personal preference basis.

(8) In accordance with 14.408-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(9)(i) Each contracting office should maintain a source list (or lists, if more convenient). New supply sources for the list may be obtained from a variety of sources, including the Central Contractor Registration (CCR) data base (see 4.503). The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.

(B) Small disadvantaged business.

(C) Women-owned small business.

(ii) The status information may be used as the basis to ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

(10) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Evaluation of quotes or offers.* (1) When evaluating quotations or offers, the evaluation must be made on the basis established in the solicitation. All quotations or offers must be considered. However, the contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in Parts 14 and 15 are not officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis.

(2) Standing price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, contracting officers shall ensure that the pricing information is current and that the Government obtains the benefit of maximum discounts before award is made.

(3) Contracting officers shall evaluate quotations or offers inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(4) Contracting officers shall comply with the policy in 7.202 relating to economic purchase quantities, when practicable.

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) For acquisitions not exceeding the simplified acquisition threshold, except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

(3) If a supplier requests information on an award which was based on factors other than price, a brief explanation of the basis for the contract award decision shall be provided (see 15.503(b)(2)).

(d) *Data to support purchases.* (1) The determination that a proposed price is reasonable should be based on competitive quotations/offers. If only one response is received, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on market research, a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, comparison to an independent government estimate, or any other reasonable basis.

(4) Documentation should be kept to a minimum. The following illustrate the extent to which quotation/offer information should be recorded:

(i) *Oral solicitations.* The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(ii) *Written solicitations* (see 2.101). For acquisitions not exceeding the simplified acquisition threshold, written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(5) Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see Subpart 4.8) when using simplified acquisition procedures.

13.107 Solicitation forms.

(a) For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

(b) Except when quotations are solicited via FACNET, other electronic means, or orally, the SF 1449; SF 18, Request for Quotations; or other agency authorized form/automated format may be used for other than commercial items.

(c) OF 336, Continuation Sheet, may be used when additional space is needed.

13.108 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification or cancellation of purchase orders.)

13.109 Agency use of indefinite delivery contracts.

Costs and processing time for acquisitions at or below the simplified acquisition threshold may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit task or delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.

13.110 Federal Acquisition Streamlining Act of 1994 (FASA) list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) & (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 270a (Miller Act). (Although the Miller Act no longer applies to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material are still required if the contract exceeds $25,000.)

(3) 40 U.S.C. 327 to 333 (Contract Work Hours and Safety Standards Act).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act)(Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable).

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Pub. L. 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator of the Office of Federal Procurement Policy to include any applicable provision of law not included on the list set forth in 13.110(a) unless the FAR Council has already determined in writing that the law is applicable. The Administrator of OFPP will include the law on the list in 13.110(a) unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

13.111 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold—

(a) Clauses implementing Miller Act requirements in 28.102-3;

(b) 52.203-5, Covenant Against Contingent Fees;

(c) 52.203-6, Restrictions on Subcontractor Sales to the Government;

(d) 52.203-7, Anti-Kickback Procedures;

(e) 52.215-2, Audit and Records—Negotiation;

(f) 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation;

(g) 52.223-6, Drug-Free Workplace, except for individuals; and

(h) 52.223-9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

13.112 Use of options in acquisitions using simplified acquisition procedures.

Options may be included in acquisitions using simplified acquisition procedures provided that the requirements of Subpart 17.2 are met, and that the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

Subpart 13.2—Blanket Purchase Agreements

levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt the agency from the responsibility for keeping obligations and expenditures within available funds.

13.202 Establishment of blanket purchase agreements (BPAs).

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) Use of this procedure would avoid the writing of numerous purchase orders.

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

(b) After determining a BPA would be advantageous, contracting officers shall—

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and

(2) Consider suppliers whose past performance has shown them to be dependable, and who offer quality supplies or services at consistently lower prices and who have provided numerous purchases at or below the simplified acquisition threshold.

(c) BPAs may be established with—

(1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

(2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or

(3) Federal Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract.

(d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—

14.103-1 General.
14.103-2 Limitations.
14.104 Types of contracts.
14.105 Solicitations for informational or planning purposes.

Subpart 14.2—Solicitation of Bids

14.201 Preparation of invitations for bids.
14.201-1 Uniform contract format.
14.201-2 Part I—The Schedule.
14.201-3 Part II—Contract clauses.
14.201-4 Part III—Documents, exhibits, and other attachments.
14.201-5 Part IV—Representations and instructions.
14.201-6 Solicitation provisions.
14.201-7 Contract clauses.
14.201-8 Price related factors.
14.201-9 Simplified contract format.
14.202 General rules for solicitation of bids.
14.202-1 Bidding time.
14.202-2 Telegraphic bids.
14.202-3 Bid envelopes.
14.202-4 Bid samples.
14.202-5 Descriptive literature.
14.202-6 Final review of invitations for bids.
14.202-7 Facsimile bids.
14.202-8 Electronic bids.
14.203 Methods of soliciting bids.
14.203-1 Transmittal to prospective bidders.
14.203-2 Dissemination of information concerning invitations for bids.
14.203-3 Master solicitation.
14.204 Records of invitations for bids and records of bids.
14.205 Solicitation mailing lists.
14.205-1 Establishment of lists.
14.205-2 Removal of names from solicitation mailing lists.
14.205-3 Reinstatement on solicitation mailing lists.
14.205-4 Excessively long solicitation mailing lists.
14.205-5 Release of solicitation mailing lists.
14.206 Small business set-asides.
14.207 Pre-bid conference.
14.208 Amendment of invitation for bids.
14.209 Cancellation of invitations before opening.
14.210 Qualified products.
14.211 Release of acquisition information.
14.212 Economic purchase quantities (supplies).
14.213 Annual submission of representations and certifications.
14.304-2 Notification to late bidders.
14.304-3 Disposition of late submissions.
14.304-4 Records.

Subpart 14.4—Opening of Bids and Award of Contract

14.400 Scope of subpart.
14.401 Receipt and safeguarding of bids.
14.402 Opening of bids.
14.402-1 Unclassified bids.
14.402-2 Classified bids.
14.402-3 Postponement of openings.
14.403 Recording of bids.
14.404 Rejection of bids.
14.404-1 Cancellation of invitations after opening.
14.404-2 Rejection of individual bids.
14.404-3 Notice to bidders of rejection of all bids.
14.404-4 Restrictions on disclosure of descriptive literature.
14.404-5 All or none qualifications.
14.405 Minor informalities or irregularities in bids.
14.406 Receipt of an unreadable electronic bid.
14.407 Mistakes in bids.
14.407-1 General.
14.407-2 Apparent clerical mistakes.
14.407-3 Other mistakes disclosed before award.
14.407-4 Mistakes after awards.
14.408 Award.
14.408-1 General.
14.408-2 Responsible bidder—reasonableness of price.
14.408-3 Prompt payment discounts.
14.408-4 Economic price adjustment.
14.408-5 [Reserved]
14.408-6 Equal low bids.
14.408-7 Documentation of award.
14.408-8 Protests against award.
14.409 Information to bidders.
14.409-1 Award of unclassified contracts.
14.409-2 Award of classified contracts.

Subpart 14.5—Two-Step Sealed Bidding

14.501 General.
14.502 Conditions for use.
14.503 Procedures.
14.503-1 Step one.
14.503-2 Step two.

14.000 Scope of part.

This part prescribes—

Subpart 14.1—Use of Sealed Bidding

14.101 Elements of sealed bidding.

Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

(a) *Preparation of invitations for bids.* Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

(b) *Publicizing the invitation for bids.* Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must occur a sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.

(c) *Submission of bids.* Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.

(d) *Evaluation of bids.* Bids shall be evaluated without discussions.

(e) *Contract award.* After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

14.102 [Reserved]

14.103 Policy.

14.103-1 General.

(a) Sealed bidding shall be used whenever the conditions in 6.401(a) are met. This requirement applies to any proposed contract action under Part 6.

(b) Current lists of bidders shall be maintained in accordance with 14.205.

(c) Sealed bidding may be used for classified acquisitions (see 4.401) if its use does not violate agency security requirements.

(c) The requirements of 1.602-1(b) and Part 6 have been met; and

(d) An award is made to the responsible bidder (see 9.1) whose bid is responsive to the terms of the invitation for bids and is most advantageous to the Government, considering only price and the price related factors included in the invitation, as provided in Subpart 14.4.

14.104 Types of contracts.

Firm-fixed-price contracts shall be used when the method of contracting is sealed bidding, except that fixed-price contracts with economic price adjustment clauses may be used if authorized in accordance with 16.203 when some flexibility is necessary and feasible. Such clauses must afford all bidders an equal opportunity to bid.

14.105 Solicitations for informational or planning purposes.

(See 15.201(e).)

Subpart 14.2—Solicitation of Bids

14.201 Preparation of invitations for bids.

14.201-1 Uniform contract format.

(a) Contracting officers shall prepare invitations for bids and contracts using the uniform contract format outlined in Table 14-1 to the maximum practicable extent. The use of the format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by bidders and contractors. It need not be used for acquisition of the following:

(1) Construction (see Part 36).

(2) Shipbuilding (including design, construction, and conversion), ship overhaul, and ship repair.

(3) Subsistence items.

(4) Supplies or services requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format.

(5) Firm-fixed-price or fixed-price with economic price adjustment acquisitions that use the simplified contract format (see 14.201-9).

(b) Information suitable for inclusion in invitations for bids under the uniform contract format shall also be

contract file. Award by acceptance of a bid on the award portion of Standard Form 33, Solicitation, Offer and Award (SF 33), Standard Form 26, Award/Contract (SF 26), or Standard Form 1447, Solicitation/Contract (SF 1447), incorporates Section K, Representations, certifications, and other statements of bidders, in the resultant contract even though not physically attached.

TABLE 14-1—UNIFORM CONTRACT FORMAT

Section	Title
	Part I—The Schedule
A	Solicitation/contract form
B	Supplies or services and prices
C	Description/specifications
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
	Part II—Contract Clauses
I	Contract clauses
	Part III—List of Documents, Exhibits, and Other Attachments
J	List of documents, exhibits, and other attachments
	Part IV—Representations and Instructions
K	Representations, certifications, and other statements of bidders
L	Instructions, conditions, and notices to bidders
M	Evaluation factors for award

14.201-2 Part I—The Schedule.

The contracting officer shall prepare the Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) Prepare the invitation for bids on SF 33, unless otherwise permitted by including room and building where bids must be submitted.

(ii) Invitation for bids number.

(iii) Date of issuance.

(iv) Time specified for receipt of bids.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Requirement for bidder to provide its name and complete address, including street, city, county, state, and ZIP code.

(viii) A statement that bidders should include in the bid the address to which payment should be mailed, if that address is different from that of the bidder.

(b) *Section B, Supplies or services and prices.* Include a brief description of the supplies or services; *e.g.*, item number, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities (see Part 11). The SF 33 and the SF 1447 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302-336).

(c) *Section C, Description/specifications.* Include any description or specifications needed in addition to Section B to permit full and open competition (see Part 11).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see Part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see Subpart 11.4, Delivery or Performance Schedules).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

14.201-3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to apply to

14.201-5 Part IV—Representations and instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of bidders.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by bidders.

(b) *Section L, Instructions, conditions, and notices to bidders.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide bidders. Invitations shall include the time and place for bid openings, and shall advise bidders that bids will be evaluated without discussions (see 52.214-10 and, for construction contracts, 52.214-19).

(c) *Section M, Evaluation factors for award.* Identify the price related factors other than the bid price that will be considered in evaluating bids and awarding the contract. See 14.201-8.

14.201-6 Solicitation provisions.

(a) The provisions prescribed in this subsection are limited to subjects that are general in nature, do not come under other subject areas of the FAR, and pertain to the preparation and submission of bids.

(b) The contracting officer shall insert in all invitations for bids the provisions at—

(1) 52.214-1, Solicitation Definitions—Sealed Bidding;

(2) 52.214-2, Type of Business Organization—Sealed Bidding;

(3) 52.214-3, Amendments to Invitations for Bids; and

(4) 52.214-4, False Statements in Bids.

(c) The contracting officer shall insert the following provisions in invitations for bids:

(1) 52.214-5, Submission of Bids.

(2) 52.214-6, Explanation to Prospective Bidders.

(3) 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids, for solicitations issued in the United States and Canada for submission of bids to a contracting office in the United States or Canada.

(4) 52.214-32, Late Submissions, Modifications, and Withdrawals of Bids (Overseas), for solicitations under

(2) 52.214-10, Contract Award—Sealed Bidding.

(f) The contracting officer shall insert in invitations for bids to which the uniform contract format applies, the provision at 52.214-12, Preparation of Bids.

(g)(1) The contracting officer shall insert the provision at 52.214-13, Telegraphic Bids, in invitations for bids if the contracting officer decides to authorize telegraphic bids.

(2) The contracting officer shall insert the basic provision with its Alternate I in invitations for bids that are for perishable subsistence, and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

(h) The contracting officer shall insert the provision at 52.214-14, Place of Performance—Sealed Bidding, in invitations for bids except those in which the place of performance is specified by the Government.

(i) The contracting officer shall insert the provision at 52.214-15, Period for Acceptance of Bids, in invitations for bids (IFB's) that are not issued on SF 33 or SF 1447 except IFB's—

(1) For construction work; or

(2) In which the Government specifies a minimum acceptance period.

(j) The contracting officer shall insert the provision at 52.214-16, Minimum Bid Acceptance Period, in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified.

(k) The contracting officer shall insert the provision at 52.214-17, Affiliated Bidders, in invitations for bids if the contracting officer determines that disclosure of affiliated bidders is necessary to prevent practices prejudicial to full and open competition, such as improper multiple bidding.

(l) The contracting officer shall insert the provision at 52.214-18, Preparation of Bids—Construction, in invitations for bids for construction work.

(m) The contracting officer shall insert the provision at 52.214-19, Contract Award—Sealed Bidding—Construction, in all invitations for bids for construction work.

(n) [Reserved]

(o)(1) The contracting officer shall insert the provision at 52.214-20, Bid Samples, in invitations for bids if bid samples are required.

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, the contracting officer shall use the provision with its Alternate II.

(3) See 14.202-4(f)(2) regarding waiving the requirement for all bidders.

(p)(1) The contracting officer shall insert the provision at 52.214-21, Descriptive Literature, in invitations for bids if—

(i) Descriptive literature is required to evaluate the technical acceptability of an offered product; and

(ii) The required information will not be readily available unless it is submitted by bidders.

(2) Use the basic clause with its Alternate I if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation.

(3) See 14.202-5(e)(2) regarding waiving the requirement for all bidders.

(q) The contracting officer shall insert the provision at 52.214-22, Evaluation of Bids for Multiple Awards, in invitations for bids if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(r) The contracting officer shall insert the provision at 52.214-23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding issued in the United States and Canada for submission of technical proposals to a contracting office in the United States or Canada.

(s) The contracting officer shall insert the provision at 52.214-24, Multiple Technical Proposals, in solicitations for technical proposals in step one of two-step sealed bidding if the contracting officer permits the submission of multiple technical proposals.

(t) The contracting officer shall insert the provision at 52.214-25, Step Two of Two-Step Sealed Bidding, in invitations for bids issued under step two of two-step sealed bidding.

(u) The contracting officer shall insert the provision at 52.214-30, Annual Representations and Certifications—outside the United States or Canada.

(w) The contracting officer shall insert the provision at 52.214-31, Facsimile Bids, in solicitations if facsimile bids are authorized (see 14.202-7).

(x) The provision at 52.214-34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(y) The provision at 52.214-35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

14.201-7 Contract clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-26, Audit and Records—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold at 15.403-4(a)(1) for submission of cost or pricing data.

(b)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at 15.403-4(a)(1).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(c)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at 15.403-4(a)(1).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

award and shall be included in the solicitation when applicable. (See 14.201-5(c).)

(a) Foreseeable costs or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis (see 47.303 and 47.305), transportation costs to the designated points shall be considered in determining the lowest cost to the Government.

(b) Changes made, or requested by the bidder, in any of the provisions of the invitation for bids, if the change does not constitute a ground for rejection under 14.404.

(c) Advantages or disadvantages to the Government that might result from making more than one award (see 14.201-6(q)). The contracting officer shall assume, for the purpose of making multiple awards, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(d) Federal, state, and local taxes (see Part 29).

(e) Origin of supplies, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Part 25).

14.201-9 Simplified contract format.

Policy. For firm-fixed-price or fixed-price with economic price adjustment acquisitions of supplies and services, the contracting officer may use the simplified contract format in lieu of the uniform contract format (see 14.201-1). The contracting officer has flexibility in preparation and organization of the simplified contract format. However, the following format should be used to the maximum practical extent:

(a) *Solicitation/contract form.* Standard Form (SF) 1447, Solicitation/Contract, shall be used as the first page of the solicitation.

(b) *Contract schedule.* Include the following for each contract line item:

(1) Contract line item number.

(2) Description of supplies or services, or data sufficient to identify the requirement.

(3) Quantity and unit of issue.

(4) Unit price and amount.

(5) Packaging and marking requirements.

tion. Additional clauses shall be incorporated only when considered absolutely necessary to the particular acquisition.

(d) *List of documents and attachments.* Include if necessary.

(e) *Representations and instructions*—(1) *Representations and certifications.* Insert those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(2) *Instructions, conditions, and notices.* Include the solicitation provisions required by 14.201-6. Include any other information/instructions necessary to guide offerors.

(3) *Evaluation factors for award.* Insert all evaluation factors and any significant subfactors for award.

(4) Upon award, the contracting officer need not physically include the provisions in subparagraphs (e)(1), (2), and (3) of this subsection in the resulting contract, but shall retain them in the contract file. Award by acceptance of a bid on the award portion of SF 1447 incorporates the representations, certifications, and other statements of bidders in the resultant contract even though not physically attached.

14.202 General rules for solicitation of bids.

14.202-1 Bidding time.

(a) *Policy.* A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see 36.213-3(a).) A bidding time (*i.e.*, the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided, when synopsis is required by Subpart 5.2.

(b) *Factors to be considered.* Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time:

(1) Degree of urgency;

(2) Complexity of requirement;

bids using Standard Form 30, Amendment of Solicitation/ Modification of Contract. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an amendment. Amendments shall be sent, before the time for bid opening, to everyone to whom invitations have been furnished and shall be displayed in the bid room.

(b) Before amending an invitation for bids, the period of time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegrams or telephone. Such extension must be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation (1) if such information is necessary for bidders to submit bids or (2) if the lack of such information would be prejudicial to uninformed bidders. The information shall be furnished even though a pre-bid conference is held. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

14.209 Cancellation of invitations before opening.

(a) The cancellation of an invitation for bids usually involves a loss of time, effort, and money spent by the Government and bidders. Invitations should not be cancelled unless cancellation is clearly in the public interest; *e.g.*,

(1) Where there is no longer a requirement for the supplies or services; or

(2) Where amendments to the invitation would be of such magnitude that a new invitation is desirable.

(b) When an invitation issued other than electronically is cancelled, bids that have been received shall be returned unopened to the bidders and notice of cancellation shall be sent to all prospective bidders to whom invitations were issued. When an invitation issued electronically is cancelled, a general notice of cancellation shall be posted electronically, the bids received shall not be viewed, and the bids shall be purged from primary and backup data storage systems.

14.210 Qualified products.

(See Subpart 9.2.)

14.211 Release of acquisition information.

(a) *Before solicitation.* Information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices in accordance with 14.205-4(c) or 36.213-2, or long-range acquisition estimates in accordance with 5.404, or synopses in accordance with 5.201. Within the Government, such information shall be restricted to those having a legitimate interest. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another. See 3.104 regarding requirements for proprietary and source selection information including access to and disclosure thereof.

(b) *After solicitation.* Discussions with prospective bidders regarding a solicitation shall be conducted and technical or other information shall be transmitted only by the contracting officer or superiors having contractual authority or by others specifically authorized. Such personnel shall not furnish any information to a prospective bidder that alone or together with other information may afford an advantage over others. However, general information that would not be prejudicial to other prospective bidders may be furnished upon request; *e.g.*, explanation of a particular contract clause or a particular condition of the schedule in the invitation for bids, and more specific information or clarifications may be furnished by amending the solicitation (see 14.208).

14.212 Economic purchase quantities (supplies).

Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in Subpart 7.2. See 7.203 for instructions regarding use of the provision at 52.207-4, Economic Purchase Quantity—Supplies, and 7.204 for guidance on handling responses to that provision.

14.213 Annual submission of representations and certifications.

(a) Submission of offeror representations and certifications on an annual basis, as an alternative to submission in

verifying and updating offeror's annual submissions. Generally, the representations and certifications shall be effective for a period of 1 year from date of signature.

(c) The contracting officer shall not include in individual solicitations the full text of provisions that are contained in the annual representations and certifications.

(d) Offerors shall make changes that affect only one solicitation by completing the appropriate section of the provision at 52.214-30, Annual Representations and Certifications—Sealed Bidding.

Subpart 14.3—Submission of Bids

14.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system.

(b) Telegraphic bids shall not be considered unless permitted by the invitation. The term "telegraphic bids" means bids submitted by telegram or by mailgram.

(c) Facsimile bids shall not be considered unless permitted by the solicitation (see 14.202-7).

(d) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if—

(1) The bidder accepts all the terms and conditions of the invitation; and

(2) Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

14.302 Bid submission.

(a) Bids shall be submitted so that they will be received in the office designated in the invitation for bids (referred to in paragraphs (b) and (c) of this section as the "designated office") not later than the exact time set for opening of bids.

(b) Except as specified in paragraph (c) of this section, if telegraphic bids are authorized, a telegraphic bid that is communicated by means of a telephone call to the designated office shall be considered if—

(5) The telegram indicates on its face that it was received in the telegraph office before the telephone call was received by the designated office; and

(6) The bid in the telegram is identical in all essential respects to the bid received in the telephone call from the telegraph office.

(c) If the conditions in paragraph (b) of this section apply and the bid received by telephone is the apparent low bid, award may not be made until the telegram is received by the designated office; however, if the telegram is not received by the designated office within 5 days after the bid opening date, the bid shall be rejected.

14.303 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. Unless proscribed by agency regulations, a telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office shall be considered. However, the message shall be confirmed by the telegraph company by sending a copy of the written telegram that formed the basis for the telephone call. If the solicitation authorizes facsimile bids, bids may be modified or withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision prescribed in 14.201-6(w). Modifications received by telegram (including a record of those telephoned by the telegraph company) or facsimile shall be sealed in an envelope by a proper official. The official shall write on the envelope (1) the date and time of receipt and by whom, and (2) the number of the invitation for bids, and shall sign the envelope. No information contained in the envelope shall be disclosed before the time set for bid opening.

(b) A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the persons requesting withdrawal is established and that person signs a receipt for the bid.

(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

resume. In such cases, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining "late bids" under 14.304. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

14.403 Recording of bids.

(a) Standard Form 1409, Abstract of Offers, or Optional Form 1419, Abstract of Offers—Construction (or automated equivalent), shall be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids may be limited to item numbers and bid prices. In preparing these forms, the extra columns and SF 1410, Abstract of Offers—Continuation, and OF 1419A, Abstract of Offer—Construction, Continuation Sheet, may be used to label and record such information as the contracting activity deems necessary.

(b) Abstracts of offers for unclassified acquisitions shall be available for public inspection. Such abstracts shall not contain information regarding failure to meet minimum standards of responsibility, apparent collusion of bidders, or other notations properly exempt from disclosure to the public in accordance with agency regulations implementing Subpart 24.2.

(c) The forms identified in paragraph (a) of this section need not be used by the Defense Fuel Supply Center for acquisitions of coal or petroleum products or by the Defense Personnel Support Center for perishable subsistence items.

(d) If an invitation for bids is cancelled before the time set for bid opening, this fact shall be recorded together with a statement of the number of bids invited and the number of bids received.

14.404 Rejection of bids.

14.404-1 Cancellation of invitations after opening.

(a)(1) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancel- that the requirements of 11.201 (relating to the availability and identification of specifications) have not been met, the invitation shall be cancelled.

(c) Invitations may be cancelled and all bids rejected before award but after opening when, consistent with subparagraph (a)(1) of this section, the agency head determines in writing that—

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies or services being contracted for are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see Subpart 3.3 for reports to be made to the Department of Justice);

(8) No responsive bid has been received from a responsible bidder;

(9) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3 shows that performance by the Government is more economical; or

(10) For other reasons, cancellation is clearly in the public's interest.

(d) Should administrative difficulties be encountered after bid opening that may delay award beyond bidders' acceptance periods, the several lowest bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) should be requested, before expiration of their bids, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for resoliciting.

(e) Under some circumstances, completion of the acquisition after cancellation of the invitation for bids may be appropriate.

(1) If the invitation for bids has been cancelled for the reasons specified in subparagraphs (c)(6), (7), or (8) of this subsection, and the agency head has authorized, in the determination in paragraph (c) of this subsection, the com-

this subsection, the contracting officer shall proceed with a new acquisition.

(f) When the agency head has determined, in accordance with paragraph (e)(1) of this subsection, that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate (in accordance with Part 15, as appropriate) and make award without issuing a new solicitation provided—

(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

14.404-2 Rejection of individual bids.

(a) Any bid that fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) Any bid that does not conform to the applicable specifications shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Any bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation shall be rejected.

(d) A bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder—

(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;

(2) Fails to state a price and indicates that price shall be "price in effect at time of delivery;"

(3) States a price but qualifies it as being subject to "price in effect at time of delivery;"

(4) When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;

(5) Requires that the Government is to determine that the bidder's product meets applicable Government specifications; or

(6) Limits rights of the Government under any contract clause.

Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

(g) Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see 15.404-1(g)).

(h) Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made (see Subpart 9.4).

(i) Low bids received from concerns determined to be not responsible pursuant to Subpart 9.1 shall be rejected (but if a bidder is a small business concern, see 19.6 with respect to certificates of competency).

(j) When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, the bid shall be rejected, except as otherwise provided in 28.101-4.

(k) The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

(l) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer shall reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by 41 U.S.C. 15 or 31 U.S.C. 3727.

14.404-3 Notice to bidders of rejection of all bids.

When it is determined necessary to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected and shall state the reason for such action.

14.404-4 Restrictions on disclosure of descriptive literature.

When a bid is accompanied by descriptive literature (as defined in 14.202-5(a)), and the bidder imposes a restriction that prevents the public disclosure of such literature, the restriction may render the bid nonresponsive. The restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid that relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see 14.202-5(f)).

for the supplies or services;

(F) Any additional pertinent evidence; and

(G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or modify the bid.

(4) When time is of the essence because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the appropriate authority. Ordinarily, the contracting officer will not refer mistake in bid cases by telegraph or telephone to the appropriate authority when the determination set forth in paragraphs (a) or (b) of this section is applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing.

(5) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. Attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(h) Each agency shall maintain records of all determinations made in accordance with this subsection 14.407-3, the facts involved, and the action taken in each case. Copies of all such determinations shall be included in the file.

(i) Nothing contained in this subsection 14.407-3 prevents an agency from submitting doubtful cases to the Comptroller General for advance decision.

14.407-4 Mistakes after award.

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed under the procedures of Subpart 33.2 and the following:

(a) When a mistake in a contractor's bid is not discovered until after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the Government without changing the essential requirements of the specifications.

bid under the original invitation for bids; or

(3) That no change shall be made in the contract as awarded, if the evidence does not warrant a determination under subparagraph (b)(1) or (2) of this section.

(c) Determinations under subparagraph (b)(1) and (2) above may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was—

(1) Mutual; or

(2) If unilaterally made by the contractor, so apparent as to have charged the contracting officer with notice of the probability of the mistake.

(d) Each proposed determination shall be coordinated with legal counsel in accordance with agency procedures.

(e) Mistakes alleged or disclosed after award shall be processed as follows:

(1) The contracting officer shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as—

(i) The contractor's file copy of the bid,

(ii) The contractor's original worksheets and other data used in preparing the bid,

(iii) Subcontractors' and suppliers' quotations, if any,

(iv) Published price lists, and

(v) Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

(2) The case file concerning an alleged mistake shall contain the following:

(i) All evidence furnished by the contractor in support of the alleged mistake.

(ii) A signed statement by the contracting officer—

(A) Describing the supplies or services involved;

(B) Specifying how and when the mistake was alleged or disclosed;

(C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;

(D) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved, or in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services and the basis for the estimate;

than a change in contract price is recommended, the manner by which the supplies or services will otherwise be acquired; and

(G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.

(iii) A signed copy of the bid involved.

(iv) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.

(v) An abstract of written record of the bids received.

(vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the contracting officer and the contractor concerning the alleged mistake.

(vii) A copy of the contract and any related change orders or supplemental agreements.

(f) Each agency shall include in the contract file a record of—

(1) All determinations made in accordance with this 14.407-4;

(2) The facts involved; and

(3) The action taken in each case.

14.408 Award.

14.408-1 General.

(a) The contracting officer shall make a contract award -- (1) by written or electronic notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404–1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2.

(b) If less than three bids have been received, the contracting officer shall examine the situation to ascertain the reasons for the small number of responses. Award shall be made notwithstanding the limited number of bids. However, the contracting officer shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items, and include a notation of such action in the records of the invitation for bids (see 14.204).

(4) When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the Government may make subsequent awards on those additional items within the bid acceptance period.

(5) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitute the contract.

(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer from a SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams or electronic transmissions, as notices of awards.

14.408-2 Responsible bidder—reasonableness of price.

(a) The contracting officer shall determine that a prospective contractor is responsible (see Subpart 9.1) and that the prices offered are reasonable before awarding the contract. The price analysis techniques in 15.404-1(b) may be used as guidelines. In each case the determination shall be made in the light of all prevailing circumstances. Particular care must be taken in cases where only a single bid is received.

(b) The price analysis shall consider whether bids are materially unbalanced (see 15.404-1(g)).

14.408-3 Prompt payment discounts.

(a) Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award, and will be taken by the payment center if payment is made within the discount period specified by the bidder. As an alternative to indicating a discount in conjunction with the offer, bidders may prefer to offer discounts on individual invoices.

(b) See 32.111(c)(1), which prescribes the contract clause at 52.232-8, Discounts for Prompt Payment.

discuss proposals with their offerors.

(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see 14.201-6(s).

(b) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.

(c) Upon receipt, the contracting officer shall—

(1) Safeguard proposals against disclosure to unauthorized persons;

(2) Accept and handle data marked in accordance with 15.609 as provided in that section; and

(3) Remove any reference to price or cost.

(d) The contracting officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and number of proposals involved. However, the evaluation should be completed quickly.

(e)(1) Evaluations shall be based on the criteria in the request for proposals but not consideration of responsibility as defined in 9.1, Proposals, shall be categorized as—

(i) Acceptable;

(ii) Reasonably susceptible of being made acceptable; or

(iii) Unacceptable.

(2) Any proposal which modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

(f)(1) The contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be the submitter.

(2) In initiating requests for additional information, the contracting officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals submitted. Such time may be extended in the discretion of the contracting officer. If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(g) When a technical proposal is found unacceptable (either initially or after clarification), the contracting officer shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. Upon written request, the contracting officer shall debrief unsuccessful offerors (see 15.505 and 15.506).

(h) Late technical proposals are governed by 15.208 (b) and (c).

(i) If it is necessary to discontinue two-step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued by negotiation.

14.503-2 Step two.

(a) Sealed bidding procedures shall be followed except that invitations for bids shall—

(1) Be issued only to those offerors submitting acceptable technical proposals in step one;

(2) Include the provision prescribed in 14.201-6(t);

(3) Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and

(4) Not be synopsized in the Commerce Business Daily as an acquisition opportunity nor publicly posted (see 5.101(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed in the Commerce Business Daily for the benefit of prospective subcontractors (see 5.207(a)(2)).

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Subpart 15.1—Source Selection Processes and Techniques

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Subpart 15.6—Unsolicited Proposals

15.600 Scope of subpart.
15.601 Definitions.
15.602 Policy.
15.603 General.
15.604 Agency points of contact.
15.605 Content of unsolicited proposals.

15.000 Scope of part.

This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).

15.001 Definitions.

As used in this part—

"Proposal modification" is a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

15.002 Types of negotiated acquisition.

(a) *Sole source acquisitions.* When contracting in a sole source environment, the request for proposals (RFP) should be tailored to remove unnecessary information and requirements; *e.g.*, evaluation criteria and voluminous proposal preparation instructions.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the proposal representing the best value to the Government (see 2.101).

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.

This subpart describes some of the acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition.

15.101 Best value continuum.

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in

15.101-1 Tradeoff process.

(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and

(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406.

15.101-2 Lowest price technically acceptable source selection process.

(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. If the contracting officer documents the file pursuant to 15.304(c)(3)(iii), past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as an evaluation factor, it shall be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply. If the contracting officer determines that a small business' past performance is not acceptable, the matter shall be referred to the Small Business Administration for a Certificate of Competency determination, in accor-

(a) Oral presentations by offerors as requested by the Government may substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see 15.208) and content (see 15.306). Oral presentations provide an opportunity for dialogue among the parties. Prerecorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.

(b) The solicitation may require each offeror to submit part of its proposal through oral presentations. However, certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

(c) Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the acquisition; and

(4) The impact (including cost) on small businesses. In considering the costs of oral presentations, contracting officers should also consider alternatives to on-site oral presentations (*e.g.*, teleconferencing, video teleconferencing).

(d) When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

(3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

permitted during oral presentations.

(e) The contracting officer shall maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) shall be at the discretion of the source selection authority. A copy of the record placed in the file may be provided to the offeror.

(f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(g) If, during an oral presentation, the Government conducts discussions (see 15.306(d)), the Government must comply with 15.306 and 15.307.

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Exchanging information with industry prior to receipt of proposals;

(b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and

(c) Receiving proposals and information.

15.201 Exchanges with industry before receipt of proposals.

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see 3.104). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements, and enhancing the Government's ability to obtain quality supplies and services,

and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research, as described in Part 10;

(4) One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) RFIs;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) The special notices of procurement matters at 5.205(c), or electronic notices, may be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs may be used when the Government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

(f) General information about agency mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer shall be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular offeror in response to that offeror's request shall not be disclosed if doing so would reveal the potential offeror's confidential business purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise the offerors about their potential to be viable competitors. The presolicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation. Information sought may be limited to a statement of qualifications and other appropriate information (*e.g.*, proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition. This process should not be used for multi-step acquisitions where it would result in offerors being required to submit identical information in response to the notice and in response to the initial step of the acquisition.

(b) The agency shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. The agency shall advise respondents considered not to be viable competitors of the general basis for that opinion. The agency shall inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

15.203 Requests for proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive acquisitions shall, at a minimum, describe the—

(1) Government's requirement;

(2) Anticipated terms and conditions that will apply to the contract:

(i) The solicitation may authorize offerors to propose alternative terms and conditions, including the contract line item number (CLIN) structure; and

(ii) When alternative CLIN structures are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (*e.g.*, place of performance or payment and funding requirements)(see 15.206);

(c) Electronic commerce may be used to issue RFPs and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use (see Subpart 4.5).

(d) Contracting officers may issue RFPs and/or authorize receipt of proposals, modifications, or revisions by facsimile.

(1) In deciding whether or not to use facsimiles, the contracting officer should consider factors such as—

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of electronic commerce methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used in sole source acquisitions and other appropriate circumstances. Use of a letter RFP does not relieve the contracting officer from complying with other FAR requirements. Letter RFPs should be as complete as possible and, at a minimum, should contain the following:

(1) RFP number and date;

(2) Name, address (including electronic address and facsimile address, if appropriate), and telephone number of the contracting officer;

(3) Type of contract contemplated;

(4) Quantity, description, and required delivery dates for the item;

(5) Applicable certifications and representations;

(6) Anticipated contract terms and conditions;

(7) Instructions to offerors and evaluation criteria for other than sole source actions;

(8) Proposal due date and time; and

(9) Other relevant information; *e.g.*, incentives, variations in delivery schedule, cost proposal support, and data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government and a notice is not required under 5.202 (*e.g.*, perishable items and support of contingency operations or other emergency situations). Use

(iv) The solicitation number provided to the prospective offerors.

(2) The information furnished to potential offerors under oral solicitations should include appropriate items from paragraph (e) of this section.

15.204 Contract format.

The use of a uniform contract format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The uniform contract format need not be used for the following:

(a) Construction and architect-engineer contracts (see Part 36).

(b) Subsistence contracts.

(c) Supplies or services contracts requiring special contract formats prescribed elsewhere in this regulation that are inconsistent with the uniform format.

(d) Letter requests for proposals (see 15.203(e)).

(e) Contracts exempted by the agency head or designee.

15.204-1 Uniform contract format.

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-1 of this subsection.

(b) Solicitations using the uniform contract format shall include Parts I, II, III, and IV (see 15.204-2 through 15.204-5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Section K shall be incorporated by reference in the contract.

TABLE 15-1—UNIFORM CONTRACT FORMAT

Section	Title
	Part I—The Schedule
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specifications/statement of work
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements

Part IV—Representations and Instructions

K	Representations, certifications, and other statements of offerors or respondents
L	Instructions, conditions, and notices to offerors or respondents
M	Evaluation factors for award

15.204-2 Part I—The Schedule.

The contracting officer shall prepare the contract Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) Optional Form (OF) 308, Solicitation and Offer—Negotiated Acquisition, or Standard Form (SF) 33, Solicitation, Offer and Award, may be used to prepare RFPs.

(2) When other than OF 308 or SF 33 is used, include the following information on the first page of the solicitation:

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and electronic address (including facsimile address), if appropriate.

(ix) Offer expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services; *e.g.*, item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) *Section C, Description/specifications/statement of work.* Include any description or specifications needed in addition to Section B (see Part 11, Describing Agency Needs).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include other than those on the solicitation form. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

15.204-3 Part II—Contract Clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex.

15.204-4 Part III—List of Documents, Exhibits, and Other Attachments.

Section J, List of attachments. The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

15.204-5 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing proposals or responses to requests for information. Prospective offerors or respondents may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of proposal or response parts, such as—

(1) Administrative;

insert one of the phrases in 15.304(e).

15.205 Issuing solicitations.

(a) The contracting officer shall issue solicitations to potential sources in accordance with the policies and procedures in 5.102, 19.202-4, and Part 6.

(b) A master solicitation, as described in 14.203-3, may also be used for negotiated acquisitions.

15.206 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

(c) Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.

(d) If a proposal of interest to the Government involves a departure from the stated requirements, the contracting officer shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see 15.207(b) and 15.306(e)).

(e) If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment (see Subpart 4.5, Electronic Commerce in Contracting).

(g) At a minimum, the following information should be included in each amendment:

(1) Name and address of issuing activity.

(2) Solicitation number and date.

(3) Amendment number and date.

(4) Number of pages.

and time of receipt and shall be transmitted to the designated officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See 3.104 regarding the disclosure of source selection information (41 U.S.C. 423)). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(c) If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under 15.208(a), provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for submitting offers, and any revisions and modifications to them, so as to reach the Government office designated in the solicitation on time. If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b) Proposals, and modifications to them, that are received in the designated Government office after the exact time specified are "late" and shall be considered only if—

(1) They are received before award is made; and

(2) The circumstances meet the specific requirements of 52.215-1(c)(3)(i).

Express Mail Next Day Service-Post Office to Addressee and is received before award, the offeror shall be promptly notified substantially in accordance with the notice in 14.304-2, appropriately modified to relate to proposals.

(e) Late proposals and modifications that are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(f) The following shall, if available, be included in the contracting office files for each late proposal, response to request for information, or modification:

(1) The date of mailing, filing, or delivery.

(2) The date and hour of receipt.

(3) Whether or not considered for award.

(4) The envelope, wrapper, or other evidence of date of submission.

(g) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon receipt by the contracting officer of a written notice of withdrawal. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer shall document the contract file when such oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Extremely bulky proposals shall only be returned at the offeror's request and expense.

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

15.209 Solicitation provisions and contract clauses.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215-1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions.

(1) If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(2) If the Government would be willing to accept alternate proposals, the contracting officer shall alter the

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial items exempted under 15.403-1.

(2) For facilities acquisitions, the contracting officer shall use the clause with its Alternate I.

(3) For cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

(4) When the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215-3, Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) The contracting officer shall insert the provision at 52.215-4, Type of Business Organization, in all solicitations.

(e) The contracting officer shall insert the provision at 52.215-5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215-6, Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215-7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are used (see 14.213).

(h) The contracting officer shall insert the clause at 52.215-8, Order of Precedence—Uniform Contract Format, in solicitations and contracts using the format at 15.204.

15.210 Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) Standard Form 33, Solicitation, Offer and Award, and Optional Form 308, Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFIs.

15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

15.301 Definitions.

"Deficiency," as used in this subpart, is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

"Weakness," as used in this subpart, is a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

15.303 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;

(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(3));

(5) Consider the recommendations of advisory boards or panels (if any); and

15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)) (also see Part 36 for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(A)); and

(3)(i) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed $1,000,000.

(ii) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed $100,000. Agencies should develop phase-in schedules that meet or exceed this schedule.

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92-5).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204-5(c)). The rating method need not be disclosed in the solicitation. The gen-

U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

15.305 Proposal evaluation.

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see 15.403-1(c)(1)(i)(B)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. Cost realism analyses may also be used on fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts (see 15.404-1(d)(3)). The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered (41 U.S.C. 401). This comparative assessment of past performance information is separate from the responsibility determination required under Subpart 9.1.

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts mine the relevance of similar past performance information.

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

(3) *Technical evaluation.* When tradeoffs are performed (see 15.101-1), the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information* Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see 37.203(d).

15.306 Exchanges with offerors after receipt of proposals.

(a) *Clarifications and award without discussions.* (1) Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (*e.g.*, the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government

a competitive range is to be established, these communications—

(1) Shall be limited to the offerors described in paragaphs (b)(1)(i) and (b)(1)(ii) of this section and—

(i) Shall be held with with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond; and

(ii) May only be held with those offerors (other than offerors under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications may be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address—

(i) Ambiguities in the proposal or other concerns (*e.g.*, perceived deficiencies, weaknesses, errors, omissions, or mistakes (see 14.407)); and

(ii) Information relating to relevant past performance; and

(4) Shall address adverse past performance information to which the offeror has not previously had an opportunity to comment.

(c) *Competitive range.* (1) Agencies shall evaluate all proposals in accordance with 15.305(a), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

ing 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 (10 U.S.C. 2305(b)(4) and 41 U.S.C. 253b(d)).

(3) If the contracting officer, after complying with paragraph (d)(3) of this section, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in accordance with 15.503.

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing (see 15.505 and 15.506).

(d) *Exchanges with offerors after establishment of the competitive range.* Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(3) The contracting officer shall, subject to paragraphs (d)(4) and (e) of this section and 15.307(a), indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. The scope and extent of discussions are a matter of contracting officer judgment. In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums,

among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision (see 15.307(a) and 15.503(a)(1)).

(e) *Limits on exchanges.* Government personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 423(h)(1)(2));

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of 3.104 and 41 U.S.C. 423(h)(1)(2).

15.307 Proposal revisions.

(a) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(b) The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.

for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

Subpart 15.4—Contract Pricing

15.400 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

15.401 Definitions.

"Cost or pricing data" (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.406-2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as: vendor quotations; nonrecurring costs; information on changes in production methods and in production or purchasing volume; data supporting projections of business prospects and objectives and related operations costs; unit-cost trends such as those associated with labor efficiency; make-or-buy decisions; estimated resources to attain business goals; and information on management decisions that could have a significant bearing on costs.

"Cost realism" means that the costs in an offeror's proposal are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the various elements of the offeror's technical proposal.

material obsolescence and usage, spare parts provisioning, and material handling.

"Forward pricing rate recommendation" means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

"Information other than cost or pricing data" means any type of information that is not required to be certified in accordance with 15.406-2 and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

"Price," as used in this subpart, means cost plus any fee or profit applicable to the contract type.

"Subcontract," as used in this subpart, also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor (10 U.S.C. 2306a(h)(2) and 41 U.S.C. 254b(h)(2)).

15.402 Pricing policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that cost or pricing data are not required by 15.403-4, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by 15.403-3(b).

(2) Information other than cost or pricing data:

(i) Information related to prices (*e.g.*, established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under 15.403-1(b)(1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the cost or pricing data. Contracting officers shall not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor; or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.403 Obtaining cost or pricing data.

15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a) Cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to cost or pricing data requirements.* The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial item is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial items (see standards in paragraph (c)(3) of this subsection).

(c) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* A price is based on adequate price competition if—

the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, *e.g.*, circumstances indicate that—

(*1*) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(*2*) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition, is reasonable, and is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial items.* Any acquisition for an item that meets the commercial item definition in 2.101, or any modification, as defined in paragraph (c)(1) or (2) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data.

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pric- award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract or the waiver specifically includes that subcontract.

15.403-2 Other circumstances where cost or pricing data are not required.

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of cost or pricing data.

(b) Cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

15.403-3 Requiring information other than cost or pricing data.

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism. However, the contracting officer should not obtain more information than is necessary for determining the reasonableness of the price or evaluating cost realism. To the extent necessary to determine the reasonableness of the price, the contracting officer shall require submission of information from the offeror. Unless an exception under 15.403-1(b)(1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)).

(2) The contractor's format for submitting such information should be used (see 15.403-5(b)(2)).

(3) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.406-2.

(b) *Adequate price competition.* When adequate price competition exists (see 15.403-1(c)(1)), generally no additional information is necessary to determine the reasonableness of price. However, if there are unusual ci

2306a(d)(2) and 41 U.S.C. 254b(d)). (1) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(2) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

(3) Information obtained relating to commercial items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed outside the Government.

15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) Cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.403-1(b)(4) should be considered. The threshold for obtaining cost or pricing data is $500,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see waivers at 15.403-1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases (*e.g.*, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and

(2) Unless prohibited because an exception at 15.403-1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.406-2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.401 and shall not be certified in accordance with 15.406-2.

(d) The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

15.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Taking into consideration the policy at 15.402, the contracting officer shall specify in the solicitation (see 15.408(l) and (m))—

(1) Whether cost or pricing data are required;

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;

(3) Any information other than cost or pricing data that is required; and

(2) Information other than cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential and the format has been described in the solicitation.

(3) Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a form acceptable to the contracting officer.

15.404 Proposal analysis.

15.404-1 Proposal analysis techniques.

(a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis shall be used when cost or pricing data are not required (see paragraph (b) of this subsection and 15.404-3).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.

(5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a guidance. However, they are not directive and should be considered informational only. Free copies of the references are available on the World Wide Web, Internet address http://www.gsa.gov/fai.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances surrounding the acquisition. Examples of such techniques include, but are not limited to the following:

(i) Comparison of proposed prices received in response to the solicitation.

(ii) Comparison of previously proposed prices and contract prices with current proposed prices for the same or similar end items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

(iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v) Comparison of proposed prices with independent Government cost estimates.

(vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(c) *Cost analysis.* (1) Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

(i) Verification of cost or pricing data and evaluation of cost elements, including—

indirect cost rates, labor rates, and cost of money or other factors.

(ii) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(iii) Comparison of costs proposed by the offeror for individual cost elements with—

(A) Actual costs previously incurred by the same offeror;

(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(C) Other cost estimates received in response to the Government's request;

(D) Independent Government cost estimates by technical personnel; and

(E) Forecasts of planned expenditures.

(iv) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31 and, when applicable, the requirements and procedures in 48 CFR Chapter 99 (Appendix to the FAR looseleaf edition), Cost Accounting Standards.

(v) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see 15.407-2).

(d) *Cost realism analysis.* (1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(ii) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

(e) *Technical analysis.* (1) The contracting officer may request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(f) *Unit prices.* (1) Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not man-

(g) *Unbalanced pricing.* (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

15.404-2 Information to support proposal analysis.

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. Such requests shall be tailored to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) Field pricing assistance generally is directed at obtaining technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts. Information on related pricing practices and history may also be obtained. Field pricing assistance may also include information relative to the business, technical, production, or other capabilities and practices of an offeror. The type of information and level of detail requested will vary in accor- specific areas for which assistance is needed, a realistic review schedule, and the information necessary to perform the review.

(4) When requesting field pricing assistance on a contractor's request for equitable adjustment, the contracting officer shall provide the information listed in 43.204(b)(5).

(5) Field pricing information and other reports may include proprietary or source selection information (see 3.104-4(j) and (k)). Such information shall be appropriately identified and protected accordingly.

(b) *Reporting field pricing information.* (1) Depending upon the extent and complexity of the field pricing review, results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Whenever circumstances permit, the contracting officer and field pricing experts are encouraged to use telephonic and/or electronic means to request and transmit pricing information.

(ii) When it is necessary to have written technical and audit reports, the contracting officer shall request that the audit agency concurrently forward the audit report to the requesting contracting officer and the administrative contracting officer (ACO). The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel shall be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, shall be made a part of the official contract file (see 4.807(f)).

(c) *Audit assistance for prime contracts or subcontracts.* (1) The contracting officer may contact the cognizant audit office directly, particularly when an audit is the only field pricing support required. The audit office shall send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor shall not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) The contracting officer should be notified immediately of any information disclosed to the auditor

U.S.C. 254d and 10 U.S.C. 2313).

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit should be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not preclude the contracting officer or the ACO, or their representatives, from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

(d) *Deficient proposals.* The ACO or the auditor, as appropriate, shall notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any records considered essential to conduct a satisfactory review or audit. Oral notifications shall be confirmed promptly in writing, including a description of deficient or denied data or records. The contracting officer immediately shall take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, the contracting officer shall withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

15.404-3 Subcontract pricing considerations.

(a) The contracting officer is responsible for the determination of price reasonableness for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's cost or pricing data.

(b) The prime contractor or subcontractor shall—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

that action.

(1) The contractor shall submit, or cause to be submitted by the subcontractor(s), cost or pricing data to the Government for subcontracts that are the lower of either—

(i) $10,000,000 or more; or

(ii) Both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) The contracting officer may require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor cost or pricing data below the thresholds in paragraph (c)(1) of this subsection that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor cost or pricing data shall be submitted in the format provided in Table 15-2 of 15.408 or the alternate format specified in the solicitation.

(4) Subcontractor cost or pricing data shall be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. The contractor shall update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit to the Government cost or pricing data for the prospective subcontractor most likely to receive the award.

15.404-4 Profit.

(a) *General.* This subsection prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(1) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee,

base.

(3) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance.

(b) *Policy.* (1) Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over $100,000 totaling $50 million or more a year—

(i) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) Agencies may use another agency's structured approach.

(c) *Contracting officer responsibilities.* (1) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see Subpart 31.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see 15.408(i)).

works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(C) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(ii) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) The contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily.

(6) If a change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

(d) *Profit-analysis factors*—(1) *Common factors.* Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1)(i) through (vi) of this subsection shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort.* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i)(A) through (D) of this subsection shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition.* This subfactor measures the managerial and technical effort needed to obtain

consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor.* This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs.* This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management.* This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk.* (A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, women-owned small business concerns, handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

15.405 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Taking into consideration the advisory recom-

the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result—a price that is fair and reasonable to both the Government and the contractor.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to a level above the contracting officer. Disposition of the action should be documented.

15.406 Documentation.

15.406-1 Prenegotiation objectives.

(a) The prenegotiation objectives establish the Government's initial negotiation position. They assist in the contracting officer's determination of fair and reasonable price. They should be based on the results of the contracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives

ing officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and shall include the executed certificate in the contract file.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(END OF CERTIFICATE)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the

cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.*, actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) If cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

15.406-3 Documenting the negotiation.

(a) The contracting officer shall document in the contract file the principal elements of the negotiated agreement. The documentation (*e.g.*, price negotiation memorandum (PNM)) shall include the following:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (*e.g.*, RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of any contractor systems (*e.g.*, purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.

(5) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.

(6) If cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken negotiation objective, and the negotiated position. Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(11) Documentation of fair and reasonable pricing.

(b) Whenever field pricing assistance has been obtained, the contracting officer shall forward a copy of the negotiation documentation to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

15.407 Special cost or pricing areas.

15.407-1 Defective cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum shall reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

(b)(1) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's

Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, the contracting officer shall consider the time by which the cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (b)(1) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(iv) Cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (b)(5) and (6) of this subsection, the contracting officer shall allow an offset for any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (*e.g.*, the initial pricing of the same contract or the pricing of the same change order).

(5) An offset shall be allowed only in an amount supported by the facts and if the contractor—

(i) Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and

(ii) Proves that the cost or pricing data were available before the "as of" date specified on the Certificate of Current Cost or Pricing Data but were not submitted. Such offsets need not be in the same cost groupings (*e.g.*, material, direct labor, or indirect costs).

Current Cost or Pricing Data.

(7)(i) In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in 32.902.

(ii) In calculating the interest amount due, the contracting officer shall—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

(iv) In the demand letter, the contracting officer shall separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date; and

(D) A statement that interest will continue to accrue until repayment is made.

(c) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer shall request an audit to evaluate the accuracy, completeness, and

tracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum documenting both the determination and any corrective action taken as a result. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy of the memorandum or other notice of the contracting officer's determination shall be provided to the contractor.

(e) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215-10, Price Reduction for Defective Cost or Pricing Data, and 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(f) If Government audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the contracting officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price shall be limited to the difference between the price of the subcontract awarded and the price of the subcontract on which the data were submitted.

(2) In fixed-price contracts except firm-fixed-price contracts and fixed-price contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.408(b) and (c). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.407-2 Make-or-buy programs.

(a) *General.* The prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. When make-or-buy programs are required, the Government may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies. Consent to subcontracts and review of contractors' purchasing systems are separate actions covered in Part 44.

(b) *Definitions.* As used in this subsection—

"Buy item" means an item or work effort to be produced or performed by a subcontractor.

"Make item" means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

"Make-or-buy program" means that part of a contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted.

(c) *Acquisitions requiring make-or-buy programs.* (1) Contracting officers may require prospective contractors to submit make-or-buy program plans for negotiated acquisitions requiring cost or pricing data whose estimated value is $10 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under $10 million only if the contracting officer—

(2) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged, and women-owned small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved.

(e) *Program requirements.* To support a make-or-buy program, the following information shall be supplied by the contractor in its proposal:

(1) *Items and work included.* The information required from a contractor in a make-or-buy program shall be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. Normally, make-or-buy programs should not include items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar amount set by the agency.

(2) The offeror's program should include or be supported by the following information:

(i) A description of each major item or work effort.

(ii) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(iii) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or to "buy."

(iv) Reasons for categorizing items and work efforts as "must make" or "must buy," and proposing to "make" or to "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the evaluation factors described in the solicitation and must be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(v) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) *Evaluation, negotiation, and agreement.* Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215-9, Changes or Additions to Make-or-Buy Program.

(2) Contracting officers normally shall not agree to proposed "make items" when the products or services are not regularly manufactured or provided by the contractor and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices, or when they are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices. However, the contracting officer may agree to these as "make items" if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215-9, Changes or Additions to Make-or-Buy Program (see 15.408(a)). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

(g) *Incorporating make-or-buy programs in contracts.* The contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see Part 34) or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if—

(i) The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and

(ii) The contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

fies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(b) Contracting officers will use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement. Conditions that may affect the agreement's validity shall be reported promptly to the ACO. If the ACO determines that a changed condition invalidates the agreement, the ACO shall notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Contracting officers shall not require certification at the time of agreement for data supplied in support of FPRA's or other advance agreements. When a forward pricing rate agreement or other advance agreement is used to price a contract action that requires a certificate, the certificate supporting that contract action shall cover the data supplied to support the FPRA or other advance agreement, and all other data supporting the action.

15.407-4 Should-cost review.

(a) *General.* (1) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods because they do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multifunctional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(2) There are two types of should-cost reviews—program should-cost review (see paragraph (b) of this subsection) and overhead should-cost review (see paragraph (c) of this subsection). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review tems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program should-cost review should be considered, particularly in the case of a major system acquisition (see Part 34), when—

(i) Some initial production has already taken place;

(ii) The contract will be awarded on a sole source basis;

(iii) There are future year production requirements for substantial quantities of like items;

(iv) The items being acquired have a history of increasing costs;

(v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(vi) Sufficient time is available to plan and adequately conduct the should-cost review; and

(vii) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(3) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. The expertise of on-site Government personnel should be used, when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(4) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the ACO a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

and general and administrative activities. It is normally used to evaluate and negotiate an FPRA with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(2) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(i) Dollar amount of Government business.

(ii) Level of Government participation.

(iii) Level of noncompetitive Government contracts.

(iv) Volume of proposal activity.

(v) Major system or program.

(vi) Corporate reorganizations, mergers, acquisitions, or takeovers.

(vii) Other conditions (*e.g.*, changes in accounting systems, management, or business activity).

(3) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, and identify and recommend corrective actions regarding inefficient and uneconomical practices. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating an FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

15.407-5 Estimating systems.

(a) Using an acceptable estimating system for proposal preparation benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals. Cognizant audit activities, when it is appropriate to do so, shall establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews shall be documented in survey reports.

(b) The auditor shall send a copy of the estimating system survey report and a copy of the official notice of

contracting officer shall insert the clause at 52.215-9, Changes or Additions to Make-or-Buy Program, in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract. If a less economical "make" or "buy" categorization is selected for one or more items of significant value, the contracting officer shall use the clause with—

(1) Its Alternate I, if a fixed-price incentive contract is contemplated; or

(2) Its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

(b) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-10, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403-4).

(c) *Price Reduction for Defective Cost orPricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403-4) for the pricing of contract modifications, and the clause prescribed in paragraph (b) of this section has not been included.

(d) *Subcontractor Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215-12, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included.

(e) *Subcontractor Cost or Pricing Data—Modifications.* The contracting officer shall insert the clause at 52.215-13, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included.

(f) *Integrity of Unit Prices.* (1) The contracting officer shall insert the clause at 52.215-14, Integrity of Unit Prices, in solicitations and contracts except for-

(i) Acquisitions at or below the simplified acquisition threshold;

(ii) Construction or architect-engineer services under Part 36;

(iii) Utility services under Part 41;

contracting officer shall insert the clause at 52.215-15, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to Part 31.

(h) *Facilities Capital Cost of Money.* The contracting officer shall insert the provision at 52.215-16, Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see Subpart 31.2).

(i) *Waiver of Facilities Capital Cost of Money.* If the prospective contractor does not propose facilities capital cost of money in its offer, the contracting officer shall insert the clause at 52.215-17, Waiver of Facilities Capital Cost of Money, in the resulting contract.

(j) *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.* The contracting officer shall insert the clause at 52.215-18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to Part 31.

(k) *Notification of Ownership Changes.* The contracting officer shall insert the clause at 52.215-19, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2.

(l) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.* Considering the hierarchy at 15.402, the contracting officer may insert the provision at 52.215-20, Requirements for Cost or by Table 15-2 of this section;

(2) Use the provision with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the provision with its Alternate III if submission via electronic media is required; and

(4) Replace the basic provision with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403-3.

(m) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.* Considering the hierarchy at 15.402, the contracting officer may insert the clause at 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. The contracting officer shall—

(1) Use the clause with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of this section;

(2) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic clause with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403-3.

price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

NOTE 2. By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

A. You must provide the following information on the first page of your pricing proposal:
(1) Solicitation, contract, and/or modification number;
(2) Name and address of offeror;
(3) Name and telephone number of point of contact;
(4) Name of contract administration office (if available);
(5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);
(6) Proposed cost; profit or fee; and total;
(7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;
(8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS, and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR Part 31, Cost Principles, and, if not, an explanation;
(9) The following statement:

> This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403-5(b)(1) and Table 15-2. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

(10) Date of submission; and
(11) Name, title and signature of authorized representative.

B. In submitting your proposal, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, you must submit, with your proposal, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR 15.401). You must clearly identify on your cover sheet that cost or pricing data are included as part of the proposal. In addition, you must submit with your proposal any information reasonably required to explain your estimating process, including—
(a) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
(b) The nature and amount of any contingencies included in the proposed price.

D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the "Formats for Submission of Line Item

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR 15.406-2, submit a Certificate of Current Cost or Pricing Data.

II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403-4. Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.

(1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR 15.403-4 priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR 31.205-26(e)).

(2) *All Other.* Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403-4 and not otherwise exempt, in accordance with FAR 15.403-1(b) (*i.e.*, adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either $10,000,000 or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's cost or pricing data is required as described in this paragraph, it must be included along with your own cost or pricing data submission, as part of your own cost or pricing data. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. *Direct Labor.* Provide a time-phased (*e.g.*, monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. *Indirect Costs.* Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. *Other Costs.* List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. *Royalties.* If royalties exceed $1,500, you must provide the following information on a separate page for each separate royalty or license fee:

(1) Name and address of licensor.

claims of specific patents (see FAR 27.204 and 31.205-37).

F. *Facilities Capital Cost of Money.* When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB-CMF and show the calculation of the proposed amount (see FAR 31.205-10).

III. Formats for Submission of Line Item Summaries

A. *New Contracts (including letter contracts).*

COST ELEMENTS	PROPOSED CONTRACT ESTIMATE—TOTAL COST	PROPOSED CONTRACT ESTIMATE—UNIT COST	REFERENCE
(1)	(2)	(3)	(4)

Column	Instruction
(1)	Enter appropriate cost elements.
(2)	Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (*e.g.*, under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.
(3)	Optional, unless required by the Contracting Officer.
(4)	Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

B. *Change Orders, Modifications, and Claims.*

COST ELEMENTS	ESTIMATED COST OF ALL WORK DELETED	COST OF DELETED WORK ALREADY PERFORMED	NET COST TO BE DELETED	COST OF WORK ADDED	NET COST OF CHANGE	REFERENCE
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Column	Instruction
(1)	Enter appropriate cost elements.
(2	Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.
(3)	Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.

(7) Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

C. *Price Revision/Redetermination.*

CUTOFF DATE (1)	NUMBER OF UNITS COMPLETED (2)	NUMBER OF UNITS TO BE COMPLETED (3)	CONTRACT AMOUNT (4)	REDETERMINATION PROPOSAL AMOUNT (5)	DIFFERENCE (6)

COST ELEMENTS (7)	INCURRED COST—PREPRODUCTION (8)	INCURRED COST—COMPLETED UNITS (9)	INCURRED COST—WORK IN PROCESS (10)	TOTAL INCURRED COST (11)	ESTIMATED COST TO COMPLETE (12)	ESTIMATED TOTAL COST (13)	REFERENCE (14)

(Use as applicable)

Column	Instruction
(1)	Enter the cutoff date required by the contract, if applicable.
(2)	Enter the number of units completed during the period for which experienced costs of production are being submitted.
(3)	Enter the number of units remaining to be completed under the contract.
(4)	Enter the cumulative contract amount.
(5)	Enter your redetermination proposal amount.
(6)	Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).
(7)	Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.
(8)	Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.*, included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.

	inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.
(11)	Enter total incurred costs (Total of Columns (8), (9), and (10)).
(12)	Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.
(13)	Enter total estimated cost (Total of Columns (11) and (12)).
(14)	Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.501 Definition.

"Day," as used in this subpart, has the meaning set forth at 33.101.

15.502 Applicability.

This subpart applies to competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). The procedures in 15.504, 15.506, 15.507, 15.508, and 15.509, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d)(1) and (2).

15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices—(1) Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the offeror's proposal; and (ii) no response is required unless a basis exists to challenge the small business size status of the apparent successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805-2).

(b) *Postaward notices.* (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in Part 13.

notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror's written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the proposal acceptance period.

(c) If the Optional Form (OF) 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, Solicitation, Offer and Award, is not used to award the contract, the first page of the award document shall contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and shall contain the contracting officer's name, signature, and date. In addition, if the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page shall include the contractor's agreement statement from Block 14 of the OF 307 and the signature of the contractor's authorized representative.

15.505 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b(f) - (h)).

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see 15.506(d)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

provided under 15.506. In that event, the contracting officer shall include the information at 15.506(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors' proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.506(e).

(g) An official summary of the debriefing shall be included in the contract file.

15.506 Postaward debriefing of offerors.

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

15.507 Protests against award.

(a) Protests against award in negotiated acquisitions shall be handled in accordance with Part 33. Use of agency protest procedures that incorporate the alternative dispute

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.508 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed substantially in accordance with the procedures for mistakes in bids at 14.407-4.

15.509 Forms.

Optional Form 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, Solicitation, Offer and Award, may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate. If these forms are not used, the award document shall incorporate the agreement and award language from the OF 307.

Subpart 15.6—Unsolicited Proposals

15.600 Scope of subpart.

This subpart sets forth policies and procedures concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

15.601 Definitions.

As used in this subpart—

"Advertising material" means material designed to acquaint the Government with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the Government's interest in buying such products or services.

"Commercial item offer" means an offer of a commercial item that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not

new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

15.602 Policy.

It is the policy of the Government to encourage the submission of new and innovative ideas in response to Broad Agency Announcements, Small Business Innovation Research topics, Small Business Technology Transfer Research topics, Program Research and Development Announcements, or any other Government-initiated solicitation or program. When the new and innovative ideas do not fall under topic areas publicized under those programs or techniques, the ideas may be submitted as unsolicited proposals.

15.603 General.

(a) Unsolicited proposals allow unique and innovative ideas or approaches that have been developed outside the Government to be made available to Government agencies for use in accomplishment of their missions. Unsolicited proposals are offered with the intent that the Government will enter into a contract with the offeror for research and development or other efforts supporting the Government mission, and often represent a substantial investment of time and effort by the offeror.

(b) Advertising material, commercial item offers, or contributions, as defined in 15.601, or routine correspondence on technical issues, are not unsolicited proposals.

(c) A valid unsolicited proposal must—

(1) Be innovative and unique;

(2) Be independently originated and developed by the offeror;

(3) Be prepared without Government supervision, endorsement, direction, or direct Government involvement;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

appropriate personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort for both parties (see 15.201). Agencies shall make available to potential offerors of unsolicited proposals at least the following information:

(1) Definition (see 15.601) and content (see 15.605) of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors (see Subpart 9.1), and organizational conflicts of interest (see Subpart 9.5).

(3) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming solicitations; Broad Agency Announcements; Small Business Innovation Research programs; Small Business Technology Transfer Research programs; Program Research and Development Announcements; or grant programs.

(4) Agency points of contact for information regarding advertising, contributions, and other types of transactions similar to unsolicited proposals.

(5) Information sources on agency objectives and areas of potential interest.

(6) Procedures for submission and evaluation of unsolicited proposals.

(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to 15.609.

(b) Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

15.605 Content of unsolicited proposals.

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including—

(1) Offeror's name and address and type of organization; *e.g.*, profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identification of proprietary data to be used only for evaluation purposes;

words) of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and

(4) Type of support needed from the agency; *e.g.*, facilities, equipment, materials, or personnel resources.

(c) Supporting information including—

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;

(6) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and

(7) The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.

15.606 Agency procedures.

(a) Agencies shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals consistent with the requirements of this subpart. The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(b) Agencies shall establish agency points of contact (see 15.604) to coordinate the receipt and handling of unsolicited proposals.

15.606-1 Receipt and initial review.

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the proposal—

other representative authorized to obligate the offeror contractually; and

(6) Complies with the marking requirements of 15.609.

(b) If the proposal meets these requirements, the contact point shall promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet the requirements of paragraph (a) of this subsection, the agency contact point shall promptly inform the offeror of the reasons for rejection in writing and of the proposed disposition of the unsolicited proposal.

15.606-2 Evaluation.

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal, circulated for evaluation, the legend required by 15.609(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique, innovative, and meritorious methods, approaches, or concepts demonstrated by the proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

(3) Potential contribution of the effort to the agency's specific mission;

(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and

(6) The realism of the proposed cost.

(b) The evaluators shall notify the agency point of contact of their recommendations when the evaluation is completed.

15.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact shall return an unsolicited proposal to the offeror, citing reasons, when its substance—

meritorious proposal.

(b) The contracting officer may commence negotiations on a sole source basis only when—

(1) An unsolicited proposal has received a favorable comprehensive evaluation;

(2) A justification and approval has been obtained (see 6.302-1(a)(2)(i) for research proposals or other appropriate provisions of Subpart 6.3, and 6.303-2(b));

(3) The agency technical office sponsoring the contract furnishes the necessary funds; and

(4) The contracting officer has complied with the synopsis requirements of Subpart 5.2.

15.608 Prohibitions.

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(b) Government personnel shall not disclose restrictively marked information (see 3.104 and 15.609) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

15.609 Limited use of data.

(a) An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

USE AND DISCLOSURE OF DATA

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of—or in connection with—the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in

from that provided in paragraph (a) of this section. The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The agency point of contact shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal:

UNSOLICITED PROPOSAL—USE OF DATA LIMITED

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with FAR 3.104, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) The notice in paragraph (d) of this section is used solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, the use of this notice shall not be used to justify the withholding of a record, nor to improperly deny the public access to a record, where an obligation is imposed on an agency by the Freedom of Information Act, 5 U.S.C. 552, as amended. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution, and an evaluation outside the Government is necessary, the agency point of contact shall—

(1) Attach a cover sheet clearly marked with the legend in paragraph (d) of this section;

(2) Change the beginning of this legend to read "All Government and non-Government personnel . . . . "; and

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government.

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16.103 Negotiating contract type.
16.104 Factors in selecting contract types.
16.105 Solicitation provision.

Subpart 16.2—Fixed-Price Contracts

16.201 General.
16.202 Firm-fixed-price contracts.
16.202-1 Description.
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16.203 Fixed-price contracts with economic price adjustment.
16.203-1 Description.
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Subpart 16.6—Time-And-Materials, Labor-Hour, and Letter Contracts

16.601 Time-and-materials contracts.
16.602 Labor-hour contracts.
16.603 Letter contracts.
16.603-1 Description.
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Subpart 16.7—Agreements

16.701 Scope.
16.702 Basic agreements.
16.703 Basic ordering agreements.

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

Subpart 16.1—Selecting Contract Types

16.101 General.

(a) A wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to—

(1) The degree and timing of the responsibility assumed by the contractor for the costs of performance; and

contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (see Subpart 16.4), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

16.102 Policies.

(a) Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

(b) Contracts negotiated under Part 15 may be of any type or combination of types that will promote the Government's interest, except as restricted in this part (see 10 U.S.C. 2306(a) and 41 U.S.C. 254(a)). Contract types not described in this regulation shall not be used, except as a deviation under Subpart 1.4.

(c) The cost-plus-a-percentage-of-cost system of contracting shall not be used (see 10 U.S.C. 2306(a) and 41 U.S.C. 254(b)). Prime contracts (including letter contracts) other than firm-fixed-price contracts shall, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts (see clauses prescribed in Subpart 44.2 for cost-reimbursement contracts and Subparts 16.2 and 16.4 for fixed-price contracts).

(d) No contract may be awarded before the execution of any determination and findings (D&F's) required by this part. Minimum requirements for the content of D&F's required by this part are specified in 1.704.

16.103 Negotiating contract type.

(a) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(b) A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be con-

cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

(d) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are—

(1) Fixed-price acquisitions made under simplified acquisition procedures;

(2) Contracts on a firm fixed-price basis other than those for major systems or research and development; and

(3) Awards on the set-aside portion of sealed bid partial set-asides for small business.

16.104 Factors in selecting contract types.

There are many factors that the contracting officer should consider in selecting and negotiating the contract type. They include the following:

(a) *Price competition.* Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

(b) *Price analysis.* Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See 15.404-1(b).)

(c) *Cost analysis.* In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

(d) *Type and complexity of the requirement.* Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

(e) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.

16.302 Cost contracts.

(a) *Description.* A cost contract is a cost-reimbursement contract in which the contractor receives no fee.

(b) *Application.* A cost contract may be appropriate for research and development work, particularly with nonprofit educational institutions or other nonprofit organizations, and for facilities contracts.

(c) *Limitations.* See 16.301-3.

16.303 Cost-sharing contracts.

(a) *Description.* A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs.

(b) *Application.* A cost-sharing contract may be used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

(c) *Limitations.* See 16.301-3.

16.304 Cost-plus-incentive-fee contracts.

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. Cost-plus-incentive-fee contracts are covered in Subpart 16.4, Incentive Contracts. See 16.405-1 for a more complete description and discussion of application of these contracts. See 16.301-3 for limitations.

16.305 Cost-plus-award-fee contracts.

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (a) a base amount (which may be zero) fixed at inception of the contract and (b) an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance. Cost-plus-award-fee contracts are covered in Subpart 16.4, Incentive Contracts. See 16.405-2 for a more complete description and discussion of application of these contracts. See 16.301-3 and 16.405-2(c) for limitations.

16.306 Cost-plus-fixed-fee contracts.

(a) *Description.* A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a fixed fee. This fee does not vary with actual costs, but may be adjusted as a result of changes in the work to be performed under the contract. This type of contract permits the Government to define a task and to ask prospective contractors to submit proposals based on competition regarding the cost and technical aspects of the proposed effort.

(b) *Application.* (1) A cost-plus-fixed-fee contract is suitable for use when the conditions of 16.301-2 are present and, for example—

(i) The contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown; or

(ii) The contract is for development and test, and using a cost-plus-incentive-fee contract is not practical.

(2) A cost-plus-fixed-fee contract normally should not be used in development of major systems (see Part 34) once preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the Government has established reasonably firm performance objectives and schedules.

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless the contracting officer complies with all limitations in 16.301-3.

(d) *Completion and term forms.* A cost-plus-fixed-fee contract may take one of two basic forms—completion or term.

(1) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (*e.g.*, a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee. However, in the event the work cannot be completed within the estimated cost, the Government may require more effort without increase in fee, provided the Government increases the estimated cost.

(2) The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if the performance is considered satisfactory by the Government, the fixed fee is payable at the expiration of the agreed-upon period, upon contractor statement that the level of effort specified in the contract has been expended in performing the contract work. Renewal for further periods of performance is a new acquisition that involves new cost and fee arrangements.

(3) Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work.

facilities contract) is contemplated. If the contract is with an educational institution, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.3." If the contract is with a State or local government, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.6." If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A-122, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.7."

(2) If the contract is a construction contract and contains the clause at 52.232-27, Prompt Payment for Construction Contracts, the contracting officer shall use the clause at 52.216-7 with its Alternate I.

(b) The contracting officer shall insert the clause at 52.216-8, Fixed Fee, in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

(c) The contracting officer shall insert the clause at 52.216-9, Fixed-Fee—Construction, in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated.

(d) The contracting officer shall insert the clause at 52.216-10, Incentive Fee, in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated.

(e)(1) The contracting officer shall insert the clause at 52.216-11, Cost Contract—No Fee, in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract.

(2) If a cost-reimbursement research and development contract with an educational institution or a nonprofit organization that provides no fee or other payment above cost and is not a cost-sharing contract is contemplated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer shall use the clause with its Alternate I.

(f)(1) The contracting officer shall insert the clause at 52.216-12, Cost-Sharing Contract—No Fee, in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated.

(2) If a cost-reimbursement consolidated facilities contract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated.

(2) If a facilities acquisition contract is contemplated and, in the judgment of the contracting officer, it may be necessary to withhold payment of an amount to protect the Government's interest, the contracting officer shall use the clause with its Alternate I.

(h) The contracting officer shall insert the clause at 52.216-14, Allowable Cost and Payment—Facilities Use, in solicitations and contracts when a facilities use contract is contemplated.

(i) The contracting officer shall insert the clause at 52.216-15, Predetermined Indirect Cost Rates, in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution (see 42.705-3(b)) is contemplated and predetermined indirect cost rates are to be used. If the contract is a facilities contract, modify paragraph (c) by deleting the words "Subpart 31.1" and substituting for them "section 31.106."

Subpart 16.4—Incentive Contracts

16.401 General.

(a) Incentive contracts as described in this subpart are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific acquisition objectives by—

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to—

(i) motivate contractor efforts that might not otherwise be emphasized; and

(ii) discourage contractor inefficiency and waste.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee are provided only for achievement that surpasses the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases

tracts are preferred when contract costs and performance requirements are reasonably certain. Cost-reimbursement incentive contracts are subject to the overall limitations in 16.301 that apply to all cost-reimbursement contracts.

(d) Award-fee contracts are a type of incentive contract.

16.402 Application of predetermined, formula-type incentives.

16.402-1 Cost incentives.

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).

(b) Except for award-fee contracts (see 16.404 and 16.405-2), incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

16.402-2 Performance incentives.

(a) Performance incentives may be considered in connection with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit or fee to results achieved by the contractor, compared with specified targets.

(b) To the maximum extent practicable, positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

(c) Technical performance incentives may be particularly appropriate in major systems contracts, both in development (when performance objectives are known and the fabrication of prototypes for test and evaluation is required) and in pro-

(e) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

(f) Because performance incentives present complex problems in contract administration, the contracting officer should negotiate them in full coordination with Government engineering and pricing specialists.

(g) It is essential that the Government and contractor agree explicitly on the effect that contract changes (*e.g.*, pursuant to the Changes clause) will have on performance incentives.

(h) The contracting officer must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

16.402-3 Delivery incentives.

(a) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract (*e.g.*, earliest possible delivery or earliest quantity production).

(b) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

16.402-4 Structuring multiple-incentive contracts.

A properly structured multiple-incentive arrangement should—

(a) Motivate the contractor to strive for outstanding results in all incentive areas; and

(b) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost incentive

establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset. The two forms of fixed-price incentive contracts, firm target and successive targets, are further described in 16.403-1 and 16.403-2 below.

(b) *Application.* A fixed-price incentive contract is appropriate when—

(1) A firm-fixed-price contract is not suitable;

(2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and

(3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

(c) *Billing prices.* In fixed-price incentive contracts, billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated cost will be substantially different from the target cost.

16.403-1 Fixed-price incentive (firm target) contracts.

(a) *Description.* A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs. responsibility.

(c) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision; and

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(d) *Contract schedule.* The contracting officer shall specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision.

16.403-2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1) A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(i) An initial target cost.

(ii) An initial target profit.

(iii) An initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit. (This formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.)

(iv) The production point at which the firm target cost and firm target profit will be negotiated (usually before delivery or shop completion of the first item).

(v) A ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(2) When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

(i) They may negotiate a firm fixed price, using the firm target cost plus the firm target profit as a guide.

(ii) If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final

Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services will not exceed three years and $10,000,000, including all options, a contracting officer may, but is not required to, give preference to making multiple awards. If an indefinite-quantity contract for advisory and assistance services exceeds three years and $10,000,000, including all options, multiple awards shall be made unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, prior to the issuance of the solicitation, that the services required under the task order contract are so unique or highly specialized that it is not practicable to award more than one contract. This determination may also be appropriate when the tasks likely to be issued are so integrally related that only a single contractor can reasonably perform the work;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section are not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.505 Ordering.

(a) *General.* (1) When placing orders under this subpart, a separate notice under 5.201 is not required.

(2) The contracting officer or duly appointed ordering officer shall ensure that individual orders clearly describe all services to be performed or supplies to be delivered. Such officer shall also ensure that orders are within the scope, period, and maximum value of the contract.

(3) The contracting officer shall include in the contract Schedule the names of the activity or activities authorized to issue orders.

(4) If appropriate, authorization for placing oral orders may be included in the contract Schedule; provided, that procedures have been established for obligating funds and that oral orders are confirmed in writing.

(iv) Delivery or performance date.

(v) Place of delivery or performance (including consignee).

(vi) Packaging, packing, and shipping instructions, if any.

(vii) Accounting and appropriation data.

(viii) Any other pertinent information.

(7) No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task order contract or delivery order contract except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract.

(b) *Orders under multiple award contracts.* (1) Except as provided for in paragraph (b)(2) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of $2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers shall exercise broad discretion. The contracting officer, in making decisions in the award of any individual task order, should consider factors such as past performance on earlier tasks under the multiple award contract, quality of deliverables, cost control, price, cost, or other factors that the contracting officer believes are relevant to the award of a task order to an awardee under the contract. In evaluating past performance on individual orders, the procedural requirements in Subpart 42.15 are not mandatory. The procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order must be set forth in the solicitation and contract. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of Part 6. However, agencies shall not use any method (such as allocation) that would not result in fair consideration being given to all awardees prior to placing each order. Formal evaluation plans or scoring of quotes or offers are not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(2) Awardees need not be given an opportunity to be considered for a particular order in excess of $2,500 under

or highly specialized;

(iii) The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) The "competing independently" requirement of 15.403-1(c)(1) is satisfied for orders placed under multiple delivery order contracts or multiple task order contracts when—

(i) The price for the supplies or services is established in the contract at the time of contract award; or

(ii) The contracting officer solicits offers from two or more awardees for order placement when the price for the supplies or services is not established in the contract at the time of contract award.

(4) The head of the agency shall designate a task order contract and delivery order contract ombudsman who shall be responsible for reviewing complaints from contractors on task order contracts and delivery order contracts. The ombudsman shall review complaints from the contractors and ensure that all contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman shall be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task order contracts for advisory and assistance services.* (1) Except as provided for in paragraph (c)(2) of this section, the ordering period of a task order contract for advisory and assistance services, including all options or modifications, may not exceed five years, unless a longer period is specifically authorized by a statute that is applicable to such a contract. Notwithstanding the five-year limitation or the requirements of Part 6, a task order contract for advisory and assistance services may be extended on a sole-source basis only once for a period not to exceed six months if the contracting officer or other official designated by the head of the agency determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

necessarily incident to, and not a significant component of, the contract.

16.506 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) The contracting officer shall insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) The contracting officer shall insert the clause at 52.216-20, Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d)(1) The contracting officer shall insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, the contracting officer shall use the clause with its Alternate I.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, the contracting officer shall use the clause with its Alternate II (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, the contracting officer shall use the clause with its Alternate III (but see paragraph (d)(5) of this section).

(5) If the contract (i) includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and (ii) involves a partial small business set-aside, the contracting officer shall use the clause with its Alternate IV.

(e) The contracting officer shall insert the clause at 52.216-22, Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(f) The contracting officer shall insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite quantity contracts that may result in multiple contract awards. This provision shall not be used for advisory and assistance services contracts that exceed three years and

all options) unless a determination has been made under 16.504(c)(2)(i)(A). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make.

Subpart 16.6—Time-and-Materials, Labor-Hour, and Letter Contracts

16.601 Time-and-materials contracts.

(a) *Description.* A time-and-materials contract provides for acquiring supplies or services on the basis of—

(1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and

(2) Materials at cost, including, if appropriate, material handling costs as part of material costs.

(b) *Application.* A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(1) *Government surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(2) *Material handling costs.* When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with Part 31.

(3) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than at cost if—

(i) The total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;

(ii) The material to be so charged is identified in the contract;

contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) *Limitations.* A time-and-materials contract may be used (1) only after the contracting officer executes a determination and findings that no other contract type is suitable; and (2) only if the contract includes a ceiling price that the contractor exceeds at its own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.

16.602 Labor-hour contracts.

Description. A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See 16.601(b) and 16.601(c) for application and limitations, respectively.

16.603 Letter contracts.

16.603-1 Description.

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

16.603-2 Application.

(a) A letter contract may be used when (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.

(b) When a letter contract award is based on price competition, the contracting officer shall include an overall price ceiling in the letter contract.

(c) Each letter contract shall, as required by the clause at 52.216-25, Contract Definitization, contain a negotiated definitization schedule including (1) dates for submission of the contractor's price proposal, required cost or pricing data, and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which shall be the earliest practicable date for definitization. The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. However, the con-

reasonable price or fee in accordance with Subpart 15.4 and Part 31, subject to appeal as provided in the Disputes clause.

(d) The maximum liability of the Government inserted in the clause at 52.216-24, Limitation of Government Liability, shall be the estimated amount necessary to cover the contractor's requirements for funds before definitization. However, it shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.

(e) The contracting officer shall assign a priority rating to the letter contract if it is appropriate under 11.604.

16.603-3 Limitations.

A letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable. Letter contracts shall not—

(a) Commit the Government to a definitive contract in excess of the funds available at the time the letter contract is executed;

(b) Be entered into without competition when competition is required by Part 6; or

(c) Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

16.603-4 Contract clauses.

(a) The contracting officer shall include in each letter contract the clauses required by this regulation for the type of definitive contract contemplated and any additional clauses known to be appropriate for it.

(b) In addition, the contracting officer shall insert the following clauses in solicitations and contracts when a letter contract is contemplated:

(1) The clause at 52.216-23, Execution and Commencement of Work, except that this clause may be omitted from letter contracts awarded on SF 26;

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

(3) The clause at 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c). If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will Definitization, in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships.

Subpart 16.7—Agreements

16.701 Scope.

This subpart prescribes policies and procedures for establishing and using basic agreements and basic ordering agreements. (See Subpart 13.2 for blanket purchase agreements (BPA's) and see 35.015(b) for additional coverage of basic agreements with educational institutions and nonprofit organizations.)

16.702 Basic agreements.

(a) *Description.* A basic agreement is a written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that (1) contains contract clauses applying to future contracts between the parties during its term and (2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

(b) *Application.* A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

(1) Basic agreements shall contain—

(i) Clauses required for negotiated contracts by statute, executive order, and this regulation; and

(ii) Other clauses prescribed in this regulation or agency acquisition regulations that the parties agree to include in each contract as applicable.

(2) Each basic agreement shall provide for discontinuing its future applicability upon 30 days' written notice by either party.

(3) Each basic agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agree-

period associated with multi-year acquisition, consideration in pricing fixed-priced contracts should be given to the use of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.

(c) *Cancellation procedures.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for requirements included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.408, Table 15-2, Formats for Submission of Line Items Summaries C(8)) are estimated at 10 percent of the total multi-year price, and the percentages for each of the program year requirements for 5 years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multi-year requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost

(d) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In sealed bidding, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step sealed bidding, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in cancellation ceilings and dates before final negotiation and contract award.

(e) *Payment of cancellation charges.* If cancellation occurs, the Government's liability will be determined by the terms of the applicable contract.

(f) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multi-year contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(g) *Payment limit.* The contracting officer shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(h) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including requirements subject to cancellation, the Government's obligation shall not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

17.106-2 Solicitations.

Solicitations for multi-year contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item of supply or service, for the—

(1) First program year; and

(2) Multi-year contract including the requirements for each program year.

(b) Criteria for comparing the lowest evaluated submission on the first program year requirements to the lowest evaluated submission on the multi-year requirements.

(c) A provision that, if the Government determines before award that only the first program year requirements

tracting may be used as a factor in the evaluation only if they can be reasonably established and are stated in the solicitation.

(g) The cancellation ceiling shall not be an evaluation factor.

17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(a) *Participation by subcontractors, suppliers, and vendors.* In order to broaden the defense industrial base, to the maximum extent practicable—

(1) Multi-year contracting shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, suppliers, and vendors; and

(2) Upon accrual of any payment or other benefit under such a multi-year contract to any subcontractor, supplier, or vendor company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(b) *Protection of existing authority.* To the extent practicable, multi-year contracting shall not be carried out in a manner to preclude or curtail the existing ability of the Department or agency to provide for termination of a prime contract, the performance of which is deficient with respect to cost, quality, or schedule.

(c) *Cancellation or termination for insufficient funding.* In the event funds are not made available for the continuation of a multi-year contract awarded using the procedures in this section, the contract shall be canceled or terminated.

(d) Contracts awarded under the multi-year procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

(e) *Recurring costs in cancellation ceiling.* The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the agency head.

(f) *Annual and multi-year proposals.* Obtaining both annual and multi-year offers provides reduced lead time for making an annual award in the event that the multi-year award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual offers may increase administrative costs and workload (except when the economic price adjustment terms apply) for all items or services under the multi-year contract. If level unit pricing is not in the Government's interest, the head of a contracting activity may approve the use of variable unit prices, provided that for competitive proposals there is a valid method of evaluation.

17.107 Options.

Benefits may accrue by including options in a multi-year contract. In that event, contracting officers must follow the requirements of Subpart 17.2. Options should not include charges for plant and equipment already amortized, or other nonrecurring charges which were included in the basic contract.

17.108 Congressional notification.

(a) Except for DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of $10 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on appropriations of the House of Representatives and Senate and the appropriate oversight committees of the House and Senate for the agency in question. Information on such committees may not be readily available to contracting officers. Accordingly, agencies should provide such information through its internal regulations. The contract may not be awarded until the thirty-first day after the date of notification.

(b) For DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of $100 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and appropriations of the House of Representatives and Senate. The contract may not be awarded until the thirty-first day after the date of notification.

17.109 Contract clauses.

(a) The contracting officer shall insert the clause at 52.217-2, Cancellation Under Multi-year Contracts, in solicitations and contracts when a multi-year contract is contemplated.

(c) Publicize solicitations and contract awards in the "Commerce Business Daily" (see Subparts 5.2 and 5.3).

19.202-3 Equal low bids.

In the event of equal low bids (see 14.408-6), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

19.202-4 Solicitation.

The contracting officer shall encourage maximum response to solicitations by small business, small disadvantaged business concerns, and women-owned small business concerns by taking the following actions:

(a) Allow the maximum amount of time practicable for the submission of offers.

(b) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined.

(c) Send solicitations to—

(1) All small business concerns on the solicitation mailing list; or

(2) A pro rata number of small business concerns when less than a complete list is used.

(d) Provide to any small business concern, upon its request, a copy of bid sets and specifications with respect to any contract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business must comply when doing business with other than the Government.

19.202-5 Data collection and reporting requirements.

Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions:

(a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business or women-owned small business (see the provision at 52.219-1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small, small disadvantaged, and women-owned small businesses in Government acquisitions in terms of the total

tracts, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.405.

(b) For 8(a) contracts, both with respect to meeting the requirement at 19.806(b) and in order to accurately estimate the current fair market price, contracting officers shall follow the procedures at 19.807.

Subpart 19.3—Determination of Status as a Small Business Concern

19.301 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation. An offeror may represent that it is a small business concern in connection with a specific solicitation if it meets the definition of a small business concern applicable to the solicitation and has not been determined by the Small Business Administration (SBA) to be other than a small business.

(b) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the concern's small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning a specific representation shall be referred to the SBA in accordance with 19.302.

(c) An offeror's representation that it is a small business is not binding on the SBA. If an offeror's small business status is challenged, the SBA will evaluate the status of the concern and make a determination, which will be binding on the contracting officer, as to whether the offeror is a small business. A concern cannot become eligible for a specific award by taking action to meet the definition of a small business concern after the SBA has determined that it is not a small business.

(d) If the SBA determines that the status of a concern as a "small business", a "small disadvantaged business" or a "women-owned small business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d)

small business representation of an offeror in a specific offer.

(b) Any time after offers are opened, the contracting officer may question the small business representation of any offeror in a specific offer by filing a contracting officer's protest (see paragraph (c) below).

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, shall promptly forward the protest to the SBA Area Office for the geographical area where the principal office of the concern in question is located.

(2) The protest, or confirmation if the protest was initiated orally, shall be in writing and shall contain the basis for the protest with specific, detailed evidence to support the allegation that the offeror is not small. The SBA will dismiss any protest that does not contain specific grounds for the protest.

(d) In order to affect a specific solicitation, a protest must be timely. SBA's regulations on timeliness are contained in 13 CFR 121.10.

(1) To be timely, a protest by any concern or other interested party must be received by the contracting officer (see (d)(1)(i) and (ii) of this section) by the close of business of the 5th business day after bid opening (in sealed bid acquisitions) or receipt of the special notification from the contracting officer that identifies the apparently successful offeror (in negotiated acquisitions) (see 15.503(a)(2)).

(i) A protest may be made orally if it is confirmed in writing either within the 5-day period or by letter postmarked no later than 1 day after the oral protest.

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, or letter postmarked within the 5-day period.

(2) A contracting officer's protest is always considered timely whether filed before or after award.

(3) A protest under a Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals.

(e) Upon receipt of a protest from or forwarded by the Contracting Office, the SBA will—

(1) Notify the contracting officer and the protestant of the date it was received, and that the size of the concern being challenged is under consideration by the SBA; and the required material within the 3 business days or another period of time granted by the SBA, the SBA may assume that the disclosure would be contrary to the offeror's interests.

(g)(1) Within 10 business days after receiving a protest, the challenged offeror's response, and other pertinent information, the SBA will determine the size status of the challenged concern and notify the contracting officer, the protestant, and the challenged offeror of its decision by certified mail, return receipt requested.

(2) The SBA Area Director will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of the determination. Award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with paragraph (i) below, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid.

(h)(1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until (i) the SBA has made a size determination or (ii) 10 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) After the 10-day period has expired, the contracting officer may, when practical, continue to withhold award until the SBA's determination is received, unless further delay would be disadvantageous to the Government.

(3) Whenever an award is made before the receipt of SBA's size determination, the contracting officer shall notify SBA that the award has been made.

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contracting action. The contracting officer shall forward the protest to the SBA (see 19.302(c)(1)) with a notation that the concern is not being considered for award, and shall notify the protestant of this action.

(i) An appeal from an SBA size determination may be filed by (1) any concern or other interested party whose

Agency recommendations for competition below the threshold may be included in the offering letter or may be submitted by separate correspondence to the SBA Headquarters.

19.805-2 Procedures.

(a) Competitive 8(a) acquisitions shall be conducted by contracting agencies by using sealed bids (see Part 14) or competitive proposals (see Part 15).

(b) Offers shall be solicited from those sources identified in accordance with the SBA instructions provided under 19.804-3.

(c) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria.

(1) In sealed bid acquisitions, upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (*i.e.*, first low, second low, etc.) with the total evaluated price for each offer, differentiating between basic requirements and any options. The SBA will consider the eligibility of the first low offeror. If the first low offeror is not determined to be eligible, the SBA will consider the eligibility of the next low offeror until an eligible offeror is identified. The SBA will determine the eligibility of the firms and advise the contracting officer within 5 working days after its receipt of the list of bidders. Once eligibility has been established by the SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.

(2) In negotiated acquisition, the SBA will determine eligibility when the successful offeror has been established by the agency and the contract transmitted for signature unless a referral has been made under 19.809, in which case the SBA will determine eligibility at that point.

(d) In any case in which a firm is determined to be ineligible, the SBA will notify the firm of that determination.

(e) The eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a solicitation or proposed contract award. Any party with information concerning the determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

(b) An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.

(c) If requested by the SBA, the contracting officer shall make available the data used to estimate the fair market price.

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

19.807 Estimating fair market price.

(a) The contracting officer shall estimate the fair market price of the work to be performed by the 8(a) contractor.

(b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

(c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

19.808 Contract negotiation.

19.808-1 Sole source.

(a) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the

19.808-2 Competitive.

In competitive 8(a) acquisitions subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms.

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer should refer the matter to the SBA for its consideration in deciding whether SBA should certify that it is competent and responsible to perform. This is not a referral for Certificate of Competency consideration under Subpart 19.6. Within 15 working days of the receipt of the referral or a longer period agreed to by the SBA and the contracting activity, the SBA local district office that services the 8(a) firm will advise the contracting officer as to the SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected 8(a) offeror if the SBA has not certified its competency within 15 working days (or a longer mutually agreeable period).

19.810 SBA appeals.

(a) The following matters may be submitted by the SBA Administrator for determination to the agency head if the SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) Program.

(2) The terms and conditions of a particular sole source acquisition to be awarded under the 8(a) Program.

(3) The estimated fair market price.

(b) Notification of a proposed referral to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBA is formally notified of the contracting officer's decision. The SBA shall provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification. The SBA must provide the request for determination to the agency head within 20 working days of the SBA's receipt of the adverse decision. Pending issuance of a decision by the agency head, incapable of performance, if appropriate. The decision shall be made a part of the contract file.

19.811 Preparing the contracts.

19.811-1 Sole source.

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case the Standard Form 1442 shall be used as required in 36.701(b).

(b) The agency shall prepare the contract that the SBA will award to the 8(a) contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the 8(a) contractor, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.

(3) The following items shall be inserted by the SBA:

(i) The SBA contract number.

(ii) The effective date.

(iii) The typed name of the SBA's contracting officer.

(iv) The signature of the SBA's contracting officer.

(v) The date signed.

(4) The SBA will obtain the signature of the 8(a) contractor prior to signing and returning the prime contract to the contracting officer for signature. The SBA will make every effort to obtain signatures and return the contract, and any subsequent bilateral modification, to the contracting officer within a maximum of 10 working days.

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in 19.811-1(a) and (b), use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document shall contain the information in 19.811-1(b)(1), (2), (3), and (5). Appropriate blocks on the Standard Form (SF) 26 or 1442

Subpart 24.2—Freedom of Information Act
24.201 Authority.
24.202 Prohibitions.
24.203 Policy

24.000 Scope of part.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and OMB Circular No. A-130, December 12, 1985, to Government contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended).

Subpart 24.1—Protection of Individual Privacy

24.101 Definitions.

"Agency," as used in this subpart, means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

"Individual," as used in this subpart, means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain," as used in this subpart, means maintain, collect, use, or disseminate.

"Operation of a system of records," as used in this subpart, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

"Record," as used in this subpart, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

"System of records on individuals," as used in this subpart, means a group of any records under the control of any agency from which information is retrieved by the name of the Act to the contractor and its employees working on the contract.

(b) An agency officer or employee may be criminally liable for violations of the Act. When the contract provides for operation of a system of records on individuals, contractors and their employees are considered employees of the agency for purposes of the criminal penalties of the Act.

(c) If a contract specifically provides for the design, development, or operation of a system of records on individuals on behalf of an agency to accomplish an agency function, the agency must apply the requirements of the Act to the contractor and its employees working on the contract. The system of records operated under the contract is deemed to be maintained by the agency and is subject to the Act.

(d) Agencies, which within the limits of their authorities, fail to require that systems of records on individuals operated on their behalf under contracts be operated in conformance with the Act may be civilly liable to individuals injured as a consequence of any subsequent failure to maintain records in conformance with the Act.

24.103 Procedures.

(a) The contracting officer shall review requirements to determine whether the contract will involve the design, development, or operation of a system of records on individuals to accomplish an agency function.

(b) If one or more of those tasks will be required, the contracting officer shall—

(1) Ensure that the contract work statement specifically identifies the system of records on individuals and the design, development, or operation work to be performed; and

(2) Make available, in accordance with agency procedures, agency rules and regulation implementing the Act.

24.104 Contract clauses.

When the design, development, or operation of a system of records on individuals is required to accomplish an agency function, the contracting officer shall insert the following clauses in solicitations and contracts:

(a) The clause at 52.224-1, Privacy Act Notification.

(b) The clause at 52.224-2, Privacy Act.

convenient locations; or

(c) Upon request, providing a copy of a reasonably described record.

24.202 Prohibitions.

(a) A proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. This prohibition does not apply to a proposal, or any part of a proposal, that is—

(1) In the possession or control of NASA or the Coast Guard; or

(2) Set forth or incorporated by reference in a contract between the Government and the contractor that submitted the proposal. (See 10 U.S.C. 2305(g) and 41 U.S.C. 253b(m).)

(b) No agency shall disclose any information obtained pursuant to 15.403-3(b) that is exempt from disclosure implementation of these requirements is located in its respective title of the *Code of Federal Regulations* and referenced in Subpart 24.2 of its implementing acquisition regulations.

(b) Contracting officers may receive requests for records that may be exempted from mandatory public disclosure. The exemptions most often applicable are those relating to classified information, to trade secrets and confidential commercial or financial information, to interagency or intra-agency memoranda, or to personal and medical information pertaining to an individual. Since these requests often involve complex issues requiring an in-depth knowledge of a large and increasing body of court rulings and policy guidance, contracting officers are cautioned to comply with the implementing regulations of their agency and to obtain necessary guidance from the agency officials having Freedom of Information Act responsibility. If additional assistance is needed, authorized agency officials may contact the Department of Justice, Office of Information and Privacy.

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Federal Prison Industries, Inc., and Subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled; or

(g) Purchases of products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703 (b); which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for this purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in airtight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column two rates of duty apply.

25.404 [Reserved]

25.405 Procedures.

When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used:

(a) Contracting officers shall comply with the requirements of 5.203, Publicizing and response time.

(b) Agencies shall not impose technical requirements solely to preclude the acquisition of eligible products.

(c) Offers received in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness, whose name shall be recorded in the contract file.

(d) Solicitations shall specify that offers involving eligible products from designated, NAFTA, or Caribbean Basin countries shall be submitted in the English language and in U.S. dollars.

(e) Within three days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries notice in accordance with 14.409-1 and 15.503. "Day," for purposes of the notifica-

(1) The provision at 52.225-8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225-9;

(2) The clause at 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is subject to the Trade Agreements Act;

(3) The provision at 52.225-20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225-21. Use the provision with its Alternate I if the acquisition value is between $25,000 and $50,000; and

(4) The clause at 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA. Use the clause with its Alternate I if the acquisition value is between $25,000 and $50,000.

(b) The contracting officer shall rely on the offeror's certification as submitted.

(c) The clause prescriptions at paragraph (a) of this section shall apply where any item under a multiple item solicitation is determined to be subject to the Trade Agreements Act or North American Free Trade Agreement Implementation Act. If the Acts do not apply to all of the items being solicited, the contracting officer shall indicate, in the schedule, those items that are exempt.

(d) The contracting officer shall insert the provisions at 52.214-34, Submission of Offers in the English Language, and 52.214-35, Submission of Offers in U.S. Currency, in all solicitations subject to the Trade Agreements Act or NAFTA.

Subpart 25.5—Use of Foreign Currency

25.501 Policy.

(a) Unless a specific currency is required by international agreement or by the Trade Agreements Act (see 25.405(d)), contracting officers shall determine whether solicitations for contracts to be entered into and performed outside the

convert the offered prices to U.S. currency for evaluation purposes. The contracting officer shall use the current market exchange rate from a commonly used source in of best and final offers, for other negotiated acquisitions effect on the—

(1) Date of bid opening for sealed bid acquisitions;

(2) Closing date for negotiated acquisitions when award is based on initial offers; or

(3) Due date for receipt.

(c) If contracts are priced in foreign currency, agencies must ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

25.502 Solicitation provision.

The contracting officer shall insert the provision at 52.225-4, Evaluation of Foreign Currency Offers, in solicitations if the use of other than a specified currency is permitted. The contracting officer shall insert the source of the rate to be used in the evaluation of offers.

Subpart 25.6—Customs and Duties

25.600 Scope of subpart.

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts. Regulations governing importations and duties are contained in the "Customs Regulations" issued by the U.S. Customs Service, Department of the Treasury (Chapter 1, Title 19 of the *Code of Federal Regulations*).

25.601 Definition.

"Customs territory of the United States," as used in this subpart, means the States, the District of Columbia, and Puerto Rico.

25.602 Policy.

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies shall use these exemptions whenever the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.

notice from a Government contractor of customs office of the arrival, or pending arrival, of a shipment of supplies entitled to duty-free entry, the contracting officer normally shall execute—

(i) Customs Form 7501, Consumption Entry, which shall serve as both the entry and the entry summary (see 19 CFR Parts 141-142) (two copies to be forwarded to the District Director of Customs at port of entry);

(ii) Customs Form 7501-A, Consumption Entry Permit (one copy to be forwarded to the District Director of Customs at port of entry); and

(iii) Either a duty-free entry certificate when required in accordance with 25.604 (two copies to be forwarded to the District Director of Customs at port of entry) or Customs Form 7506, Warehouse Withdrawal Conditionally Free of Duty, and Permit (two copies to be forwarded to the District Director of Customs at warehouse location).

(2) Customs forms are available from any District Director of Customs Office or United States Customs port. Data for completing customs forms shall be obtained from the contractor.

(c) *Immediate entry and release*. Imported supplies purchased under Government contracts are regarded as shipments, the immediate delivery of which is necessary under the provisions of 19 U.S.C. 1448(b). Request for their release from Customs custody before formal entry and release shall normally be made by the contracting officer by filing Customs Form 3461, Immediate Delivery Application, with the District Director of Customs at port of entry. Forms for formal entry and release must be filed within a reasonable time thereafter. Applications for immediate delivery may be limited to particular shipments or may cover all shipments under a Government contract. They may be approved for specific or indefinite periods of time (see 19 CFR 10.101 and 19 CFR Part 142, Subpart A, for requirements).

25.604 Exempted supplies.

(a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) lists supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the

provided in 19 U.S.C. 1309(a). The contracting activity shall cite this authority on the appropriate customs form when making such purchases (see 19 CFR 10.59(a)).

25.605 Contract clause.

(a) The contracting officer shall insert the clause at 52.225-10, Duty-Free Entry, in solicitations and contracts over $100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States.

(b) The clause may be used in solicitations and contracts of $100,000 or less, if such action is consistent with the policy in 25.602.

(c) If the contracting officer knows before award that the contract includes specific supplies that will be accorded duty-free entry, a list of these supplies shall be inserted in the contract Schedule. The list shall include item numbers from Schedule 8, Tariff Schedules of the United States, and a description of the supplies.

Subpart 25.7—Restrictions on Certain Foreign Purchases

25.701 Restrictions.

(a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, agencies and their contractors and subcontractors shall not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

(1) Cuba (31 CFR Part 515);
(2) Iran (31 CFR Part 560);
(3) Iraq (31 CFR Part 575);
(4) Libya (31 CFR Part 550); or
(5) North Korea (31 CFR Part 500).

(b) Agencies and their contractors and subcontractors shall not acquire any supplies or services from entities controlled by the Government of Iraq (Executive orders 12722 and 12724).

(c) Questions concerning these restrictions should be referred to the—

Department of the Treasury
Office of Foreign Assets Control

Subpart 25.8—International Agreements and Coordination

25.801 International agreements.

Treaties and agreements between the United States and foreign governments may affect contracting within foreign countries. Contracting officers should give particular attention to the provisions in those agreements that pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters related to contracting.

25.802 Procedures.

(a) When placing contracts with contractors outside the United States, for performance outside the United States, contracting officers shall—

(1) Determine the existence and applicability of any international agreements to contracts being planned or processed, and ensure compliance with these agreements; and

(2) Conduct the necessary advance acquisition planning and coordination between the appropriate United States executive agencies and foreign interests as required by these agreements.

(b) Many international agreements are compiled in the "United States Treaties and Other International Agreements" series published by the Department of State. Copies of this publication are normally available in overseas legal offices and United States diplomatic missions.

Subpart 25.9—Additional Foreign Acquisition Clauses

25.901 Omission of audit clause.

(a) *Definition.* "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254d, and 15.209(b), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the basic clause at 52.215-2, Audit and Records—Negotiation, which authorizes examination of records by the Comptroller General. Use of the clause with

(1) If the agency head, or designee, determines, with the concurrence of the Comptroller General, that waiver of the right to examination of records by the Comptroller General will serve the public interest; or

(2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records, as defined at 4.703(a), available for examination, and the agency head, or designee, determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to use the clause with its Alternate III.

25.902 Inconsistency between English version and translation of contract.

The contracting officer shall insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever translation into another language is anticipated.

Subpart 25.10—Implementation of Sanctions Against Countries that Discriminate Against United States Products or Services in Government Procurement

25.1000 Scope of subpart.

This subpart implements section 305(d)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(d)(1)), which requires the President to identify a country which discriminates against U.S. products or services in Government procurement and to impose sanctions on that country's products and services. This subpart does not apply to the Department of Defense. For thresholds which

ity located in the United States or its territories.

"Sanctioned EU end product" means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the EU or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that from which it was so transformed in a sanctioned member state of the EU. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself.

"Sanctioned EU services" means services to be performed in a sanctioned member state of the EU when the contract is awarded by a contracting activity located in the United States or its territories.

"Sanctioned member state of the EU" means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

25.1002 Trade sanctions.

(a) Subject to the exceptions in paragraph (b) of this section, executive agencies shall not award contracts for—

(1) Sanctioned EU end products with an estimated acquisition value less than $190,000.

(2) Sanctioned EU construction with an estimated acquisition value less than $7,311,000.

(3) Sanctioned EU services as follows:

(i) Service contracts with an estimated acquisition value less than $190,000.

(ii) Regardless of dollar value, contracts for—

(A) All transportation services, including Launching Services (all V codes, J019, J998, J999, K019);

(B) Dredging (Y216, Z216);

(C) Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers (all M codes);

(D) Development, production or co-production of program material for broadcasting, such as motion pictures (T006, T016);

27.202-1 General.

The contractor is required to notify the contracting officer of all claims of infringement that come to the contractor's attention in connection with performing a Government contract. The contractor is also required, when requested, to assist the Government with any evidence and information in its possession in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the contract performance.

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

27.203 Patent indemnification of Government by contractor.

27.203-1 General.

(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.

(b) A patent indemnity clause shall not be used in the following situations:

(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.

(2) When the contract is awarded using sealed bidding or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either—

(A) Without increase in price on the basis that the patent is invalid or not infringed, or

(B) For other good reasons.

(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.

(4) When the contract is awarded using simplified acquisition procedures.

(5) When the contract is solely for architect-engineer work (see Part 36).

27.203-2 Clauses for sealed bid contracts (excluding construction).

(a) Except when prohibited by 27.203-1(b) above, the contracting officer shall insert the clause at 52.227-3, Patent Indemnity, in sealed bid contracts for supplies or services (excluding construction and dismantling, demolition, and removal of improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Also, the clause may be included as authorized in 27.203-1(b)(2)(i).

(b) In solicitations and contracts (excluding those for construction) that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience and ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced

decision to omit a patent indemnity clause in a negotiated fixed-price contract described in this subsection should be based on a price consideration to the Government for forgoing the indemnification rights normally received by commercial purchasers of the same supplies or services.

27.203-4 Clauses for negotiated contracts (excluding construction).

(a) The contracting officer may insert the clause at 52.227-3, Patent Indemnity—

(1) As authorized in 27.203-1(b)(2)(ii); and

(2) Except as prohibited by 27.203-1(b), in solicitations anticipating negotiated contracts (and such contracts) for supplies or services (excluding construction and dismantling, demolition, and removal of improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Ordinarily, the contracting officer, in consultation with the prospective contractor, should be able to determine whether the supplies or services being purchased normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. (For negotiated construction contracts, see 27.203-5.)

(b) In solicitations and contracts that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience, and the ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, the clause shall be used with its Alternate III.

determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the basic clause with its Alternate I.

27.203-6 Clause for Government waiver of indemnity.

If, in the Government's interest, it is appropriate to exempt one or more specific United States patents from the patent indemnity clause, the contracting officer shall obtain written approval from the agency head or designee and shall insert the clause at 52.227-5, Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause. The contracting officer shall document the contract file with a copy of the written approval

27.204 Reporting of royalties—anticipated or paid.

27.204-1 General.

(a)(1) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with any Government rights in particular inventions, patents, or patent applications, contracting officers shall require prospective contractors to furnish certain royalty information and shall require contractors to furnish certain royalty reports. Contracting officers shall take appropriate action to reduce or eliminate excessive or improper royalties.

(2) Royalty information shall not be required (except for information under 27.204-3) in sealed bid contracts unless the need for such information is approved at a level above that of the contracting officer as being necessary for proper protection of the Government's interests.

(b) Any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained (see 15.403) should contain a provision requesting information relating to any proposed charge for royalties. If the response to a solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information relating to the proposed payments of royalties to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall promptly advise the contracting officer of appropriate action. Before

prime contracts under paragraph (b) of this subsection. However, consent need not be withheld pending receipt of advice in regard to such royalties from the office having cognizance of patent matters.

(d) The contracting officer shall forward the royalty information and/or royalty reports received to the office having cognizance of patent matters for the contracting activity concerned for advice as to appropriate action.

27.204-2 Solicitation provision for royalty information.

The contracting officer shall insert a solicitation provision substantially as shown in 52.227-6, Royalty Information, in any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained under 15.403. If the solicitation is for communication services and facilities by a common carrier, use the provision with its Alternate I.

27.204-3 Patents—notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of a license agreement between the Government and a patent owner and the contracting officer knows (or has reason to believe) that the licensed patent will be applicable to a prospective contract, the Government should furnish information relating to the royalty to prospective offerors since it serves the interest of both the Government and the offerors. In such situations, the contracting officer should include in the solicitation a notice of the license, the number of the patent, and the royalty rate recited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is a licensee under the patent or the patent owner. This information is necessary so that the Government may either—

(1) Evaluate an offeror's price by adding an amount equal to the royalty; or

(2) Negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

(c) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, the contracting officer shall insert in the solicitation, substantially as shown, the facts shall be promptly reported to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall review the royalties thus reported and such royalties as are reported under 27.204 and 27.206 and, in accordance with agency procedures, shall either recommend appropriate action to the contracting officer or, if authorized, shall take appropriate action.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the Government against payment of royalties on supplies or services—

(1) With respect to which the Government has a royalty-free license;

(2) At a rate in excess of the rate at which the Government is licensed; or

(3) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer in coordination with the cognizant office shall obtain a refund pursuant to any refund of royalties clause in the contract (see 27.206) or negotiate for a reduction of royalties.

(d) For guidance in evaluating information furnished pursuant to 27.204 and 27.205(a) above, see 31.205-37 and 31.311-34. See also 31.109 regarding advance understandings on particular cost items, including royalties.

27.206 Refund of royalties.

27.206-1 General.

When a fixed-price contract is negotiated under circumstances that make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor, such royalties may be included in the target or contract price, provided the contract specifies that the Government will be reimbursed the amount of such royalties if they are not paid. Such circumstances might include, for example, either a pending Government anti-trust action or prospective litigation on the validity of a patent or patents or on the enforceability of an agreement (upon which the contractor or subcontractor bases the asserted obligation) to pay the royalties to be included in the target or contract price.

27.207 Classified contracts.

27.207-1 General.

(a) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792, *et seq.* (Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(b) Upon receipt from the contractor of a patent application, not yet filed, that has been submitted by the contractor in compliance with paragraph (a) or (b) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. Upon a determination that the application contains classified subject matter, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the United States Patent Office in accordance with procedures in the National Industrial Security Program Operating Manual. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days, pursuant to paragraph (a) of the clause.

(c) In the case of all applications filed under the provisions of this section 27.207, the contracting officer, upon receiving the application serial number, the filing date, and the information furnished by the contractor under paragraph (d) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, shall promptly submit that information to personnel having cognizance of patent matters in order that the steps necessary to ensure the security of the application may be taken.

(d) A request for the approval referred to in paragraph (c) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, must be considered and acted upon promptly by the contracting officer to avoid the loss of valuable patent rights of the Government or the contractor.

27.207-2 Clause for classified contracts.

The contracting officer shall insert the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature of is from a country that is a party to the North American Free Trade Agreement (NAFTA).

(b) Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or public noncommercial use.

(c) Section 6 of Executive Order 12889 of December 27, 1993, waives the requirement to obtain advance authorization for—

(1) An invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license; and

(2) The existence of a national emergency or other circumstances of extreme urgency, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(d) Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately-owned patent.

(e) When addressing issues regarding compensation for the use of patented technology, Government personnel should be advised that NAFTA uses the term "adequate remuneration." Executive Order 12889 equates "remuneration" to "reasonable and entire compensation" as used in 28 U.S.C. 1498, the statute which gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the U.S. Government.

(f) Depending on agency procedures, either the technical/requiring activity or the contracting officer shall ensure compliance with the notice requirements of NAFTA Article 1709(10). A contract award should not be suspended pending notification to the right holder.

(g) When questions arise regarding the notice requirements or other matters relating to this section, the contracting officer should consult with legal counsel.

the Rights in Data—General clause (or other equivalent clause setting forth the respective rights of the Government and the contractor) in the contract, and data authorized to be withheld under such clause will not be required to be delivered under the Additional Data Requirements clause, except as provided in Alternate II or Alternate III, if included in the clause (see 27.404(d) and (e)).

(3) Agencies not having an established program for dissemination of computer software shall give consideration to not ordering additional computer software under the clause at 52.227-16, Additional Data Requirements, for the sole purpose of disseminating or marketing of the software to the public especially if this will provide the contractor additional incentive to make improvements to the software at its own expense and disseminate or market it. This should not preclude an agency from including a summary description of computer software available from a contractor in any data dissemination programs which it operates, with a statement as to how the potential user can obtain it through the contractor, licensee, or assignee. In cases where the contracting officer orders software for internal purposes, consideration shall be given, consistent with the Government's needs, to not ordering particular source codes, algorithms, processes, formulae or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

(c) *Acceptance of data.* As required by 41 U.S.C. 418a (d)(7), acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract clause as required by Subpart 46.3, and the clause at 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, when it is included in the contract. (See paragraph (d) of this section.)

(d) *Major System Acquisition.* (1) In order to assure that technical data needed to support a major system acquisition are timely delivered and are complete, accurate, and satisfy the requirements of the contract concerning the data, the clause at 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, is to be included in contracts for or in support of a major system (as the term "major system" is defined in Section 4 of the Office of Federal Procurement Policy Act, as amended by Pub. L. 98-577), including every detailed design, development, or production contract for a major system acquisition and contracts for any individual part, component, sub- to declare that to the best of its knowledge and belief, such data are complete, accurate, and comply with contract requirements. It also provides for corrections of any deficiencies in the data, as well as for the ability of the contracting officer to request revisions of the data to reflect engineering design changes made during performance of the contract and affecting form, fit, and function of the items the data depict. Further included is the authority for the contracting officer to withhold payment under the contract to assure timely delivery of the technical data and/or assure correction if the technical data are not complete, accurate, and in compliance with contract requirements.

(3) When the clause at 52.227-21, Technical Data, Declaration, Revision and Withholding of Payment—Major Systems, is used, the section of the contract specifying data delivery requirements (see subparagraph (a)(2) of this section) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of such technical data, the contracting officer or designee shall review the technical data and the contractor's declaration relating thereto to assure that the data are complete, accurate, and comply with contract requirements. If not, the contractor is to be requested to correct the deficiencies, and payment may be withheld until such is done. Final payment should not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(4) In a contract for or in support of a major system awarded by a civilian agency other than NASA or the U.S. Coast Guard the contracting officer shall include contractual provisions requiring, as an element of performance under the contract, the delivery of any technical data, other than computer software, relating to the major system or supplies for the major system procured or to be procured by the Government, which are to be developed exclusively with Federal funds in the performance of the contract if the delivery of such technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at 52.227-22, Major System—Minimum Rights, is to be included in such contracts in addition to the clause at 52.227-14, Rights in Data—General, and other required clauses, to ensure that the Government acquires at least those rights required by Pub. L. 98-577 in technical data

product, or use the process if obtained by the United States as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

27.407 Rights to technical data in successful proposals.

(a) Contracting officers may, in consideration of contract award, desire to acquire unlimited rights in technical data (but not commercial or financial information) contained in a successful proposal upon which a contract award is based. However, before such unlimited rights are acquired, the prospective contractor must be afforded the opportunity either—

(1) To advise the contracting officer that the technical data, or portions thereof (to be identified by the prospective contractor), are covered by any restrictive notice regarding the disclosure and use of proposal information authorized by Subpart 15.2 or 15.6 (or any agency supplement thereto), and request that such protection be maintained by excluding the data from the Government's rights; or

(2) To establish to the contracting officer's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the contract, and request that such portions be excluded from the Government's rights.

(b) If unlimited rights to technical data in successful proposals, as set forth in paragraph (a) of this section, are to be acquired, it shall be by use of the clause at 52.227-23, Rights to Proposal Data (Technical). Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause, which clause enables the identification of data to be excluded from the Government's rights, as discussed in paragraph (a) of this section. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in Subpart 15.2 or 15.6 (or agency supplements thereto) relating to proposal information (*i.e.*, will be used for evaluation purposes only). If the clause at 52.227-23, Rights to Proposal Data (Technical), is included in a contract, the prospective contractor must be specifically afforded the opportunity to exclude technical data as set forth in paragraph (a) of this

(a) In contracts involving cosponsored research and development wherein the contractor is required to make substantial contributions of funds or resources (*i.e.*, by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of or acquire less than unlimited rights to any data developed and delivered under such contract. Agencies may regulate the use of this authority in their supplements. Basically such rights should, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprocurement rights as appropriate), and will address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to directed licensing provisions if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in 27.402. As a guide, such clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (*i.e.*, Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. Such clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, such clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies which will be available, in any event, to the public for their direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding

(see 28.102-2(c)). The amount shall be adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed $3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

28.101-3 [Reserved]

28.101-4 Noncompliance with bid guarantee requirements.

(a) In sealed bidding, noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the situations described in paragraph (c) of this subsection when the noncompliance shall be waived.

(b) In negotiation, noncompliance with a solicitation requirement for a bid guarantee requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract based on initial proposals without discussion, except in the situations described in paragraph (c) of this subsection when noncompliance shall be waived. (See 15.306(a)(2) for conditions regarding making awards based on initial proposals.) If the conditions for awarding based on initial proposals are not met, deficiencies in bid guarantees submitted by offerors determined to be in the competitive range shall be addressed during discussions and the offeror shall be given an opportunity to correct the deficiency.

(c) Noncompliance with a solicitation requirement for a bid guarantee shall be waived in the following circumstances unless the contracting officer determines in writing that acceptance of the bid would be detrimental to the Government's interest when—

(1) Only one offer is received. In this case, the contracting officer may require the furnishing of the bid guarantee before award;

(2) The amount of the bid guarantee submitted is less than required, but is equal to or greater than the difference between the offer price and the next higher acceptable offer;

(3) The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity offered, is sufficient for a quantity for which the offeror is otherwise eligible for award. Any award to the offeror shall not exceed the quantity covered by the bid guarantee;

modification expressly refers to the previous offer and the offeror corrects any deficiency in bid guarantee;

(7) An otherwise acceptable bid bond was submitted with a signed offer, but the bid bond was not signed by the offeror;

(8) An otherwise acceptable bid bond is erroneously dated or bears no date at all; or

(9) A bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number, and the name and location of the project involved, so long as it is acceptable in all other respects.

28.102 Performance and payment bonds and alternative payment protections for construction contracts.

28.102-1 General.

(a) The Miller Act (40 U.S.C. 270a-270f) requires performance and payment bonds for any construction contract exceeding $100,000, except that this requirement may be waived—

(1) By the contracting officer for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such bond; or

(2) As otherwise authorized by the Miller Act or other law.

(b)(1) Pursuant to Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), for construction contracts greater than $25,000, but not greater than $100,000, the contracting officer shall select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

(i) A payment bond.

(ii) An irrevocable letter of credit (ILC).

(iii) *A tripartite escrow agreement.* The prime contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in

(2) The contractor shall submit to the Government one of the payment protections selected by the contracting officer.

(c) The contractor shall furnish all bonds or alternative payment protection, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.

28.102-2 Amount required.

(a) *Performance bonds.* (1) The penal amount of performance bonds shall be 100 percent of the original contract price, unless the contracting officer determines that a lesser amount would be adequate for the protection of the Government.

(2) The Government may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) *Payment bonds or alternative payment protection.* (1) The penal amount of payment bonds or the amount of alternative payment protection shall equal—

(i) 50 percent of the contract price if the contract price is not more than $1 million;

(ii) 40 percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) $2 1/2 million if the contract price is more than $5 million.

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased.

(i) The penal amount of the total protection as revised shall meet the requirement of paragraph (b)(1) of this subsection.

(ii) The Government shall secure the required additional protection by directing the contractor to increase the penal sum of the existing bond or to obtain an additional bond, or to furnish additional alternative payment protection.

(3) The Government shall secure additional protection by directing the contractor to increase the penal sum of the existing bond or to obtain an additional bond, or to furnish additional alternative payment protection.

contract price to be the price payable for the specified minimum quantity. When the minimum quantity is exceeded, paragraphs (a)(2) and (b)(2) of this subsection apply.

(d) *Reducing amounts.* The contracting officer has the discretion to reduce the amount of security to support a bond, subject to the conditions of 28.203-5(c) or 28.204(b).

28.102-3 Contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 52.228-15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed $100,000. The penal amount of the performance bonds may be decreased in accordance with 28.102-2(a). Where the provision at 52.228-1 is not included in the solicitation, the contracting officer shall set a period of time for return of executed bonds.

(b) Insert the clause at 52.228-13, Alternative Payment Protections, in solicitations and contracts for construction, when the estimated or actual value exceeds $25,000 but does not exceed $100,000. Complete the clause by specifying the payment protections selected (see 28.102-1(b)(1)) and the deadline for submission.

28.103 Performance and payment bonds for other than construction contracts.

28.103-1 General.

(a) Generally, agencies shall not require performance and payment bonds for other than construction contracts. However, performance and payment bonds may be used as permitted in 28.103-2 and 28.103-3.

(b) The contractor shall furnish all bonds before receiving a notice to proceed with the work.

(c) No bond shall be required after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.

28.103-2 Performance bonds.

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. The following situations may warrant a performance bond:

31.102 Fixed-price contracts.
31.103 Contracts with commercial organizations.
31.104 Contracts with educational institutions.
31.105 Construction and architect-engineer contracts.
31.106 Facilities contracts.
31.106-1 Applicable cost principles.
31.106-2 Exceptions to general rules on allowability and allocability.
31.106-3 Contractor's commercial items.
31.107 Contracts with State, local, and federally recognized Indian tribal governments.
31.108 Contracts with nonprofit organizations.
31.109 Advance agreements.
31.110 Indirect cost rate certification and penalties on unallowable costs.

Subpart 31.2—Contracts with Commercial Organizations

31.201 General.
31.201-1 Composition of total cost.
31.201-2 Determining allowability.
31.201-3 Determining reasonableness.
31.201-4 Determining allocability.
31.201-5 Credits.
31.201-6 Accounting for unallowable costs.
31.201-7 Construction and architect-engineer contracts.
31.202 Direct costs.
31.203 Indirect costs.
31.204 Application of principles and procedures.
31.205 Selected costs.
31.205-1 Public relations and advertising costs.
31.205-2 [Reserved]
31.205-3 Bad debts.
31.205-4 Bonding costs.
31.205-5 Civil defense costs.
31.205-6 Compensation for personal services.
31.205-7 Contingencies.
31.205-8 Contributions or donations.
31.205-9 [Reserved]
31.205-10 Cost of money.
31.205-11 Depreciation.
31.205-12 Economic planning costs.
31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.
31.205-14 Entertainment costs.
31.205-15 Fines, penalties, and mischarging costs.
31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.
31.205-17 Idle facilities and idle capacity costs.
31.205-18 Independent research and development and bid and proposal costs.
31.205-19 Insurance and indemnification.
31.205-20 Interest and other financial costs.
31.205-29 Plant protection costs.
31.205-30 Patent costs.
31.205-31 Plant reconversion costs.
31.205-32 Precontract costs.
31.205-33 Professional and consultant service costs.
31.205-34 Recruitment costs.
31.205-35 Relocation costs.
31.205-36 Rental costs.
31.205-37 Royalties and other costs for use of patents.
31.205-38 Selling costs.
31.205-39 Service and warranty costs.
31.205-40 Special tooling and special test equipment costs.
31.205-41 Taxes.
31.205-42 Termination costs.
31.205-43 Trade, business, technical, and professional activity costs.
31.205-44 Training and education costs.
31.205-45 Transportation costs.
31.205-46 Travel costs.
31.205-47 Costs related to legal and other proceedings.
31.205-48 Deferred research and development costs.
31.205-49 Goodwill.
31.205-50 [Reserved]
31.205-51 Costs of alcoholic beverages.
31.205-52 Asset valuations resulting from business combinations.

Subpart 31.3—Contracts with Educational Institutions

31.301 Purpose.
31.302 General.
31.303 Requirements.

Subparts 31.4 and 31.5—[Reserved]

Subpart 31.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

31.601 Purpose.
31.602 General.
31.603 Requirements.

Subpart 31.7—Contracts with Nonprofit Organizations

31.701 Purpose.
31.702 General.
31.703 Requirements.

31.000 Scope of part.

This part contains cost principles and procedures for—

(a) The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (see 15.404-1(c)), and

involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method.)

"Accumulating costs" means collecting cost data in an organized manner, such as through a system of accounts.

"Actual cash value" means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

"Actual costs," as used in this part (other than Subpart 31.6), means amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

"Actuarial assumption" means a prediction of future conditions affecting pension costs; *e.g.*, mortality rate, employee turnover, compensation levels, pension fund earnings, and changes in values of pension funds assets.

"Actuarial cost method" means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension fund administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods.

"Actuarial gain and loss" means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

"Actuarial liability" means pension cost attributable, under the actuarial cost method in use, to years before the date of a particular actuarial valuation. As of such date, the actuarial liability represents the excess of the present value of the future benefits and administrative expenses over the present value of future contributions, for the normal cost for all plan participants and beneficiaries. The excess of the actuarial liability over the value of the assets of a pension plan is the unfunded actuarial liability.

"Actuarial valuation" means the determination, as of a specified date, of the normal cost, actuarial liability, value of the assets of a pension fund, and other relevant values for the pension plan.

"Allocate" means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term

jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

"Cost input" means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

"Cost objective," as used in this part (other than Subpart 31.6), means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

"Cost of capital committed to facilities" means an imputed cost determined by applying a cost of money rate to facilities capital.

"Deferred compensation" means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

"Defined-benefit pension plan" means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are intended to provide the stated benefits.

"Defined-contribution pension plan" means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

"Directly associated cost" means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

"Estimating costs" means the process of forecasting a future result in terms of cost, based upon information available at the time.

"Expressly unallowable cost" means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

inventory plus the cost of acquisitions by the total number of units included in these two categories.

31.002 Availability of accounting guide.

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the guide entitled "Guidance for New Contractors" (DCAAP 7641.90). The guide is available from:

Headquarters, Defense Contract Audit Agency
Operating Administrative Office
8725 John J Kingman Road, Suite 2135
Fort Belvoir VA 22060-6219

Telephone No. (703) 767-1066

Telefax No. (703) 767-1061

Subpart 31.1—Applicability

31.100 Scope of subpart.

This subpart describes the applicability of the cost principles and procedures in succeeding subparts of this part to various types of contracts and subcontracts. It also describes the need for advance agreements.

31.101 Objectives.

In recognition of differing organizational characteristics, the cost principles and procedures in the succeeding subparts are grouped basically by organizational type; *e.g.*, commercial concerns and educational institutions. The overall objective is to provide that, to the extent practicable, all organizations of similar types doing similar work will follow the same cost principles and procedures. To achieve this uniformity, individual deviations concerning cost principles require advance approval of the agency head or designee. Class deviations for the civilian agencies require advance approval of the Civilian Agency Acquisition Council. Class deviations for the National Aeronautics and Space Administration require advance approval of the Associate Administrator for Procurement. Class deviations for the Department of Defense require advance approval of the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition and Technology.

tiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

31.103 Contracts with commercial organizations.

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated with organizations other than educational institutions (see 31.104), construction and architect-engineer contracts (see 31.105), State and local governments (see 31.107) and nonprofit organizations (see 31.108) on the basis of cost.

(a) The cost principles and procedures in Subpart 31.2 and agency supplements shall be used in pricing negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed as required by 15.404-1(c).

(b) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 and agency supplements by reference in contracts with commercial organizations as the basis for—

(1) Determining reimbursable costs under—

(i) Cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and

(ii) The cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost (see 16.601(b)(3));

(2) Negotiating indirect cost rates (see Subpart 42.7);

(3) Proposing, negotiating, or determining costs under terminated contracts (see 49.103 and 49.113);

(4) Price revision of fixed-price incentive contracts (see 16.204 and 16.403);

(5) Price redetermination of price redetermination contracts (see 16.205 and 16.206); and

(6) Pricing changes and other contract modifications.

31.104 Contracts with educational institutions.

This category includes all contracts and contract modifications for research and development, training, and other work performed by educational institutions.

contracts (see Subpart 49.3 and 49.109-7).

(b) The cost principles in this subpart are to be used as a guide in evaluating costs in connection with negotiating fixed-price contracts and termination settlements.

31.105 Construction and architect-engineer contracts.

(a) This category includes all contracts and contract modifications negotiated on the basis of cost with organizations other than educational institutions (see 31.104), State and local governments (see 31.107), and nonprofit organizations except those exempted under OMB Circular A-122 (see 31.108) for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.

(b) Except as otherwise provided in (d) below, the cost principles and procedures in Subpart 31.2 shall be used in the pricing of contracts and contract modifications in this category if cost analysis is performed as required by 15.404-1(c).

(c) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 (as modified by (d) below by reference in contracts in this category as the basis for—

(1) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts thereunder;

(2) Negotiating indirect cost rates;

(3) Proposing, negotiating, or determining costs under terminated contracts;

(4) Price revision of fixed-price incentive contracts; and

(5) Pricing changes and other contract modifications.

(d) Except as otherwise provided in this paragraph (d), the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with Subpart 31.2.

(1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in 31.109, for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts.

(i) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of construction equipment use rates (*e.g.*, the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods

running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with 31.205-36(b)(3).

(3) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

31.106 Facilities contracts.

31.106-1 Applicable cost principles.

The cost principles and procedures applicable to the evaluation and determination of costs under facilities contracts (as defined in 45.301), and subcontracts thereunder, will be governed by the type of entity to which a facilities contract is awarded. Except as otherwise provided in 31.106-2 of this section, Subpart 31.2 applies to facilities contracts awarded to commercial organizations; Subpart 31.3 applies to facilities contracts awarded to educational institutions; and 31.105 applies to facilities contracts awarded to construction contractors. Whichever cost principles are appropriate will be used in the pricing of facilities contracts and contract modifications if cost analysis is performed as required by 15.404-1(c). In addition, the contracting officer shall incorporate the cost principles and procedures appropriate in the circumstances (*e.g.*, Subpart 31.2; Subpart 31.3; or 31.105) by reference in facilities contracts as the basis for—

(a) Determining reimbursable costs under facilities contracts, including cost-reimbursement subcontracts thereunder;

procedures are normally directed to the equitable allocation of costs to the types of products which the contractor produces or services rendered in the course of normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services.

(b) Advance agreements (see 31.109) should be made between the contractor and the contracting officer as to indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of contractor facilities may range from charging all these costs to this acquisition to not charging any. When necessary to produce an equitable result, the contractor's usual method of allocating indirect cost shall be varied, and appropriate adjustment shall be made to the pools of indirect cost and the bases of their distribution.

(c) The purchase of completed facilities (or services in connection with the facilities) from outside sources does not involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(d) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities may involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditures of the classes of labor used for the performance of the facilities work may be allocated to the facilities contract. Thus, a facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items

acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.

31.107 Contracts with State, local, and federally recognized Indian tribal governments.

(a) Subpart 31.6 provides principles and standards for determining costs applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal governments, except contracts with—

(1) Publicly financed educational institutions subject to Subpart 31.3; or

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(b) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

31.108 Contracts with nonprofit organizations.

Subpart 31.7 provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions, State and local governments, and those nonprofit organizations exempted under OMB Circular No. A-122.

31.109 Advance agreements.

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7 of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7, contracting officers and contractors should seek advance agreement on the treatment incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.

(c) The contracting officer is not authorized by this 31.109 to agree to a treatment of costs inconsistent with this part. For example, an advance agreement may not provide that, notwithstanding 31.205-20, interest is allowable.

(d) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.

(e) The cognizant administrative contracting officer (ACO), or other contracting officer established in Part 42, shall negotiate advance agreements except that an advance agreement affecting only one contract, or class of contracts from a single contracting office, shall be negotiated by a contracting officer in the contracting office, or an ACO when delegated by the contracting officer. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the contracting officer before executing the advance agreement.

(f) Before negotiating an advance agreement, the Government negotiator shall—

(1) Determine if other contracting offices inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(2) Inform any such office or agency of the matters under consideration for negotiation; and

(3) As appropriate, invite the office or agency and the cognizant audit agency to participate in prenegotiation discussions and/or in the subsequent negotiations.

(g) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in 15.406-3, as applicable.

(h) Examples of costs for which advance agreements may be particularly important are—

(1) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;

related to construction projects, are in 31.105. The applicability of these principles and procedures is set forth in 31.000 and 31.100.

31.202 Direct costs.

(a) A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment—

(1) Is consistently applied to all final cost objectives; and

(2) Produces substantially the same results as treating the cost as a direct cost.

31.203 Indirect costs.

(a) An indirect cost is any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to the several cost objectives. An indirect cost shall not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(c) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. All items properly includable in an indirect cost base should bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share of G&A costs.

(d) The contractor's method of allocating indirect costs shall be in accordance with standards promulgated by the CAS Board, if applicable to the contract; otherwise, the method shall be in accordance with generally accepted accounting principles which are consistently applied. The method may require examination when—

(1) Substantial differences occur between the cost patterns of work under the contract and the contractor's other work;

(2) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(3) Indirect cost groupings developed for a contractor's primary location are applied to offsite locations. Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(e) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance in 30.406 for selecting the cost accounting periods to be used in allocating indirect costs are incorporated herein for application to contracts subject to full CAS coverage. For contracts subject to modified CAS coverage and for non-CAS-covered contracts, the base period for allocating indirect costs will normally be the contractor's fiscal year. But a shorter period may be appropriate (1) for contracts in which performance involves only a minor portion of the fiscal year, or (2) when it is general

office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

31.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent they are reasonable, allocable, and determined to be allowable under 31.201, 31.202, 31.203, and 31.205. These criteria apply to all of the selected items that follow, even if particular guidance is provided for certain items for emphasis or clarity.

(b) Costs incurred as reimbursements or payments to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions are allowable to the extent that allowance is consistent with the appropriate subpart of this Part 31 applicable to the subcontract involved. Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed under 15.404-1(c), shall be allowable only to the extent that the price was negotiated in accordance with 31.102.

(c) Section 31.205 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subsection in 31.205 is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. When a cost, to which more than one subsection in 31.205 is relevant, cannot be apportioned, the determination of allowability shall be based on the guidance contained in the subsection that most specifically deals with, or best captures the essential nature of, the cost at issue.

31.205 Selected costs.

31.205-1 Public relations and advertising costs.

(a) "Public relations" means all functions and activities dedicated to—

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts and that are exclusively for—

(i) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205-34);

(ii) Acquiring scarce items for contract performance; or

(iii) Disposing of scrap or surplus materials acquired for contract performance.

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding subparagraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities which are primarily used for entertainment rather than product promotion.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of—

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. The cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Composition and Measurement of Pension Costs, and 48 CFR 9904.413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in subdivision (j)(2)(i) and in subparagraphs (j)(3) through (8) of this subsection.

(i) Except for unfunded pension plans as defined in 31.001, to be allowable in the current year, pension costs must be funded by the time set for filing of the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year.

(ii) Pension payments must be reasonable in amount and be paid pursuant to (A) an agreement entered into in good faith between the contractor and employees before the work or services are performed and (B) the terms and conditions of the established plan. The cost of changes in pension plans which are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in subparagraph (j)(7) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined benefit pension plans.* This subparagraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the

return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) (see 48 CFR 9904.412-50(c)(3)), will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(B) Allowable costs for unfunded pension plans, as defined in 31.001, are limited to the amount computed in accordance with 48 CFR 9904.412 and 48 CFR 9904.413.

(ii) Any amount paid or funded before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in those years. The interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension costs in accordance with 48 CFR 9904.412-50(a)(7).

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413-50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equi-

(A) State the amount of the Government's equitable share in the gross amount withdrawn; and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal. If a transfer is made without such an agreement, paragraph (j)(4) of this subsection will apply to the transfer as a constructive withdrawal and receipt of the funds by the contractor.

(4) *Termination of defined benefit pension plans.* When excess or surplus assets revert to the contractor as a result of termination of a defined benefit pension plan, or such assets are constructively received by it for any reason, the contractor shall make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data (see 15.403-4) were submitted or which are subject to Subpart 31.2.

(5) *Defined contribution pension plans.* This subparagraph covers those pension plans in which the contributions to be made are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans provided the plans fall within the definition of a pension plan in subparagraph (j)(1) of this subsection.

(i) The pension cost assignable to a cost accounting period is the net contribution required to be made for that period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA (see 48 CFR 9904.412-50(c)(3)) will be allowable in those future accounting periods when the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding been made in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded to the trust before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in such years.

(iii) The provisions of subdivision (j)(3)(iv) of this subsection concerning payments to PBGC apply to defined contribution plans.

such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allow-able subject to the pension cost criteria contained in subdivisions (j)(3)(i) through (iv) provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs;

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(8) *Employee stock ownership plans (ESOP).* (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(c)(1)(i)(A) of this subsection, required advance agreements may be negotiated at the corporate level and/or with those profit centers that contract directly with the Government and that in the preceding year allocated recoverable IR&D and B&P costs exceeding $700,000, including burdening, to contracts and subcontracts for which the submission and certification of cost or pricing data were required (see also paragraph (b) of this subsection and 15.403-4). When ceilings are negotiated for separate profit centers of the company, the allowability of IR&D and B&P costs for any center that in its previous fiscal year did not reach the $700,000 threshold may be determined in accordance with paragraph (c)(1)(ii) of this subsection.

(C) Ceilings are the maximum dollar amounts of total IR&D and B&P costs that will be allowable for allocation over the appropriate base for that part of the company's operation covered by an advance agreement.

(D) No IR&D and B&P cost shall be allowable if a company fails to initiate negotiation of a required advance agreement before the end of the fiscal year for which the agreement is required.

(E) When negotiations are held with a company meeting the $7,000,000 criterion or with separate profit centers (when negotiations are held at that level under (c)(1)(i)(B) of this subsection), and if no advance agreement is reached, payment for IR&D and B&P costs shall be reduced below that which the company or profit center would have otherwise received. The amount of such reduced payment shall not exceed 75 percent of the amount which, in the opinion of the contracting officer, the company or profit center would be entitled to receive under an advance agreement. Written notification of the contracting officer's determination of a reduced amount shall be provided the contractor. In the event that an advance agreement is not reached before the end of the contractor's fiscal year for which the agreement is to apply, negotiations shall immediately be terminated, and the contracting officer shall furnish a determination of the reduced amount.

(F) Contractors may appeal decisions of the contracting officer to reduce payment. The appeal shall be filed with the contracting officer within 30 days of receipt of the contracting officer's determination. (See also Subpart 42.10.)

(ii) *Companies not required to negotiate advance agreements.* Costs for IR&D and B&P are allowable as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable. The following limitations apply to major contractors—

(i) For the first three contractor fiscal years beginning on or after October 1, 1992, the total maximum allowable amount of IR&D/B&P costs shall not exceed the sum of:

(A) The total amount of allowable IR&D/B&P costs in the preceding fiscal year (*i.e.*, the lower of the previous year's ceiling or actual costs incurred); plus

(B) Five percent of the amount in (c)(2)(i)(A) of this subsection; plus

(C) If the total amount of IR&D/B&P costs for a fiscal year is greater than the total amount of IR&D/B&P costs for the preceding fiscal year, the amount that is determined by multiplying the amount in (c)(2)(i)(A) of this subsection by the lesser of—

(*1*) The percentage by which the total amount of IR&D/B&P costs for a fiscal year exceeds the total amount of such costs for the preceding fiscal year; or

(*2*) The percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed. The rate of inflation shall be the price escalation index for the Research, Development, Test & Evaluation (RDT&E) account, Total Obligation Authority (TOA) which is published annually (normally in January) by the Department of Defense Comptroller and used in preparation of the annual submission of the Defense budget. This rate will be published in the *Federal Register* on an annual basis.

(ii) Major contractors shall submit, in accordance with agency guidance, financial and technical information to support their IR&D/B&P costs.

(iii) A waiver may be granted, in accordance with agency procedures, to increase the amount prescribed in (c)(2)(i) of this subsection for the following special circumstances:

(A) To ensure that the contractor's allowable IR&D/B&P costs are at least the same amount that would have been allowed under this subpart which was in effect on December 4, 1991; or

(B) When it is in the best interest of the Government.

(ii) The proration of such costs to sales of the product is reasonable;

(iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and

(iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

(2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

(e) *Cooperative arrangements.* (1) IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D costs also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under—

(i) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));

(ii) Sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6));

(iii) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or

(iv) Other equivalent authority.

(2) IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

31.205-19 Insurance and indemnification.

(a) Insurance by purchase or by self-insuring includes coverage the contractor is required to carry, or to have approved, under the terms of the contract and any other coverage the contractor maintains in connection with the The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions in the following subparagraphs.

(1) Costs of insurance required or approved, and maintained by the contractor pursuant to the contract, are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable, subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums must be reasonable.

(ii) Costs allowed for business interruption or other similar insurance must be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers or other equivalent representatives.

(v) Contractors operating under a program of self-insurance must obtain approval of the program when required by 28.308(a).

(vi) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see 31.205-6).

(3) Actual losses are unallowable unless expressly provided for in the contract, except—(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable for contracts not subject to 48 CFR 9904.416 and when the

(c) Where manufacturing or production development costs are capitalized or required to be capitalized under the contractor's capitalization policies, allowable cost will be determined in accordance with the requirements of 31.205-11, Depreciation.

31.205-26 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs, consideration shall be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting defective work). These costs are allowable, subject to the requirements of paragraphs (b) through (e) of this section.

(b) Costs of material shall be adjusted for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material or be allocated as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, lost discounts need not be credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided, such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of future material costs are required, current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

31.205-27 Organization costs.

(a) Except as provided in paragraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

(b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by 31.205-6. These activities include acquiring stock for—

(1) Executive bonuses,
(2) Employee savings plans, and
(3) Employee stock ownership plans.

31.205-28 Other business expenses.

The following types of recurring costs are allowable when allocated on an equitable basis:

(a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.

(b) Cost of shareholders' meetings.

(c) Normal proxy solicitations.

(d) Preparing and publishing reports to shareholders.

(e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.

(f) Incidental costs of directors' and committee meetings.

(g) Other similar costs.

(a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract (but see 31.205-33):

(1) Costs of preparing invention disclosures, reports, and other documents.

(2) Costs for searching the art to the extent necessary to make the invention disclosures.

(3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.

(b) General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable (but see 31.205-33).

(c) Other than those for general counseling services, patent costs not required by the contract are unallowable. (See also 31.205-37.)

31.205-31 Plant reconversion costs.

Plant reconversion costs are those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately before the start of the Government contract, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred. Care should be exercised to avoid duplication through allowance as contingencies, additional profit or fee, or in other contracts.

31.205-32 Precontract costs.

Precontract costs are those incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see 31.109).

31.205-33 Professional and consultant service costs.

(a) *Definition.* "Professional and consultant services", as used in this subpart, are those services rendered by persons who are members of a particular profession or possess

officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this paragraph and paragraphs (c) through (f) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205-30 and 31.205-47).

(c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:

(1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (*e.g.*, 52.215-1(e), Restriction on Disclosure and Use of Data).

(2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

den incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) of this section).

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

(7) Income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the books of account and financial statements.

(c) Taxes on property (see subparagraph (b)(5) of this section) used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; *e.g.*, taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property on the respective final cost objectives.

(d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs. shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

31.205-42 Termination costs.

Contract terminations generally give rise to the incurrence of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles peculiar to termination situations are to be used in conjunction with the other cost principles in Subpart 31.2:

(a) *Common items.* The costs of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The contracting officer should consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* Despite all reasonable efforts by the contractor, costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall be unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable as follows:

(1) Starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as—

(i) Excessive spoilage due to inexperienced labor;

(ii) Idle time and subnormal production due to testing and changing production methods;

(iii) Training; and

proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.

(4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting that high unit cost incurred during the early stages of the contract.

(5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately before termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(d) *Loss of useful value.* Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided—

(1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;

(2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value for any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, or special machinery and equipment was acquired.

(e) *Rental under unexpired leases.* Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if—

(1) The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(f) *Alterations of leased property.* The cost of alterations and reasonable restorations required by the lease may

(B) The termination and settlement of subcontracts.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) *Subcontractor claims.* Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 31.201-4 and 31.203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

31.205-43 Trade, business, technical and professional activity costs.

The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—

(1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;

(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and

(3) Costs of attendance by individuals who are not employees of the contractor, provided—

(i) Such costs are not also reimbursed to the individual by the employing company or organization, and

required by 32.206(e).

(c) *Difference from non-commercial financing.* Government financing of commercial purchases under this subpart is expected to be different from that used for non-commercial purchases under Subpart 32.1 and its related subparts. While the contracting officer may adapt techniques and procedures from the non-commercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

(d) *Unusual contract financing.* Any contract financing arrangement not in accord with the requirements of agency regulations or this part is unusual contract financing and requires advance approval in accordance with agency procedures. If not otherwise specified, such unusual contract financing shall be approved by the head of the contracting activity.

(e) *Best interest of the Government.* The statutes cited in 32.201 do not allow contract financing by the Government unless it is in the best interest of the United States. Agencies may establish standards to determine whether contract financing is in the best interest of the Government. These standards may be for certain types of procurements, certain types of items, or certain dollar levels of procurements.

32.202-2 Types of payments for commercial-item purchases.

These definitions incorporate the requirements of the statutory commercial financing authority and the implementation of the Prompt Payment Act.

"Commercial advance payment" means a payment made before any performance of work under the contract. The aggregate of these payments shall not exceed 15 percent of the contract price. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with Subpart 32.9). These payments are not subject to Subpart 32.4, Advance Payments for Non-Commercial Items.

"Commercial interim payment" means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

32.202-3 Conducting market research about financing terms.

Contract financing may be a subject included in the market research conducted in accordance with Part 10. If market research for contract financing is conducted, the contracting officer should consider—

(a) The extent to which other buyers provide contract financing for purchases in that market;

(b) The overall level of financing normally provided;

(c) The amount or percentages of any payments equivalent to commercial advance payments (see 32.202-2);

(d) The basis for any payments equivalent to commercial interim payments (see 32.202-2), as well as the frequency, and amounts or percentages; and

(e) Methods of liquidation of contract financing payments and any special or unusual payment terms applicable to delivery payments (see 32.202-2).

32.202-4 Security for Government financing.

(a) *Policy.* (1) 10 U.S.C. 2307(f) and 41 U.S.C. 255(f) require the Government to obtain adequate security for Government financing. The contracting officer shall specify in the solicitation the type of security the Government will accept. If the Government is willing to accept more than one form of security, the offeror shall be required to specify the form of security it will provide. If acceptable to the contracting officer, the resulting contract shall specify the security (see 32.206(b)(1)(iv)).

(2) Subject to agency regulations, the contracting officer may determine the offeror's financial condition to be adequate security, provided the offeror agrees to provide additional security should that financial condition become inadequate as security (see paragraph (c) of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items). Assessment of the contractor's financial condition shall consider both net worth and liquidity. If the contracting officer finds the offeror's financial condition is not adequate security, the contracting officer shall require other adequate security. Paragraphs (b), (c), and (d) of this subsection list other (but not all) forms of security that the contracting officer may find acceptable.

lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) When the Government's security is in the form of a lien, the contract shall specify what the lien is upon, *e.g.*, the work in process, the contractor's plant, or the contractor's inventory. Contracting officers may be flexible in the choice of assets. The contract must also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing shall be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens may result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* Contracting officers may consider the guidance at 28.203-2, 28.203-3, and 28.204 in determining which types of assets may be acceptable as security. For the purpose of applying the guidance in Part 28 to this subsection, the term "surety" and/or "individual surety" should be interpreted to mean "offeror" and/or "contractor."

(d) *Other forms of security.* Other acceptable forms of security include—

(1) An irrevocable letter of credit from a federally insured financial institution;

(2) A bond from a surety, acceptable in accordance with Part 28 (note that the bond must guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Title to identified contractor assets of adequate worth.

(e) *Management of risk and security.* In establishing contract financing terms, the contracting officer must be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) may unduly increase the risk to the Government. The security and the amounts and timing of financing payments must be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

32.203 Determining contract financing terms.

When the criteria in 32.202-1(b) are met, the contracting officer may either specify the financing terms in the solicitation or request offerors to propose financing terms. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see 14.208 and 15.206 concerning amendments of solicitations). However, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract. Contract financing shall not be a basis for adjusting offerors' proposed prices, because the effect of contract financing is reflected in each offeror's proposed prices.

32.205 Procedures for offeror-proposed commercial contract financing.

(a) Under this procedure, each offeror may propose financing terms. The contracting officer must then determine which offer is in the best interests of the United States.

(b) *Solicitations.* The contracting officer shall include in the solicitation the provision at 52.232-31, Invitation to Propose Financing Terms. The contracting officer shall also—

(1) Specify the delivery payment (invoice) dates that will be used in the evaluation of financing proposals; and

(2) Specify the interest rate to be used in the evaluation of financing proposals (see paragraph (c)(4) of this section).

(c) *Evaluation of proposals.* (1) When contract financing terms vary among offerors, the contracting officer must adjust each proposed price for evaluation purposes to reflect the cost of providing the proposed financing in order to determine the total cost to the Government of that particular combination of price and financing.

(2) Contract financing results in the Government making payments earlier than it otherwise would. In order to determine the cost to the Government of making payments earlier, the contracting officer must compute the imputed cost of those financing payments and add it to the proposed price to determine the evaluated price for each offeror.

(3) The imputed cost of a single financing payment is the amount of the payment multiplied by the annual interest

(f) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to subparagraph (f)(1) of this section.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.505 or 15.506, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(4) Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

(g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

(h) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The agency shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the agency and to other participating parties when they become known. However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties, if one has not already been provided.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 30 days after the GAO notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's request for an extension. Any new date is documented in the agency's file.

(ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information exempt from disclosure under 5 U.S.C. 552 may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of an agency report to the GAO. The protest file shall include an index and as appropriate—

and

(G) Any other documents that the agency determines are relevant to the protest, including documents specifically requested by the protester.

(iii) The agency report to the GAO shall include—

(A) A copy of the documents described in 33.104(a)(3)(ii);

(B) The contracting officer's signed statement of relevant facts and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest file that may be necessary to determine the merits of the protest;

(C) A list of the documents withheld from the protester, or intervenors, and the reasons for withholding them. The list identifies any documents specifically requested by, and withheld from, the protester; and

(D) A list of parties being provided the documents.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protester and any intervenors. A party shall receive all relevant documents, except—

(A) Those that the agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and

(B) Protester's documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If the protester requests additional documents within 2 days after the protester knew the existence or relevance of additional documents, or should have known, the agency shall provide the requested documents to the GAO within 5 days of receipt of the request.

(B) The additional documents shall also be provided to the protester and other interested parties within this 5-day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective sion of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties.

(iv) *Sanctions and remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against an agency which fails to provide documents designated in a protective order.

(6) The protester and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 14 days, or 7 days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 days after the hearing.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO

the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 days of the written finding.

(2) A contract award shall not be authorized until the agency has notified the GAO of the finding in paragraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under subparagraph (b)(1) of this section.

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by 15.505 or 15.506, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in subparagraphs (c)(2) and (3) of this section.

(2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the agency has notified the GAO of the finding in paragraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the agency receives notice of a protest filed with the GAO after the dates contained in subparagraph officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protester and other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protester, or other interested party who has responded to the notice in paragraph (a)(2) of this section. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and report within 7 days of the hearing.

(f) *GAO decision time.* GAO issues its recommendation on a protest within 100 days from the date of filing of the protest with the GAO, or within 65 days under the express option. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO not later than 5 days after the expiration of the 60-day period. The report shall explain the reasons why the GAO's recommendation, exclusive of costs, has not been followed by the agency.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) If the GAO recommends the award of costs to an interested party, the agency shall attempt to reach an agreement on the amount of the cost to be paid. If the agency and the interested party are unable to agree on the amount to be paid, GAO may, upon request of the interested party, recommend to the agency the amount of cost that the agency should pay.

September 1, 1995 (5 CFR 304.105), or

(ii) For attorneys' fees that exceed $150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.

(4) A recommended award of costs may be paid by the agency from funds available to or for the use of the agency for the acquisition of supplies or services. Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs which have not yet been paid.

(5) If the GAO recommends that the agency pay costs (as defined in paragraph (h)(1) of this section) and the agency does not promptly pay the costs, the agency shall promptly report to GAO the reasons for the failure to follow the GAO recommendation.

(6) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government and those exclusions should be reflected in the cost agreement.

(7) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

33.105 [Reserved]

33.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for contracts expected to exceed the simplified acquisition threshold.

which fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

"Alternative dispute resolution (ADR)" means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

"Claim," as used in this part, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding $100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act and 33.207. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

"Defective certification," as used in this subpart, means a certificate which alters or otherwise deviates from the language in 33.207(c) or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

"Issue in controversy" means a material disagreement between the Government and the contractor which—

(1) May result in a claim or

(2) Is all or part of an existing claim.

"Misrepresentation of fact," as used in this part, means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for—

(a) The payment of interest on contractor claims;

(b) Certification of contractor claims; and

(c) A civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

33.203 Applicability.

(a) Except as specified in paragraph (b) of this section, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with—

(1) A foreign government or agency of that government, or

(2) An international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters "arising under" or "relating to" a contract. Agency Boards of Contract Appeals (BCA's) authorized under the Act continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at 52.233-1, Disputes, recognizes the "all disputes" authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Act or to constrain the authority of the statutory agency BCA's in the handling and deciding of contractor appeals under the Act.

33.204 Policy.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Reasonable efforts should be resolve issues in controversy. Agencies may also elect to proceed under the authority and requirements of the ADRA.

33.205 Relationship of the Act to Public Law 85-804.

(a) Requests for relief under Public Law 85-804 (50 U.S.C. 1431-1435) are not claims within the Contract Disputes Act of 1978 or the Disputes clause at 52.233-1, Disputes, and shall be processed under Part 50, Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; *i.e.*, legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Contract Disputes Act of 1978 and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor's allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Act. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) of this section may be cognizable as a request for relief under Public Law 85-804 as implemented by Part 50. However, the claim must first be submitted to the contracting officer for consideration under the Contract Disputes Act of 1978 because the claim is not cognizable under Public Law 85-804, as implemented by Part 50, unless other legal authority in the agency concerned is determined to be lacking or inadequate.

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with

tractor claim involving fraud.

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in 33.207(c) when submitting any claim—

(1) Exceeding $100,000; or

(2) Regardless of the amount claimed when using—

(i) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(ii) Any other ADR technique that the agency elects to handle in accordance with the ADRA

(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(c) The certification shall state as follows:

> I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in 15.403-4(a)(1)(iii) regarding cost or pricing data).

(e) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(f) A defective certification shall not deprive a court or an agency BCA of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency BCA, however, the court or agency BCA shall require a defective certification to be corrected.

33.208 Interest on claims.

(a) The Government shall pay interest on a contractor's claim on the amount found due and unpaid from the date that—

(1) The contracting officer receives the claim (certified if required by 33.207(a)); or

(2) Payment otherwise would be due, if that date is later, until the date of payment.

interest shall be paid from either the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate.

33.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the agency official responsible for investigating fraud.

33.210 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Act. In accordance with agency policies and 33.214, contracting officers are authorized to use ADR procedures to resolve claims. The authority to decide or resolve claims does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

33.211 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

(1) Review the facts pertinent to the claim;

(2) Secure assistance from legal and other advisors;

(3) Coordinate with the contract administration office or contracting office, as appropriate; and

(4) Prepare a written decision that shall include a—

(i) Description of the claim or dispute;

(ii) Reference to the pertinent contract terms;

(iii) Statement of the factual areas of agreement and disagreement;

(iv) Statement of the contracting officer's decision, with supporting rationale;

34.004 Acquisition strategy.
34.005 General requirements.
34.005-1 Competition.
34.005-2 Mission-oriented solicitation.
34.005-3 Concept exploration contracts.
34.005-4 Demonstration contracts.
34.005-5 Full-scale development contracts.
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Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act
34.100 Scope of subpart.
34.101 Definitions.
34.102 Policy.
34.103 Testing and qualification.
34.104 Contract clause.

Subpart 34.0—General

34.000 Scope of part.

This part describes acquisition policies and procedures for use in acquiring major systems consistent with OMB Circular No. A-109, Major System Acquisitions (A-109) (see 34.003).

34.001 Definition.

"Effective competition," as used in this part, is a market condition which exists when two or more contractors, acting independently, actively contend for the Government's business in a manner which ensures that the Government will be offered the lowest cost or price alternative or best technical design meeting its minimum needs.

34.002 Policy.

The policies of this part are designed to ensure that agencies acquire major systems in the most effective, economical, and timely manner. Agencies acquiring major systems shall—

(a) Promote innovation and full and open competition as required by Part 6 in the development of major system concepts by—

(1) Expressing agency needs and major system acquisition program objectives in terms of the agency's mission and not in terms of specified systems to satisfy needs, and

(2) Focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and

(b) The agency procedures shall identify the key decision points of each major system acquisition and the agency official(s) for making those decisions.

(c) Systems acquisitions normally designated as major are those programs that, as determined by the agency head, (1) are directed at and critical to fulfilling an agency mission need, (2) entail allocating relatively large resources for the particular agency, and (3) warrant special management attention, including specific agency-head decisions. The agency procedures may establish additional criteria, as specified in A-109, for designating major programs system acquisitions.

34.004 Acquisition strategy.

The program manager, as specified in agency procedures, shall develop an acquisition strategy tailored to the particular major system acquisition program. This strategy is the program manager's overall plan for satisfying the mission need in the most effective, economical, and timely manner. The strategy shall be in writing and prepared in accordance with the requirements of Subpart 7.1, except where inconsistent with this part, and shall qualify as the acquisition plan for the major system acquisition, as required by that subpart.

34.005 General requirements.

34.005-1 Competition.

(a) The program manager shall, throughout the acquisition process, promote full and open competition and sustain effective competition between alternative major system concepts and sources, as long as it is economically beneficial and practicable to do so. Notice of the proposed acquisition shall be given the broadest and most effective circulation practicable throughout the business, academic, and Government communities. Foreign contractors, technology, and equipment may be considered when it is feasible and permissible to do so.

(b) The contracting officer should time solicitation issuance and contract award to maintain continuity of concept development during the transition from with-drawing concept proposer to new contractor.

34.005-2 Mission-oriented solicitation.

(a) Before issuing the solicitation, whenever practicable and consistent with agency procedures, the contracting offi-

development centers, educational institutions and other not-for-profit organizations, and, if it would be beneficial and is not prohibited, foreign sources.

(2) If appropriate, hold a presolicitation conference (see 15.201) and/or send copies of the proposed solicitation to all prospective offerors for their comments. After evaluation of these comments, the solicitation should be revised, if appropriate.

(b) The contracting officer shall send the final solicitation to all prospective offerors. It shall—

(1) Describe the nature of the need in terms of mission capabilities required, without reference to any specific systems to satisfy the need;

(2) Indicate, and explain when appropriate, the schedule, capability, and cost objectives and any known constraints in the acquisition;

(3) Provide, or indicate how access can be obtained to, all Government data related to the acquisition;

(4) Include selection requirements consistent with the acquisition strategy; and

(5) Clearly state that each offeror is free to propose its own technical approach, main design features, subsystems, and alternatives to schedule, cost, and capability goals.

(c) To the extent practicable, the solicitation shall not reference or mandate Government specifications or standards, unless the agency is mandating a subsystem or other component as approved under agency procedure.

34.005-3 Concept exploration contracts.

Whenever practicable, contracts to be performed during the concept exploration phase shall be for relatively short periods, at planned dollar levels. These contracts are to refine the proposed concept and to reduce the concept's technical uncertainties. The scope of work for this phase of the program shall be consistent with the Government's planned budget for the phase. Follow-on contracts for such tasks in the exploration phase shall be awarded as long as the concept approach remains promising, the contractor's progress is acceptable, and it is economically practicable to do so.

34.005-4 Demonstration contracts.

Whenever practicable, contracts for the demonstration phase should provide for contractors to submit, by the end of the phase, priced proposals, totally funded by the Government, for full-scale development. The contracting proposals for production that are based on the latest quantity, schedule, and logistics requirements and other considerations that will be used in making the production decision.

34.005-6 Full production.

Contracts for full production of successfully tested major systems selected from the full-scale development phase may be awarded if the agency head—

(a) Reaffirms the mission need and program objectives; and

(b) Grants approval to proceed with production.

Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act

34.100 Scope of subpart.

This subpart prescribes policies and procedures for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under section 301, 302, or 303 of the Defense Production Act (50 U.S.C. App. 2091-2093). Title III of the Defense Production Act authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense.

34.101 Definitions.

"Item of supply" for the purpose of this subpart, means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system. The term includes spare parts and replenishment parts, but does not include packaging or labeling associated with shipment or identification of an "item."

34.102 Policy.

It is the policy of the Government, as required by Section 126 of Public Law 102-558, to pay for any testing and qualification required for the use or incorporation of the industrial resources manufactured or developed with assistance provided under Title III of the Defense Production Act of 1950.

34.103 Testing and qualification.

(a) Contractors receiving requests from a Title III project contractor for testing and qualification of a Title III

determine the type of contract employed. The contract type must be selected to fit the work required.

(c) Because the absence of precise specifications and difficulties in estimating costs with accuracy (resulting in a lack of confidence in cost estimates) normally precludes using fixed-price contracting for R&D, the use of cost-reimbursement contracts is usually appropriate (see Subpart 16.3). The nature of development work often requires a cost-reimbursement completion arrangement (see 16.306(d)). When the use of cost and performance incentives is desirable and practicable, fixed-price incentive and cost-plus-incentive-fee contracts should be considered in that order of preference.

(d) When levels of effort can be specified in advance, a short-duration fixed-price contract may be useful for developing system design concepts, resolving potential problems, and reducing Government risks. Fixed-price contracting may also be used in minor projects when the objectives of the research are well defined and there is sufficient confidence in the cost estimate for price negotiations. (See 16.207.)

(e) Projects having production requirements as a follow-on to R&D efforts normally should progress from cost-reimbursement contracts to fixed-price contracts as designs become more firmly established, risks are reduced, and production tooling, equipment, and processes are developed and proven. When possible, a final commitment to undertake specific product development and testing should be avoided until—

(1) Preliminary exploration and studies have indicated a high degree of probability that development is feasible and

(2) The Government has determined both its minimum requirements and desired objectives for product performance and schedule completion.

35.007 Solicitations.

(a) The submission and subsequent evaluation of an inordinate number of R&D proposals from sources lacking appropriate qualifications is costly and time-consuming to both industry and the Government. Therefore, contracting officers should initially distribute solicitations only to sources technically qualified to perform research or development in the specific field of science or technology involved. Cognizant technical personnel should recom-

(5) Other relevant factors.

(b) Proposals generally shall be solicited from technically qualified sources, including sources that become known as a result of synopses or other means of publicizing requirements. If it is not practicable to initially solicit all apparently qualified sources, only a reasonable number need be solicited. In the interest of competition, contracting officers shall furnish copies of the solicitation to other apparently qualified sources.

(c) Solicitations shall require offerors to describe their technical and management approach, identify technical uncertainties, and make specific proposals for the resolution of any uncertainties. The solicitation should require offerors to include in the proposal any planned subcontracting of scientific or technical work (see 35.009).

(d) Solicitations may require that proposals be organized so that the technical portions can be efficiently evaluated by technical personnel (see 15.204-5(b)). Solicitation and evaluation of proposals should be planned to minimize offerors' and Government expense.

(e) R&D solicitations should contain evaluation factors to be used to determine the most technically competent (see 15.304), such as—

(1) The offeror's understanding of the scope of the work;

(2) The approach proposed to accomplish the scientific and technical objectives of the contract or the merit of the ideas or concepts proposed;

(3) The availability and competence of experienced engineering, scientific, or other technical personnel;

(4) The offeror's experience;

(5) Pertinent novel ideas in the specific branch of science and technology involved; and

(6) The availability, from any source, of necessary research, test, laboratory, or shop facilities.

(f) In addition to evaluation factors for technical competence, the contracting officer shall consider, as appropriate, management capability (including cost management techniques), experience and past performance, subcontracting practices, and any other significant evaluation criteria (*e.g.*, unrealistically low cost estimates in proposals for cost-reimbursement or fixed-price incentive contracts). Although cost or price is not normally the controlling factor in selecting a contractor to perform R&D, it should not be disregarded in arriving at a selection that

work statement, the contract Schedule, and any related specifications. This may be done through the use of pre-proposal conferences (see 15.201).

(h) If it is appropriate to do so, solicitations should permit offerors to propose an alternative contract type (see 16.103).

(i) In circumstances when a concern has a new idea or product to discuss that incorporates the results of independent R&D work funded by the concern in the private sector and is of interest to the Government, there should be no hesitancy to discuss it; however, the concern should be warned that the Government will not be obligated by the discussion. Under such circumstances, it may be appropriate to negotiate directly with the concern without competition. Also, see Subpart 15.6 concerning unsolicited proposals.

(j) The Government may issue an exploratory request to determine the existence of ideas or prior work in a specific field of research. Any such request shall clearly state that it does not impose any obligation on the Government or signify a firm intention to enter into a contract.

35.008 Evaluation for award.

(a) Generally, an R&D contract should be awarded to that organization, including any educational institution, that proposes the best ideas or concepts and has the highest competence in the specific field of science or technology involved. However, an award should not be made to obtain capabilities that exceed those needed for successful performance of the work.

(b) In R&D contracting, precise specifications are ordinarily not available. The contracting officer should therefore take special care in reviewing the solicitation evaluation factors to assure that they are properly presented and consistent with the solicitation.

(c) When a small business concern would otherwise be selected for award but is considered not responsible, the SBA Certificate of Competency procedure shall be followed (see Subpart 19.6).

(d) The contracting officer should use the procedures in Subpart 15.5 to notify and debrief offerors.

(e) It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable but also to provide valuable insight into the offeror's understanding of the project, perception of risks, and ability to organize and perform the work. scientific work without the contracting officer's advance knowledge. During the negotiation of a cost-reimbursement R&D contract, the contracting officer shall obtain complete information concerning the contractor's plans for subcontracting any portion of the experimental, research, or development effort (see also 35.007(c)). Also, when negotiating a fixed-price contract, the contracting officer should evaluate this information and may obtain an agreement that protects the Government's interests. The clause at 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), prescribed for cost-reimbursement contracts at 44.204(c), requires the contracting officer's prior approval for the placement of a substantial cost-reimbursement subcontract that has experimental, developmental, or research work as one of its purposes.

35.010 Scientific and technical reports.

(a) R&D contracts shall require contractors to furnish scientific and technical reports, consistent with the objectives of the effort involved, as a permanent record of the work accomplished under the contract.

(b) Agencies should make R&D contract results available to other Government activities and the private sector. Contracting officers shall follow agency regulations regarding such matters as national security, protection of data, and new-technology dissemination policy. Reports should be sent to the:

National Technical Information Service (NTIS)
5285 Port Royal Road
Springfield VA 22161

When agencies require that completed reports be covered by a report documentation page, Standard Form (SF) 298, Report Documentation Page, the contractor should submit a copy with the report.

35.011 Data.

(a) R&D contracts shall specify the technical data to be delivered under the contract, since the data clauses required by Part 27 do not require the delivery of any such data.

(b) In planning a developmental program when subsequent production contracts are contemplated, consideration should be given to the need and time required to obtain a technical package (plans, drawings, specifications, and other descriptive information) that can be used to achieve

36.104 Policy.

Subpart 36.2—Special Aspects of Contracting for Construction

36.201 Evaluation of contractor performance.
36.202 Specifications.
36.203 Government estimate of construction costs.
36.204 Disclosure of the magnitude of construction projects.
36.205 Statutory cost limitations.
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36.207 Pricing fixed-price construction contracts.
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36.302 Scope of work.
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36.600 Scope of subpart.
36.601 Policy.
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36.602 Selection of firms for architect-engineer contracts.
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36.605 Government cost estimate for architect-engineer work.
36.606 Negotiations.
36.607 Release of information on firm selection.
36.608 Liability for Government costs resulting from design errors or deficiencies.
36.609 Contract clauses.
36.609-1 Design within funding limitations.
36.609-2 Redesign responsibility for design errors or deficiencies.
36.609-3 Work oversight in architect-engineer contracts.
36.609-4 Requirements for registration of designers.

Subpart 36.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

36.700 Scope of subpart.
36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.
36.702 Forms for use in contracting for architect-engineer services.

36.101 Applicability.

(a) Construction and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this Part 36 shall take precedence if the acquisition of construction or architect-engineer services is involved.

(c) A contract for both construction and supplies or services shall include—

(1) Clauses applicable to the predominant part of the work (see Subpart 22.4), or

(2) If the contract is divided into parts, the clauses applicable to each portion.

36.102 Definitions.

"Architect-engineer services", as defined in 40 U.S.C. 541, means:

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

"As-built drawings," see record drawings.

"Construction" means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subcontract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

"Design," as used in this part, means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

"Design-bid-build," as used in this part, means the traditional delivery method where design and construction are sequential and contracted for separately with two contracts and two contractors.

"Design-build," as used in this part, means combining design and construction in a single contract with one contractor.

"Firm," as used in this part in conjunction with architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"Plans and specifications," as used in this part, means drawings, specifications, and other data for and preliminary to the construction.

"Record drawings," as used in this part, means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

"Shop drawings," as used in this part, means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail—

(1) The proposed fabrication and assembly of structural elements,

(2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment, or

(3) Both.

"Two-phase design-build selection procedures," as used in this part, is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see Subpart 36.3).

36.103 Methods of contracting.

(a) Contracting officers shall acquire construction using sealed bid procedures if the conditions in 6.401(a)

Advance notices and solicitations should be distributed to reach as many prospective offerors as practicable. Contracting officers may send notices and solicitations to organizations that maintain, without charge to the public, display rooms for the benefit of prospective offerors, subcontractors, and material suppliers. If requested by such organizations, this may be done for all or a stated class of construction projects on an annual or semiannual basis. Contracting officers may determine the geographical extent of distribution of advance notices and solicitations on a case-by-case basis.

36.212 Preconstruction orientation.

(a) The contracting officer will inform the successful offeror of significant matters of interest, including—

(1) Statutory matters such as labor standards (Subpart 22.4), and subcontracting plan requirements (Subpart 19.7); and

(2) Other matters of significant interest, including who has authority to decide matters such as contractual, administrative (*e.g.*, security, safety, and fire and environmental protection), and construction responsibilities.

(b) As appropriate, the contracting officer may issue an explanatory letter or conduct a preconstruction conference.

(c) If a preconstruction conference is to be held, the contracting officer shall—

(1) Conduct the conference prior to the start of construction at the work site;

(2) Notify the successful offeror of the date, time, and location of the conference (see 36.522); and

(3) Inform the successful offeror of the proposed agenda and any need for attendance by subcontractors.

36.213 Special procedures for sealed bidding in construction contracting.

36.213-1 General.

Contracting officers shall follow the procedures for sealed bidding in Part 14, as modified and supplemented by the requirements in this subpart.

36.213-2 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall send presolicitation notices to prospective bidders on

(1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range) (see 36.204);

(2) State the location of the work;

(3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;

(4) State where plans will be available for inspection without charge;

(5) Specify a date by which requests for the invitation for bids should be submitted;

(6) Notify recipients that if they do not submit a bid they should advise the issuing office as to whether they want to receive future presolicitation notices;

(7) State whether award is restricted to small businesses;

(8) Specify any amount to be charged for solicitation documents; and

(9) Be publicized in the Commerce Business Daily in accordance with 5.204.

36.213-3 Invitations for bids.

(a) Invitations for bids for construction shall allow sufficient time for bid preparation (*i.e.*, the period of time between the date invitations are distributed and the date set for opening of bids) (but see 5.203 and 14.202-1) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard to the construction season and the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work, and prepare estimates based on plans and specifications.

(b) Invitations for bids shall be prepared in accordance with Subpart 14.2 and this section using the forms prescribed in Part 53.

(c) Contracting officers should assure that each invitation for bids includes the following information, when applicable:

(1) The appropriate wage determination of the Secretary of Labor (see Subpart 22.4), or, if the invitation for bids must be issued before the wage determination is received, a notice that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the invitation for bids before the opening date for bids (see 14.208 and Subpart 22.4).

(2) The Performance of Work by the Contractor clause (see 36.501 and 52.236-1).

during construction.

(7) Information concerning the prebid conference (see 14.207).

(8) Any special qualifications or experience requirements that will be considered in determining the responsibility of bidders (see Subpart 9.1).

(9) Any special instructions concerning bids, alternate bids, and award.

(10) Any instructions concerning reporting requirements.

(d) The contracting officer shall send invitations for bids to prospective bidders who requested them in response to the presolicitation notice, and should send them to other prospective bidders upon their specific request (see 14.205 and 5.102(a)).

36.213-4 Notice of award.

When a notice of award is issued, it shall be done in writing or electronically, shall contain information required by 14.408, and shall—

(a) Identify the invitation for bids;

(b) Identify the contractor's bid;

(c) State the award price;

(d) Advise the contractor that any required payment and performance bonds must be promptly executed and returned to the contracting officer;

(e) Specify the date of commencement of work, or advise that a notice to proceed will be issued.

36.214 Special procedures for price negotiation in construction contracting.

(a) Agencies shall follow the policies and procedures in Part 15 when negotiating prices for construction.

(b) The contracting officer shall evaluate proposals and associated cost or pricing data or information other than cost or pricing data and shall compare them to the Government estimate.

(1) When submission of cost or pricing data is not required (see 15.403-1 and 15.403-2), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost information concerning that element (*e.g.*, wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

used. For example, proposed prices may be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

36.215 Special procedure for cost-reimbursement contracts for construction.

Contracting officers may use a cost-reimbursement contract to acquire construction only when its use is consistent with Subpart 16.3 and Part 15 (see 15.404-4(c)(4)(i) for fee limitation on cost-reimbursement contracts).

Subpart 36.3—Two-Phase Design-Build Selection Procedures

36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures authorized by 10 U.S.C. 2305a and 41 U.S.C. 253m.

36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal acquisition planning (see Part 7), if considering the use of two-phase design-build selection procedures, the contracting officer shall conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures shall be used when the contracting officer determines that this method is appropriate, based on the following:

(1) Three or more offers are anticipated.

(2) Design work must be performed by offerors before developing price or cost proposals, and offerors will incur a substantial amount of expense in preparing offers.

(3) The following criteria have been considered:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection method.

(v) The capability of the agency to manage the two-phase selection process.

and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in Subpart 36.6 shall be used.

36.303 Procedures.

One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be evaluated in Phase One to determine which offerors will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

36.303-1 Phase One.

(a) Phase One of the solicitation(s) shall include—

(1) The scope of work;

(2) The phase-one evaluation factors, including—

(i) Technical approach (but not detailed design or technical information);

(ii) Technical qualifications, such as—

(A) Specialized experience and technical competence;

(B) Capability to perform;

(C) Past performance of the offeror's team (including the architect-engineer and construction members); and

(iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);

(3) Phase-two evaluation factors (see 36.303-2); and

(4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting).

(b) After evaluating phase-one proposals, the contracting officer shall select the most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with 36.303-1(a)(4)) and request that only those offerors submit phase-two proposals.

36.303-2 Phase Two.

(a) Phase Two of the solicitation(s) shall be prepared in accordance with Part 15, and include phase-two evaluation factors, developed in accordance with 15.304. Examples of potential phase-two technical evaluation factors include

Subpart 36.5—Contract Clauses

36.500 Scope of subpart.

This subpart prescribes clauses for insertion in solicitations and contracts for (a) construction and (b) dismantling, demolition, or removal of improvements contracts. Provisions and clauses prescribed elsewhere in the Federal Acquisition Regulation (FAR) shall also be used in such solicitations and contracts when the conditions specified in the prescriptions for the provisions and clauses are applicable.

36.501 Performance of work by the contractor.

(a) To assure adequate interest in and supervision of all work involved in larger projects, the contractor shall be required to perform a significant part of the contract work with its own forces. The contract shall express this requirement in terms of a percentage that reflects the minimum amount of work the contractor must perform with its own forces. This percentage is (1) as high as the contracting officer considers appropriate for the project, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work, and (2) ordinarily not less than 12 percent unless a greater percentage is required by law or agency regulation. Specialties such as plumbing, heating, and electrical work are usually subcontracted, and should not normally be considered in establishing the amount of work required to be performed by the contractor.

(b) The contracting officer shall insert the clause at 52.236-1, Performance of Work by the Contractor, in solicitations and contracts, except those awarded pursuant to Subparts 19.5 or 19.8, when a fixed-price construction contract is contemplated and the contract amount is expected to exceed $1,000,000. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be $1,000,000 or less.

36.502 Differing site conditions.

The contracting officer shall insert the clause at 52.236-2, Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting

52.236-3, Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.504 Physical data.

The contracting officer shall insert the clause at 52.236-4, Physical Data, in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (*e.g.*, test borings, hydrographic data, weather conditions data) will be furnished or made available to offerors.

36.505 Material and workmanship.

The contracting officer shall insert the clause at 52.236-5, Material and Workmanship, in solicitations and contracts for construction contracts.

36.506 Superintendence by the contractor.

The contracting officer shall insert the clause at 52.236-6, Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.507 Permits and responsibilities.

The contracting officer shall insert the clause at 52.236-7, Permits and Responsibilities, in solicitations and contracts when a fixed-price or cost-reimbursement construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated.

contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.

The contracting officer shall insert the clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.510 Operations and storage areas.

The contracting officer shall insert the clause at 52.236-10, Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.511 Use and possession prior to completion.

The contracting officer shall insert the clause at 52.236-11, Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the simplified acquisition threshold. This clause may be inserted in solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold.

fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.513 Accident prevention.

(a) The contracting officer shall insert the clause at 52.236-13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see 48 CFR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

36.514 Availability and use of utility services.

The contracting officer shall insert the clause at 52.236-14, Availability and Use of Utility Services, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites, and the contracting officer decides (a) that the existing utility system(s) is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

36.516 Quantity surveys.

The contracting officer may insert the clause at 52.236-16, Quantity Surveys, in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated. If it is determined at a level above that of the contracting officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, the clause shall be used with its Alternate.

36.517 Layout of work.

The contracting officer shall insert the clause at 52.236-17, Layout of Work, in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance.

36.518 Work oversight in cost-reimbursement construction contracts.

The contracting officer shall insert the clause at 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.519 Organization and direction of the work.

The contracting officer shall insert the clause at 52.236-19, Organization and Direction of the Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.520 Contracting by negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236-28, Preparation of Offers—Construction, when contracting by negotiation.

clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. When the Government needs record drawings, the contracting officer shall—

(a) Use the clause with its Alternate I, if reproducible shop drawings are needed; or

(b) Use the clause with its Alternate II, if reproducible shop drawings are not needed.

36.522 Preconstruction conference.

If the contracting officer determines it may be desirable to hold a preconstruction conference, the contracting officer shall insert a clause substantially the same as the clause at 52.236-26, Preconstruction Conference, in solicitations and fixed price contracts for construction or for dismantling, demolition or removal of improvements.

36.523 Site visit.

The contracting officer shall insert a provision substantially the same as the provision at 52.236-27, Site Visit (Construction), in solicitations which include the clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work. Alternate I may be used when an organized site visit will be conducted.

Subpart 36.6—Architect-Engineer Services

36.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services.

36.601 Policy.

36.601-1 Public announcement.

The Government shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. (See Pub. L. 92-582, as amended; 40 U.S.C. 541-544.)

practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also shall require the architect-engineer to consider energy conservation, pollution prevention, and waste reduction to the maximum extent practicable in developing the construction design specifications.

(b) Sources for contracts for architect-engineer services shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in Parts 13, 14, and 15 of this regulation.

(c) When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in Parts 13, 14, or 15.

(d) Other than "incidental services" as specified in the definition of architect-engineer services in 36.102 and in 36.601-4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to Parts 13, 14, and 15.

36.601-4 Implementation.

(a) Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engi-

Ordinarily, the evaluating official who prepares this report should be the person responsible for monitoring contract performance.

(2) A report may also be prepared after completion of the actual construction of the project.

(3) In addition to the reports in subparagraphs (a)(1) and (2) of this section, interim reports may be prepared at any time.

(4) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(5) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) *Distribution and use of performance reports.* Each performance report shall be distributed in accordance with agency procedures. The report shall be included in the contract file, and copies shall be sent to offices or boards for filing with the firm's qualifications data (see 36.603(d)(4)). The contracting activity shall retain the report for at least six years after the date of the report.

36.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared and furnished to the contracting officer before commencing negotiations for each proposed contract or contract modification expected to exceed $100,000. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal.

(b) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception

(a) Unless otherwise specified by the selection authority, the final selection authorizes the contracting officer to begin negotiations. Negotiations shall be conducted in accordance with Part 15 of this chapter, beginning with the most preferred firm in the final selection (see 15.404-4(c)(4)(i) on fee limitation and the determination and findings requirement at 16.306(c)(2) for a cost-plus-fixed-fee contract).

(b) The contracting officer should ordinarily request a proposal from the firm, ensuring that the solicitation does not inadvertently preclude the firm from proposing the use of modern design methods.

(c) The contracting officer shall inform the firm that no construction contract may be awarded to the firm that designed the project, except as provided in 36.209.

(d) During negotiations, the contracting officer should seek advance agreement (see 31.109) on any charges for computer-assisted design. When the firm's proposal does not cover appropriate modern and cost-effective design methods (*e.g.*, computer-assisted design), the contracting officer should discuss this topic with the firm.

(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at 44.204(d), "Subcontractors and Outside Associates and Consultants" (see 52.244-4), limits a firm's subcontracting to firms agreed upon during negotiations.

(f) If a mutually satisfactory contract cannot be negotiated, the contracting officer shall obtain a written best and final offer from the firm, and notify the firm that negotiations have been terminated. The contracting officer shall then initiate negotiations with the next firm on the final selection list. This procedure shall be continued until a mutually satisfactory contract has been negotiated. If negotiations fail with all selected firms, the contracting officer shall refer the matter to the selection authority who, after consulting with the contracting officer as to why a contract cannot be negotiated, may direct the evaluation board to recommend additional firms in accordance with 36.602.

36.607 Release of information on firm selection.

(a) After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.503, 15.506(b) through (f), 15.507(c), and 15.506(d)(2) through (d)(5). Note that 15.506(d)(2) through (d)(5) do not apply to architect-engineer contracts.

36.608 Liability for Government costs resulting from design errors or deficiencies.

Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

36.609 Contract clauses.

36.609-1 Design within funding limitations.

(a) The Government may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit (funding limitation). If the price of construction proposed in response to a Government solicitation exceeds the construction funding limitation in the architect-engineer contract, the firm shall be solely responsible for redesigning the project within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, if the cost of proposed construction is affected by events beyond the firm's reasonable control (*e.g.*, if there is an increase in material costs which could not have been anticipated, or an undue delay by the Government in issuing a construction solicitation), the firm shall not be obligated to redesign at no cost to the contractor and the Government. This estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the amount, the contracting officer should make available to the contractor the information upon which the Government has based its initial construction estimate and any subsequently acquired information that may affect the construction costs.

(c) The contracting officer shall insert the clause at 52.236-22, Design Within Funding Limitations, in fixed-price architect-engineer contracts except when—

(1) The head of the contracting activity or a designee determines in writing that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary,

(2) The design is for a standard structure and is not intended for a specific location, or

(3) There is little or no design effort involved.

36.609-2 Redesign responsibility for design errors or deficiencies.

(a) Under architect-engineer contracts, contractors shall be required to make necessary corrections at no cost to the Government when the designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies, or inadequacies. If, in a given situation, the Government does not require a firm to correct such errors, the contracting officer shall include a written statement of the reasons for that decision in the contract file.

(b) The contracting officer shall insert the clause at 52.236-23, Responsibility of the Architect-Engineer Contractor, in fixed-price architect-engineer contracts.

36.609-3 Work oversight in architect-engineer contracts.

The contracting officer shall insert the clause at 52.236-24, Work Oversight in Architect-Engineer Contracts, in fixed-price architect-engineer contracts.

36.609-4 Requirements for registration of designers.

The contracting officer shall insert the clause at 52.236-25, Requirements for Registration of Designers, in fixed-price architect-engineer contracts, except that it may

tracting officer. For GSA areawide contracts, the contracting officer shall insert the following: "GSA and each areawide customer with annual billings that exceed $250,000").

(2) 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services are not subject to a regulatory body.

(3) 52.241-9, Connection Charge, when a refundable connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. (Use Alternate I to the clause if a nonrefundable charge is to be paid. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (d)(6) and (d)(4) of this section).

(4) 52.241-10, Termination Liability, when payment is to be made to the contractor upon termination of service in conjunction with or in lieu of a connection charge upon completion of the facilities.

(5) 52.241-11, Multiple Service Locations (as defined in 41.101), when providing for possible alternative service locations, except under areawide contracts, is required.

(6) 52.241-12, Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(7) 52.241-13, Capital Credits, when the Federal Government is a member of a cooperative and is entitled to capital credits, consistent with the bylaws and governing documents of the cooperative.

(e) Depending on the conditions that are appropriate for each acquisition, the contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR.

(b) The contracting officer shall incorporate the applicable rate schedule in each contract, purchase order or modification.

Subpart 41.7—Formats

41.701 Formats for utility service specifications.

(a) The following specification formats for use in acquiring utility services are available from the address specified at 41.301(a) and may be used and modified at the agency's discretion:

(1) Electric service.
(2) Water service.
(3) Steam service.
(4) Sewage service.
(5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of facilities and maintenance or repair obligations, maps or drawings of delivery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) shall be inserted in Section C of the utility service solicitation and contract.

41.702 Formats for annual utility service review.

(a) Formats for use in conducting annual reviews of the following utility services are available from the address specified at 41.301(a) and may be used at the agency's discretion:

(1) Electric service.
(2) Gas service.
(3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.

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42.000 Scope of part.

This part prescribes general policies and procedures for performing contract administration functions and related audit services.

Subpart 42.1—Interagency Contract Administration and Audit Services

42.100 Scope of subpart.

This subpart prescribes policies and procedures for obtaining and providing interagency contract administration and audit services in order to—

(a) Provide specialized assistance through field offices located at or near contractors' establishments;

(b) Avoid or eliminate overlapping and duplication of Government effort; and

(c) Provide more consistent treatment of contractors.

42.101 Policy.

(a) Agencies requiring field contract administration or audit services are encouraged to use cross-servicing contractor or subcontractor by several agencies involving the same practices, operations, or functions shall be eliminated to the maximum practicable extent through the use of cross-servicing arrangements.

(c) OMB Circular No. A-73, Audit of Federal Operations and Programs, states executive branch policy on audit cross-servicing arrangements. As further provided in OFPP Policy Letter 78-4, Field Contract Support Cross-Servicing Program—

(1) Agencies shall use cross-servicing arrangements for the audit of costs incurred under contracts of two or more agencies being performed at the same business entity, and

(2) The responsible auditor or contracting officer shall coordinate with concerned agencies the establishment of indirect cost rates at such entities and shall convey the finally established rates to those agencies for application to their contracts to the extent allocable and allowable (see Subpart 42.7).

(d) Subject to the fiscal regulations of the agencies concerned, agencies—

(1) May be reimbursed in accordance with the Economy Act of 1932 (31 U.S.C. 1535) for services rendered under formal or informal cross-servicing arrangements,

(2) Normally should refrain from seeking reimbursement for cross-servicing accomplished incidental to their own needs or Governmentwide responsibilities, and

(3) May use the hourly rate established under the cross-servicing arrangement between the Department of Defense and the National Aeronautics and Space Administration to facilitate reimbursement arrangements.

(e) Agencies are not expected to enter into cross-servicing arrangements that would unduly burden agency resources or otherwise obstruct an agency in fulfilling its responsibilities.

42.102 Procedures.

(a) In locating available field contract administration or audit services, contracting offices shall consult the Department of Defense Directory of Contract Administration Services Components or the Directory of Federal Contract Audit Offices. Questions regarding contract administration offices may be referred to the:

HQ Defense Logistics Agency
Attn: DLA: DASC-WP
8725 John J Kingman Road
Fort Belvoir VA 22060

wise agreed upon in formal cross-servicing arrangements (see 42.101(a)), the applicable regulations of the servicing agency.

42.302 Contract administration functions.

(a) The following are the normal contract administration functions to be performed by the cognizant CAO, to the extent they apply, as prescribed in 42.202:

(1) Review the contractor's compensation structure.

(2) Review the contractor's insurance plans.

(3) Conduct post-award orientation conferences.

(4) Review and evaluate contractors' proposals under Subpart 15.4 and, when negotiation will be accomplished by the contracting officer, furnish comments and recommendations to that officer.

(5) Negotiate forward pricing rate agreements (see 15.407-3).

(6) Negotiate advance agreements applicable to treatment of costs under contracts currently assigned for administration (see 31.109).

(7) Determine the allowability of costs suspended or disapproved as required (see Subpart 42.8), direct the suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved, and approve final vouchers.

(8) Issue Notices of Intent to Disallow or not Recognize Costs (see Subpart 42.8).

(9) Establish final indirect cost rates and billing rates for those contractors meeting the criteria for contracting officer determination in Subpart 42.7.

(10) Attempt to resolve issues in controversy, using ADR procedures when appropriate (see Subpart 33.2); prepare findings of fact and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.

(11) In connection with Cost Accounting Standards (see Part 30 and 48 CFR Chapter 99 (FAR Appendix))—

(i) Determine the adequacy of the contractor's disclosure statements;

(ii) Determine whether disclosure statements are in compliance with Cost Accounting Standards and Part 31;

(iii) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and

(14) Manage special bank accounts.

(15) Ensure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.

(16) Monitor the contractor's financial condition and advise the contracting officer when it jeopardizes contract performance.

(17) Analyze quarterly limitation on payments statements and recover overpayments from the contractor.

(18) Issue tax exemption forms.

(19) Ensure processing and execution of duty-free entry certificates.

(20) For classified contracts, administer those portions of the applicable industrial security program designated as ACO responsibilities (see Subpart 4.4).

(21) Issue work requests under maintenance, overhaul, and modification contracts.

(22) Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations.

(23) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Part 49.

(24) Negotiate and execute contractual documents settling cancellation charges under multiyear contracts.

(25) Process and execute novation and change of name agreements under Subpart 42.12.

(26) Perform property administration (see Part 45).

(27) Approve contractor acquisition or fabrication of special test equipment under the clause at 52.245-18, Special Test Equipment.

(28) Perform necessary screening, redistribution, and disposal of contractor inventory.

(29) Issue contract modifications requiring the contractor to provide packing, crating, and handling services on excess Government property. When the ACO determines it to be in the Government's interests, the services may be secured from a contractor other than the contractor in possession of the property.

(30) In facilities contracts—

(i) Evaluate the contractor's requests for facilities and for changes to existing facilities and provide appropriate recommendations to the contracting officer;

(30) Ensure reporting of items no longer needed for Government production.

(31) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.

(32) Perform pre-award surveys (see Subpart 9.1).

(33) Advise and assist contractors regarding their priorities and allocations responsibilities and assist contracting offices in processing requests for special assistance and for priority ratings for privately owned capital equipment.

(34) Monitor contractor industrial labor relations matters under the contract; apprise the contracting officer and, if designated by the agency, the cognizant labor relations advisor, of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plant upon instruction from, and authorization of, the contracting officer.

(35) Perform traffic management services, including issuance and control of Government bills of lading and other transportation documents.

(36) Review the adequacy of the contractor's traffic operations.

(37) Review and evaluate preservation, packaging, and packing.

(38) Ensure contractor compliance with contractual quality assurance requirements (see Part 46).

(39) Ensure contractor compliance with contractual safety requirements.

(40) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.

(41) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management, and independent research and development.

(42) Review and evaluate for technical adequacy the contractor's logistics support, maintenance, and modification programs.

(43) Report to the contracting office any inadequacies noted in specifications.

(44) Perform engineering analyses of contractor cost proposals.

(47) Assist in evaluating and make recommendations for acceptance or rejection of waivers and deviations.

(48) Evaluate and monitor the contractor's procedures for complying with procedures regarding restrictive markings on data.

(49) Monitor the contractor's value engineering program.

(50) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system (see Part 44).

(51) Consent to the placement of subcontracts.

(52) Review, evaluate, and approve plant or division-wide small, small disadvantaged and women-owned small business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged and women-owned small business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small, small disadvantaged and women-owned small business subcontracting plans, including documentation of compliance with similar plans under prior contracts.

(55) By periodic surveillance, ensure the contractor's compliance with small, small disadvantaged and women-owned small business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.

(56) Maintain surveillance of flight operations.

(57) Assign and perform supporting contract administration.

(58) Ensure timely submission of required reports.

(59) Issue administrative changes, correcting errors or omissions in typing, contractor address, facility or activity code, remittance address, computations which do not require additional contract funds, and other such changes (see 43.101).

(60) Cause release of shipments from contractor's plants according to the shipping instructions. When applicable, the order of assigned priority shall be followed;

(b) Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(c) Contracting officers shall—

(1) Unless the quick-closeout procedure in 42.708 is used, use final indirect cost rates of a business unit for a given period, which shall be binding for all the cost-reimbursement contracts of the business unit for that period, subject to any specific limitation in a contract or advance agreement (when contracts of more than one agency are involved, see 42.101(c)); and

(2) To ensure compliance with 10 U.S.C. 2324(a) and 41 U.S.C. 256(a), use established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established.

42.703-2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

(b) *Waiver of certification.* (1) The agency head, or designee, may waive the certification requirement when—

(i) It is determined to be in the interest of the United States; and

(ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A state or local government subject to OMB Circular A-87;

(iii) An educational institution subject to OMB Circular A-21; and

(iv) A nonprofit organization subject to OMB Circular A-122.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

thought to be false.

(e) *Penalties for unallowable costs.* 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256(a) through (d) prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see 42.709 for penalties and contracting officer responsibilities).

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242-4, Certification of Final Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

42.704 Billing rates.

(a) The contracting officer or auditor responsible under 42.705 for determining the final indirect cost rate ordinarily shall also be responsible for determining the billing rate.

(b) The contracting officer or auditor shall establish a billing rate on the basis of information resulting from recent review, previous audits or experience, or similar reliable data or experience of other contracting activities. In establishing the billing rate, the contracting officer or auditor should ensure that it is as close as possible to the final indirect cost rate anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer or auditor determines that the dollar value of contracts requiring use of a billing rate does not warrant submission of a detailed billing rate proposal, the billing rate may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment.

(d) The elements of indirect cost and the base or bases used in computing billing rates shall not be construed as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal

42.705 Final indirect cost rates.

(a) Final indirect cost rates shall be established on the basis of—

(1) Contracting officer determination procedure (see 42.705-1), or

(2) Auditor determination procedure (see 42.705-2).

(b) Within 120 days after settlement of the final indirect cost rates (or longer, if approved in writing by the contracting officer), the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates on all contracts physically completed in the year covered by the proposal.

42.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* Contracting officer determination shall be used for the following, with the indicated cognizant contracting officer responsible for establishing the final indirect cost rates:

(1) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (see Subpart 42.6), with that officer responsible for the determination, assisted, as required, by the administrative contracting officers, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(2) Business units not under the cognizance of a corporate administrative contracting officer, but having a resident administrative contracting officer (see 42.602), with that officer responsible for the determination. For this purpose, a nonresident administrative contracting officer is considered as resident if at least 75 percent of the administrative contracting officer's time is devoted to a single contractor.

(3) Business units not included in subparagraph (a)(1) or (2) above, but where the predominant interest (on the basis of unliquidated contract dollar amount) is in an agency whose procedures require contracting officer determination. In such cases, the responsible contracting officer will be as designated under that agency's procedures.

(4) Educational institutions (see 42.705-3 for responsibility and procedures).

(5) State and local governments (see 42.705-4).

cost or pricing data.

(2) The auditor shall submit to the contracting officer an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(3) The contracting officer shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(4) The Government negotiating team shall develop a negotiation position. Pursuant to 10 U.S.C. 2324(f) and 41 U.S.C. 256(f), the contracting officer shall—

(i) Not resolve any questioned costs until obtaining—

(A) Adequate documentation on the costs; and

(B) The contract auditor's opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(5) The cognizant contracting officer shall—

(i) Conduct negotiations;

(ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;

(iii) Prepare, sign, and place in the contractor general file (see 4.801(c)(3)) a negotiation memorandum covering—

(A) The disposition of significant matters in the advisory audit report;

(B) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

(C) Reasons why any recommendations of the auditor or other Government advisors were not followed; and

(D) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(iv) Distribute resulting documents in accordance with 42.706.

(2) In addition, auditor determination may be used for business units that are covered in 42.705-1(a) when the contracting officer and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(i) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(ii) The administrative cost of contracting officer determination would exceed the expected benefits.

(iii) The business unit does not have a history of disputes and there are few cost problems.

(iv) The contracting officer and auditor agree that special circumstances require auditor determination.

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer and auditor a final indirect cost rate proposal reflecting actual cost experience during the covered period, together with supporting cost or pricing data.

(2) The auditor shall—

(i) Audit the proposal and seek agreement on it with the contractor;

(ii) In coordination with the affected contracting officers, prepare an indirect cost rate agreement conforming to the requirements of the contracts;

(iii) If agreement with the contractor is not reached, forward the audit report to the contracting officer designated by the agency with the pre-dominant interest (on the basis of unliquidated contract dollar amounts) or, where applicable, the contracting officer designated in 42.705-2(a)(2) above, who will then resolve the disagreement; and

(iv) Distribute resulting documents in accordance with 42.706.

42.705-3 Educational institutions.

(a) *General.* (1) Postdetermined final indirect cost rates shall be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used (see paragraph (b) below).

(2) OMB Circular No. A-88, Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions, (i) assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and (ii) prescribes the procedures outlined in 42.705-1(b).

(4) If the cognizant agency is unable to reach agreement with an institution, the appeals system of the cognizant agency shall be followed for resolution of the dispute.

(b) *Predetermined final indirect cost rates.* (1) Under cost-reimbursement research and development contracts with universities, colleges, or other educational institutions (41 U.S.C. 254a), payment for reimbursable indirect costs may be made on the basis of predetermined final indirect cost rates. The cognizant agency is not required to establish predetermined rates, but if they are established, their use must be extended to all the institution's Government contracts.

(2) In deciding whether the use of predetermined rates would be appropriate for the educational institution concerned, the agency should consider both the stability of the institution's indirect costs and bases over a period of years and any anticipated changes in the amount of the direct and indirect costs.

(3) Unless their use is approved at a level in the agency (see subparagraph (a)(2) above) higher than the contracting officer, predetermined rates shall not be used when—

(i) There has been no recent audit of the indirect costs;

(ii) There have been frequent or wide fluctuations in the indirect cost rates and the bases over a period of years; or

(iii) The estimated reimbursable costs for any individual contract are expected to exceed $1 million annually.

(4)(i) If predetermined rates are to be used and no rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.

(ii) If the proposal is found to be generally acceptable, the agency shall negotiate the predetermined rates with the institution. The rates should be based on an audit of the institution's costs for the year immediately preceding the year in which the rates are being negotiated. If this is not possible, an earlier audit may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or in bases used that may have a bearing on the reasonableness of the proposed rates.

(5) If predetermined rates are used

(i) The contracting officer shall include the negotiated rates and bases in the contract Schedule; and

(ii) See 16.307(i), which prescribes the clause at 52.216-15, Predetermined Indirect Cost Rates.

(6) Predetermined indirect cost rates shall be applicable for a period of not more than four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the new fiscal year or other period agreed to by the parties (see paragraphs (b) and (d) of the clause at 52.216-15, Predetermined Indirect Cost Rates).

(7) Contracting officers shall use billing rates established by the agency to reimburse the contractor for work performed during a period not covered by predetermined rates.

42.705-4 State and local governments.

OMB Circular No. A-87 concerning cost principles for state and local governments (see Subpart 31.6) establishes the cognizant agency concept and procedures for determining a cognizant agency for approving state and local government indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated by the cognizant agency will be used by all Federal agencies that also award contracts to these same state and local governments.

42.705-5 Nonprofit organizations other than educational and state and local governments.

(See OMB Circular No. A-122.)

42.706 Distribution of documents.

(a) The contracting officer or auditor shall promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and shall provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications in Subpart 4.2, Contract Distribution.

(b) Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination shall be furnished, as appropriate, to the contracting offices and Government audit offices.

and development contracts, see 35.003(b).

(b)(1) Other situations may make it prudent to provide a final indirect cost rate ceiling in a contract. Examples of such circumstances are when the proposed contractor—

(i) Is a new or recently reorganized company, and there is no past or recent record of incurred indirect costs;

(ii) Has a recent record of a rapidly increasing indirect cost rate due to a declining volume of sales without a commensurate decline in indirect expenses; or

(iii) Seeks to enhance its competitive position in a particular circumstance by basing its proposal on indirect cost rates lower than those that may reasonably be expected to occur during contract performance, thereby causing a cost overrun.

(2) In such cases, an equitable ceiling covering the final indirect cost rates may be negotiated and specified in the contract.

(c) When ceiling provisions are utilized, the contract shall also provide that—

(1) The Government will not be obligated to pay any additional amount should the final indirect cost rates exceed the negotiated ceiling rates, and

(2) In the event the final indirect cost rates are less than the negotiated ceiling rates, the negotiated rates will be reduced to conform with the lower rates.

42.708 Quick-closeout procedure.

(a) The contracting officer responsible for contract closeout shall negotiate the settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates, if—

(1) The contract is physically complete;

(2) The amount of unsettled indirect cost to be allocated to the contract is relatively insignificant. Indirect cost amounts will be considered insignificant when—

(i) The total unsettled indirect cost to be allocated to any one contract does not exceed $1,000,000; and

(ii) Unless otherwise provided in agency procedures, the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs

(c) When a contractor uses the contractor's own label for making a shipment to a post office servicing military and other agency consignees outside the United States, the contractor shall stamp or imprint the parcel immediately above the label in 1/4 inch block letters with (i) the name of the agency and (ii) the words "Official Mail-Contents for Official Use-Exempt from Customs Requirements." This permits identification and expedites handling within the postal system. Use of this marking does not eliminate the requirement for payment of postage by the contractor when so required by the contract or when the contractor is to be reimbursed for the cost of postage.

(d) Contractors may not insure shipments at Government expense for the purpose of recovery in case of loss and/or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

42.1404-2 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or prepaid postage.

(b) The contracting officer shall insert the clause at 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

42.1405 Discrepancies incident to shipment of supplies.

(a) Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carriers and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in Subpart 40.7 of the Federal Property Management Regulations (41 CFR 101-40.7). (Military installations shall consult "Reporting of Transportation Discrepancies in Shipments," AR 55-38, NAVSUP INST 4610.33C, AFR 75-18, MCO P4610.19D, DLAR 4500.15.) a matter for settlement between the contractor and the carrier. However, the Government consignee shall—

(1) Notify the carrier of the discrepancy by noting the exception on the carrier's delivery receipt; and

(2) Furnish all available data to the CAO or appropriate agency office, which shall promptly transmit the data to the contractor.

42.1406 Report of shipment (REPSHIP).

42.1406-1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

42.1406-2 Contract clause.

The contracting officer shall insert the clause at 52.242-12, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

Subpart 42.15—Contractor Performance Information

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. It implements Office of Federal Procurement Policy Letter 92-5, Past Performance Information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. However, the fee amount paid to contractors should be reflective of the contractor's perfor-

to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer.

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $1,000,000 (regardless of the date of contract award) and for each contract in excess of $100,000 beginning not later than January 1, 1998 (regardless of the date of contract award), at the time the work under the contract is completed. In addition, interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year. This evaluation is generally for the entity, division, or unit that performed the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

(b) Agencies shall not evaluate performance for contracts awarded under Subparts 8.6 and 8.7. Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 36.201 and 36.604, respectively.

42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service.

(b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contractor's performance. Information shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

(c) Departments and agencies shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.

(d) Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(e) The past performance information shall not be retained to provide source selection information for longer than three years after completion of contract performance.

Subpart 42.16—Small Business Contract Administration

42.1601 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer shall, within the period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

an agreement, the ACO should consider whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRA's should be negotiated only with contractors having a significant volume of Government contract proposals. The cognizant contract administration agency shall determine whether an FPRA will be established.

(b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see 15.406-3) and forward copies of the PNM and FPRA to the cognizant auditor of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.

(d) When an FPRA is invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of an FPRA or FPRR, the ACO shall include support for rates utilized.

(e) The ACO may negotiate continuous updates to the FPRA. The FPRA will provide specific terms and conditions covering notification, application, and data requirements for systematic monitoring to ensure the validity of the rates.

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Accounting clause at 52.243-6.

(b) The following categories of direct costs normally are segregable and accountable under the terms of the Change Order Accounting clause:

(1) Nonrecurring costs (*e.g.*, engineering costs and costs of obsolete or reperformed work).

(2) Costs of added distinct work caused by the change order (*e.g.*, new subcontract work, new prototypes, or new retrofit or backfit kits).

(3) Costs of recurring work (*e.g.*, labor and material costs).

43.204 Administration.

(a) *Change order documentation.* When change orders are not forward priced, they require two documents: the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (*e.g.*, an option clause) initially require only one document.

(b) *Definitization.* (1) Contracting officers shall negotiate equitable adjustments resulting from change orders in the shortest practicable time.

(2) Administrative contracting officers negotiating equitable adjustments by delegation under 42.302(b)(1), shall obtain the contracting officer's concurrence before adjusting the contract delivery schedule.

(3) Contracting offices and contract administration offices, as appropriate, shall establish suspense systems adequate to ensure accurate identification and prompt definitization of unpriced change orders.

(4) The contracting officer shall ensure that a cost analysis is made, if appropriate, under 15.404-1(c) and shall consider the contractor's segregable costs of the change, if available. If additional funds are required as a result of the change, the contracting officer shall secure the funds before making any adjustment to the contract.

(5) When the contracting officer requires a field pricing review of requests for equitable adjustment, the contracting officer shall provide a list of any significant contract events which may aid in the analysis of the request. This list should include—

(v) Actual performance dates;

(vi) Date entitlement to an equitable adjustment was determined or contracting officer decision was rendered if applicable;

(vii) Date of certification of the request for adjustment if certification is required; and

(viii) Dates of any pertinent Government actions or other key events during contract performance which may have an impact on the contractor's request for equitable adjustment.

(c) *Complete and final equitable adjustments.* To avoid subsequent controversies that may result from a supplemental agreement containing an equitable adjustment as the result of a change order, the contracting officer should—

(1) Ensure that all elements of the equitable adjustment have been presented and resolved; and

(2) Include, in the supplemental agreement, a release similar to the following:

CONTRACTOR'S STATEMENT OF RELEASE

In consideration of the modification(s) agreed to herein as complete equitable adjustments for the Contractor's _____ (describe) _____ "proposal(s) for adjustment," the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the "proposal(s) for adjustment" (except for _____).

43.205 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.

(2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.

(5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(c) The contracting officer shall insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for—

(1) Dismantling, demolition, or removal of improvements; and

(2) Construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

(e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicitations and contracts for construction, when the contract amount is not expected to exceed the simplified acquisition threshold.

Subpart 43.3—Forms

43.301 Use of forms.

(a)(1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall (except for the options stated in 43.301(a)(2) or actions processed under Part 15) be used for—

(i) Any amendment to a solicitation;

(ii) Change orders issued under the Changes clause of the contract;

(iii) Any other unilateral contract modification issued under a contract clause authorizing such modification without the consent of the contractor;

(iv) Administrative changes such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data;

(v) Supplemental agreements (see 43.103); and

(vi) Removal, reinstatement, or addition of funds to a contract.

(2) The SF 30 may be used for—

(i) Modifications that change the price of contracts for the acquisition of petroleum as a result of economic price adjustment;

(ii) Termination notices; and

(iii) Purchase order modifications as specified in 13.503.

(3) If it is anticipated that a change will result in a price change, the estimated amount of the price change shall not be shown on copies of SF 30 furnished to the contractor.

(b) The Optional Form 336 (OF 336), Continuation Sheet, or a blank sheet of paper, may be used as a continuation sheet for a contract modification.

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contractor's approved make-or-buy program, if any (see 15.407-2)?

(2) Is the subcontract for special test equipment or facilities that are available from Government sources (see Subpart 45.3)?

(3) Is the selection of the particular supplies, equipment, or services technically justified?

(4) Has the contractor complied with the prime contract requirements regarding small business subcontracting, including, if applicable, its plan for subcontracting with small, small disadvantaged and women-owned small business concerns (see Part 19)?

(5) Was adequate price competition obtained or its absence properly justified?

(6) Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?

(7) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

(8) Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certifications?

(9) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

(10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-furnished facilities?

(11) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

(12) Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?

(13) Is the proposed subcontractor on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see Subpart 9.4)?

(b) Particularly careful and thorough consideration under paragraph (a) of this section is necessary when—

(1) The prime contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a noncompetitive basis, at prices that appear unreasonable, or at constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) Contracting officers shall not consent to—

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations of 16.301-3;

(2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(3) Subcontracts obligating the contracting officer to deal directly with the subcontractor;

(4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or

(5) Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts (contracting officers should follow the principles of 16.103(c)).

(c) Contracting officers should not refuse consent to a subcontract merely because it contains a clause giving the subcontractor the right of indirect appeal to an agency board of contract appeals if the subcontractor is affected by a dispute between the Government and the prime contractor. Indirect appeal means assertion by the subcontractor of the prime contractor's right to appeal or the prosecution of an appeal by the prime contractor on the subcontractor's behalf. The clause may also provide that the prime contractor and subcontractor shall be equally bound by the contracting officer's or board's decision. The clause may not attempt to obligate the contracting officer or the appeals board to decide questions that do not arise between the Government and the prime contractor or that are not cognizable under the clause at 52.233-1, Disputes.

44.204 Contract clauses.

(a) *Fixed-price contracts.* (1) Except as specified in (a)(2) of this section, the contracting officer—

(i) Shall insert the clause at 52.244-1, Subcontracts (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed $500,000; and

(ii) May insert the clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed $500,000, if the

(3) If the contracting officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations, the contracting officer shall use the clause with its Alternate I.

(b) *Cost-reimbursement and letter contracts.* The contracting officer shall insert the clause at 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. If the contracting office is in DOD, the Coast Guard, or NASA, the contracting officer shall use the clause with its Alternate I. See also 44.205.

(c) *Time-and-materials and labor-hour contracts.* The contracting officer shall insert the clause at 52.244-3, Subcontracts (Time-and-Materials and Labor-Hour Contracts), in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(d) *Architect-engineer contracts.* The contracting officer shall insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants, in fixed-price architect-engineer contracts.

(e) *Competition in subcontracting.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or

(2) A contract of the type and/or purpose identified in paragraphs (c) and (d) of this section is contemplated.

Subpart 44.3—Contractors' Purchasing Systems Reviews

44.301 Objective.

The objective of a contractor purchasing system review (CPSR) is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

to determine if a CPSR is needed. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the $25 million review level if such action is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every 3 years the cognizant contract administration activity will determine whether a purchasing system review is necessary. If necessary, the cognizant contract administration activity will conduct a purchasing system review.

44.303 Extent of review.

A CPSR requires an evaluation of the contractor's purchasing system. This evaluation shall not include subcontracts awarded by the contractor exclusively in support of Government contracts awarded to the contractor that used sealed bid procedures or that are for commercial items pursuant to Part 12. The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to—

(a) The degree of price competition obtained;

(b) Pricing policies and techniques, including methods of obtaining accurate, complete, and current cost or pricing data and certification as required;

(c) Methods of evaluating subcontractor responsibility, including the contractor's use of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405-2);

(d) Treatment accorded affiliates and other concerns having close working arrangements with the contractor;

(e) Policies and procedures pertaining to small business concerns, including small disadvantaged and women-owned small business concerns;

(f) Planning, award, and postaward management of major subcontract programs;

(a) The ACO shall maintain a sufficient level of surveillance to ensure that the contractor is effectively managing its purchasing program.

(b) Surveillance shall be accomplished in accordance with a plan developed by the ACO with the assistance of subcontracting, audit, pricing, technical, or other specialists as necessary. The plan should cover pertinent phases of a contractor's purchasing system (preaward, postaward, performance, and contract completion) and pertinent operations that affect the contractor's purchasing and subcontracting. The plan should also provide for reviewing the effectiveness of the contractor's corrective actions taken as a result of previous Government recommendations. Duplicative reviews of the same areas by CPSR and other surveillance monitors should be avoided.

44.305 Granting, withholding, or withdrawing approval.

44.305-1 Responsibilities.

The cognizant ACO is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system. The ACO shall—

(a) Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests; and

(b) Promptly notify the contractor in writing of the granting, withholding, or withdrawal of approval.

44.305-2 Notification.

(a) The notification granting system approval shall include—

(1) Identification of the plant or plants covered by the approval;

(2) The effective date of approval; and

(3) A statement that system approval—

(i) Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;

(ii) Waives the contractual requirement for advance notification in fixed-price contracts, but not for cost-reimbursement contracts;

(iii) Waives the contractual requirement for consent to subcontracts in fixed-price contracts and for specified subcontracts in cost-reimbursement contracts but the class or classes of subcontracts requiring consent. Reasons for selecting the subcontracts include the fact that a CPSR or continuing surveillance has revealed sufficient weaknesses in a particular area of subcontracting to warrant special attention by the ACO.

(c) When recommendations are made for improvement of an approved system, the contractor shall be requested to reply within 15 days with a position regarding the recommendations.

44.305-3 Withholding or withdrawing approval.

(a) The ACO shall withhold or withdraw approval of a contractor's purchasing system when there are major weaknesses or when the contractor is unable to provide sufficient information upon which to make an affirmative determination. The ACO may withdraw approval at any time on the basis of a determination that there has been a deterioration of the contractor's purchasing system or to protect the Government's interest. Approval shall be withheld or withdrawn when there is a recurring noncompliance with requirements, including but not limited to—

(1) Cost or pricing data (see 15.403);

(2) Implementation of cost accounting standards (see 48 CFR Chapter 99 (FAR Appendix, loose-leaf edition));

(3) Advance notification as required by the clauses prescribed in 44.204; or

(4) Small business subcontracting (see Subpart19.7).

(b) When approval of the contractor's purchasing system is withheld or withdrawn, the ACO shall within 10 days after completing the in-plant review (1) inform the contractor in writing, (2) specify the deficiencies that must be corrected to qualify the system for approval, and (3) request the contractor to furnish within 15 days a plan for accomplishing the necessary actions. If the plan is accepted, the ACO shall make a follow-up review as soon as the contractor notifies the ACO that the deficiencies have been corrected.

44.306 Disclosure of approval status.

Upon request, the ACO may inform a contractor that the purchasing system of a proposed subcontractor has been approved or disapproved, but shall caution that the Government will not keep the contractor advised of any changes in the approval status. If the proposed subcontrac-

ment of an approved system, including the contractor's response, to at least—

(a) The cognizant contract audit office;

(b) Activities prescribed by the cognizant agency; and

(c) The contractor (except that furnishing copies of the contractor's response is optional).

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Public Law 103-355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term "subcontract" has the same meaning as defined in Part 12.

furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244-6 are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at 52.244-6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

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eral or special machine tools, or similar capital items.

(b) Additional definitions also applying throughout this part appear in those subparts where the terms are most frequently used.

45.102 Policy.

Contractors are ordinarily required to furnish all property necessary to perform Government contracts. However, if contractors possess Government property, agencies shall—

(a) Eliminate to the maximum practical extent any competitive advantage that might arise from using such property;

(b) Require contractors to use Government property to the maximum practical extent in performing Government contracts;

(c) Permit the property to be used only when authorized;

(d) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;

(e) Require contractors to be responsible and accountable for, and keep the Government's official records of Government property in their possession or control (but see 45.105);

(f) Require contractors to review and provide justification for retaining Government property not currently in use; and

(g) Ensure maximum practical reutilization of contractor inventory (see 45.601) within the Government.

45.103 Responsibility and liability for Government property.

(a) Contractors are responsible and liable for Government property in their possession, unless otherwise provided by the contract.

(b) Generally, Government contracts do not hold contractors liable for loss of or damage to Government property when the property is provided under—

(1) Negotiated fixed-price contracts for which the contract price is not based upon an exception at 15.403-1;

(2) Cost-reimbursement contracts;

(3) Facilities contracts; or

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government installation and is subject to accessibility by may be the case when the contractor is using Government property primarily for commercial work rather than Government work.

(d) If the Government provides Government property directly to a subcontractor, the terms of paragraph (b) of this section shall apply to the subcontractor.

(e) Subcontractors are liable for loss of or damage to Government property furnished through a prime contractor. However, if the prime contract is of a type listed in subparagraph (b)(1) or (2) of this section, the prime contractor may, after obtaining the contracting officer's consent, reduce the subcontractor's liability by including in the subcontract a clause similar to paragraph (g), Limited risk of loss, as provided in Alternate I of the clause at 52.245-2, Government Property (Fixed-Price Contracts), (for fixed-price contracts) or similar to the same paragraph of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (for cost-reimbursement contracts). Before consenting to a clause that reduces the subcontractor's liability, the contracting officer should ensure that the Government's interests are sufficiently protected.

(f) A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

45.104 Review and correction of contractors' property control systems.

(a) The review and approval of a contractor's property control system shall be accomplished by the agency responsible for contract administration at a contractor's plant or installation. The review and approval of a contractor's property control system by one agency shall be binding on all other departments and agencies based on interagency agreements.

(b) The contracting officer or the representative assigned the responsibility as property administrator shall review contractors' property control systems to ensure compliance with the Government property clauses of the contract.

(c) The property administrator shall notify the contractor in writing when its property control system does not comply with Subpart 45.5 or other contract requirements and shall request prompt correction of deficiencies. If the

(3) Advise the contractor that its liability for loss of or damage to Government property may increase if approval is withheld or withdrawn.

45.105 Records of Government property.

(a) Contractor records of Government property established and maintained under the terms of the contract are the Government's official Government property records. Duplicate official records shall not be furnished to or maintained by Government personnel, except as provided in paragraph (b) of this section.

(b) Contracts may provide for the contracting office to maintain the Government's official Government property records when the contracting office retains contract administration and Government property is furnished to a contractor—

(1) For repair or servicing and return to the shipping organization;

(2) For use on a Government installation;

(3) Under a local support service contract;

(4) Under a contract with a short performance period; or

(5) When otherwise determined by the contracting officer to be in the Government's interest.

45.106 Government property clauses.

This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.

(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.

(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) of this section.

(2) If the contract is—

(i) A negotiated fixed-price contract for which prices are not based on an exception at 15.403-1; or

(ii) A fixed-price service contract which is performed primarily on a Government installation, provided 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.

(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is $100,000 or less; unless a contract with an educational or nonprofit organization is contemplated.

(e) When the cost of the item to be repaired does not exceed the simplified acquisition threshold, purchase orders for property repair need not include a Government property clause.

(f)(1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) of this section.

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.

(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts), in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.

Subpart 45.2—Competitive Advantage

45.201 General.

(a) The contracting officer shall, to the maximum practical extent, eliminate competitive advantage accruing to a

equipment acquired or fabricated at Government expense.

(4) When, as a result of the prospective contractor's written statement asserting inability to obtain facilities, the agency head or designee issues a Determination and Finding (see Subpart 1.7) that the contract cannot be fulfilled by any other practical means or that it is in the public interest to provide the facilities.

(i) If the contractor's inability to provide facilities is due to insufficient lead time, the Government may provide existing facilities until the contractor's facilities can be installed.

(ii) Mere assertion by a contractor that it is unable to provide facilities is not, in itself, sufficient to justify approval. Appropriate Government officials must determine that providing Government facilities is justified.

(iii) The determination shall include findings that private financing of the facilities was sought but not available or that private financing was determined not advantageous to the Government. The determination shall also state that the contract cannot be accomplished without Government facilities being provided.

(iv) The original determination shall be included in the contract file.

(v) No determination is required when the facilities are provided as components of special tooling or special test equipment acquired or fabricated at Government expense.

(5) As otherwise authorized by law or regulation.

(b) Agencies shall not—

(1) Furnish new facilities to contractors unless existing Government-owned facilities are either inadequate or cannot be economically furnished;

(2) Use research and development funds to provide contractors with new construction or improvements of general utility, unless authorized by law; or

(3) Provide facilities to contractors solely for non-Government use, unless authorized by law.

(c) Competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must be moved into a contractor's plant, unless adequate price competition cannot be otherwise obtained. Such solicitations shall require contractors to identify the

(3) A contractor is performing on a Government establishment or installation;

(4) A contractor is performing under a contract specifying that it may acquire or fabricate special tooling, special test equipment, and components thereof subsequent to obtaining the approval of the contracting officer; or

(5) The facilities are unavailable from other than Government sources.

45.302-2 Facilities contracts.

(a) Facilities shall be provided to a contractor or subcontractor only under a facilities contract using the appropriate clauses required by 45.302-6, except as provided in 45.302-3.

(b) All facilities provided by a contracting activity for use by a contractor at any one plant or general location shall be governed by a single facilities contract, unless the contracting officer determines this to be impractical. Each agency should consolidate, to the maximum practical extent, its facility contracts covering specific contractor locations.

(c) No fee shall be allowed under a facilities contract. Profit or fee (plus or minus) shall be considered in awarding any related supply or service contract, consistent with the profit guidelines of 15.404-4.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but may be provided under a facilities contract when administratively desirable.

(e) Agencies shall ensure that facility projects involving real property transactions comply with applicable laws (*e.g.*, 10 U.S.C. 2676 and 41 U.S.C. 12 and 14).

45.302-3 Other contracts.

(a) Facilities may be provided to a contractor under a contract other than a facilities contract when one of the following exceptions applies—

(1) The actual or estimated cumulative acquisition cost of the facilities provided by the contracting activity to the contractor at one plant or general location does not exceed $1,000,000;

(2) The number of items of plant equipment provided is ten or fewer;

(3) The contract performance period is twelve months or less;

the appropriate Government property clause or, in the case of subparagraph (a)(5) of this subsection, by appropriate portions of the facilities clauses.

(c) No profit or fee shall be allowed on the cost of the facilities when purchased for the account of the Government under other than a facilities contract. General purpose components of special tooling or special test equipment are not facilities.

45.302-4 Contractor use of Government-owned and -operated test facilities.

(a) Agencies may authorize onsite use by contractors of existing Government-owned and -operated test facilities in connection with Government contracts only when—

(1) No adequate commercial test capability is available;

(2) Substantial cost savings will result from using the Government-owned test facilities; or

(3) Otherwise authorized by law.

(b) When such use is authorized, the contracting officer shall obtain adequate consideration comparable to commercial rates.

45.302-5 Standby or layaway requirements.

A facilities contract may include requirements for maintenance and storage of Government production and research property in standby or layaway status. The contract shall include appropriate specifications for the care and maintenance of the property. If the Government is required to pay the contractor for maintenance and storage, the contract shall define what constitutes standby or lay-away and specify when payments will begin and end. The contract may provide for reimbursing the contractor for any State or local property tax it is required to pay because of its possession of or interest in such property (see 31.205-41).

45.302-6 Required Government property clauses for facilities contracts.

(a) The contracting officer shall insert the clause at 52.245-7, Government Property (Consolidated Facilities), in solicitations and contracts when a consolidated facilities contract is contemplated (see 45.301).

(b) The contracting officer shall insert the clause at 52.245-8, Liability for the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities other than on a rent-free basis.

(d) The contracting officer shall insert the clause at 52.245-10, Government Property (Facilities Acquisition), in solicitations and contracts when a facilities acquisition contract is contemplated (see 45.301).

(e)(1) The contracting officer shall insert the clause at 52.245-11, Government Property (Facilities Use), in solicitations and contracts when a facilities use contract is contemplated (see 45.301).

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education, or is awarded to a nonprofit organization whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.

45.302-7 Optional property-related clauses for facilities contracts.

(a) The contracting officer may insert the clause at 52.245-12, Contract Purpose (Nonprofit Educational Institutions), in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(b) The contracting officer may insert the clause at 52.245-13, Accountable Facilities (Nonprofit Educational Institutions), in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(c) The contracting officer may insert the clause at 52.245-14, Use of Government Facilities, in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(d) The contracting officer may, under a proper delegation of authority, insert the clause at 52.245-15, Transfer of Title to the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated for the conduct of basic or applied research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.015 and 45.302-6).

(e) The contracting officer may insert the clause at 52.245-16, Facilities Equipment Modernization, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is

(2) In Department of Defense contracts, the VE program requirement clause (52.248-1, Alternates I or II), shall be placed in initial production solicitations and contracts (first and second production buys) for major system acquisition programs as defined in DoD Directive 5000.1, except as specified in subdivisions (d)(2)(i) and (ii) of this section. A program requirement clause may be included in initial production contracts for less than major systems acquisition programs if there is a potential for savings. The contracting officer is not required to include a program requirement clause in initial production contracts—

(i) Where, in the judgment of the contracting officer, the prime contractor has demonstrated an effective VE program during either earlier program phases, or during other recent comparable production contracts.

(ii) Which are awarded on the basis of competition.

(e) Value engineering incentive payments do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b) (see 15.404-4(c)(4)(i)).

(f) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant or future contract savings.

(g) In the case of contracts for items requiring an extended period of production (*e.g.*, ship construction, major system acquisition), agencies may prescribe sharing of future contract savings on all future contract units to be delivered under contracts awarded for essentially the same item during the sharing period, even if the scheduled delivery date is outside the sharing period. For engineering-development and low-rate-initial-production contracts, the future sharing shall be on scheduled deliveries equal in number to the quantity required over the highest 36 consecutive months of planned production, based on planning or production documentation at the time the VECP is accepted.

(h) In the case of contracts for architect-engineer services, the contract shall include a separately priced line item for mandatory value engineering of the scope and level of effort required in the statement of work. The objective is to ensure that value engineering effort is applied to specified areas of the contract that offer opportunities for significant savings to the Government. There shall be no sharing of

graphs (c) and (d) of the value engineering clauses prescribed in Subpart 48.2. Upon receiving a VECP, the contracting officer or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency procedures and shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) The contracting officer is responsible for accepting or rejecting the VECP within 45 days from its receipt by the Government. If the Government will need more time to evaluate the VECP, the contracting officer shall notify the contractor promptly in writing, giving the reasons and the anticipated decision date. The contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective date of the contract modification, the contractor shall perform in accordance with the existing contract. If the Government accepts the VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid, the contractor shall reimburse the Government for the proportionate share of these payments. If the VECP is not accepted, the contracting officer shall provide the contractor with prompt written notification, explaining the reasons for rejection.

(c) The following Government decisions are not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613):

(1) The decision to accept or reject a VECP.

(2) The determination of collateral costs or collateral savings.

(3) The decision as to which of the sharing rates applies when Alternate II of the clause at 52.248-1, Value Engineering, is used.

48.104 Sharing arrangements.

48.104-1 Sharing acquisition savings.

(a) *Supply or service contracts.* (1) The sharing base for acquisition savings is normally the number of affected end items on contracts of the contracting office accepting the VECP. The sharing rates (Government/contractor) for net acquisition savings for supplies and services are based on

CONTRACT TYPE	(VOLUNTARY)		(MANDATORY)	
	Instant contract rate	Concurrent and future rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (other than incentive)	50/50	50/50	75/25	75/25
Incentive (fixed-price or cost)	*	50/50	*	75/25
Cost-reimbursement (other than incentive)**	75/25	75/25	85/15	85/15

*Same sharing arrangement as the contract's profit or fee adjustment formula.
**Includes cost-plus-award-fee contracts.

(2) Acquisition savings may be realized on the instant contract, concurrent contracts, and future contracts. The contractor is entitled to a percentage share (see subparagraph (a)(1) above) of any net acquisition savings. Net acquisition savings result when the total of acquisition savings becomes greater than the total of Government costs and any negative instant contract savings. This may occur on the instant contract or it may not occur until reductions have been negotiated on concurrent contracts or until future contract savings are calculated, either through lump-sum payment or as each future contract is awarded.

(i) When the instant contract is not an incentive contract, the contractor's share of net acquisition savings is calculated and paid each time such savings are realized. This may occur once, several times, or, in rare cases, not at all.

(ii) When the instant contract is an incentive contract, the contractor shares in instant contract savings through the contract's incentive structure. In calculating acquisition savings under incentive contracts, the contracting officer shall add any negative instant contract savings to the target cost or to the target price and ceiling price and then offset these negative instant contract savings and any Government costs against concurrent and future contract savings.

(3) The contractor shares in the savings on all affected units scheduled for delivery during the sharing period (but see 48.102(g)). The contractor is responsible for maintaining, for 3 years after final payment on the contract under which the VECP was accepted, records adequate to identify the first delivered unit incorporating the applicable VECP.

(4) Contractor shares of savings are paid through the contract under which the VECP was accepted. On incentive

(6) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The lump-sum method may be used only if the contracting officer has established that this is the best way to proceed and the contractor agrees. The contracting officer ordinarily shall make calculations as future contracts are awarded and, within 3 months after award, modify the instant contract to provide the contractor's share of the savings. For future contract savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items that the contracting officer will purchase for delivery during the sharing period. In deciding whether or not to use the more convenient lump-sum method for an individual VECP, the contracting officer shall consider—

(i) The accuracy with which the number of items to be delivered during the sharing period can be estimated and the probability of actual production of the projected quantity;

(ii) The availability of funds for a lump-sum payment; and

(iii) The administrative expense of amending the instant contract as future contracts are awarded.

(b) *Construction contracts.* Sharing on construction contracts applies only to savings on the instant contract and to collateral savings. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (1) 45 percent for fixed-price contracts or (2) 75 percent for cost-reimbursement contracts. Value engineering sharing does not apply to incentive construction contracts.

(c) *Architect-engineering contracts.* There shall be no sharing of value engineering savings in contracts for architect-engineer services.

48.104-2 Sharing collateral savings.

(a) The Government shares collateral savings with the contractor, unless the head of the contracting activity has determined that the cost of calculating and tracking collateral savings will exceed the benefits to be derived (see 48.201(e)).

(b) The contractor's share of collateral savings is 20 percent of the estimated savings to be realized during an average year of use but shall not exceed (1) the contract's firm-fixed-price, target price, target cost, or estimated cost,

effect in accordance with 15.403-4(a)(1) when the amount of a termination settlement agreement, or a partial termination settlement agreement plus the estimate to complete the continued portion of the contract exceeds the threshold in 15.403-4.

49.105-1 Termination status reports.

When the TCO and contracting officer are in different activities, the TCO will furnish periodic status reports on termination actions to the contracting office upon request. The contracting office shall specify the information required.

49.105-2 Release of excess funds.

(a) The TCO shall estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the contracting officer. The initial deobligation of excess funds should be accomplished in a timely manner by the contracting officer, or the TCO, if delegated the responsibility. The TCO shall not recommend the release of amounts under $1,000, unless requested by the contracting officer.

(b) The TCO shall maintain continuous surveillance of required funds to permit timely release of any additional excess funds (a recommended format for release of excess funds is in 49.604). If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO shall promptly inform the contracting officer, who shall reinstate the funds within 30 days.

49.105-3 Termination case file.

The TCO responsible for negotiating the final settlement shall establish a separate case file for each termination. This file will include memoranda and records of all actions relative to the settlement (see 4.801).

49.105-4 Cleanup of construction site.

In the case of terminated construction contracts, the contracting officer shall direct action to ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other action necessary to leave a safe and healthful site.

49.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO submit settlement proposals of less than $100,000 to the audit agency. Referrals shall indicate any specific information or data that the TCO desires and shall include facts and circumstances that will assist the audit agency in performing its function. The audit agency shall develop requested information and may make any further accounting reviews it considers appropriate. After its review, the audit agency shall submit written comments and recommendations to the TCO. When a formal examination of settlement proposals under $100,000 is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

(b) The TCO shall refer subcontract settlements received for approval or ratification to the appropriate audit agency for review and recommendations when (1) the amount exceeds $100,000 or (2) the TCO wants a complete or partial accounting review. The audit agency shall submit written comments and recommendations to the TCO. The review by the audit agency does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review.

(c)(1) The responsibility of the prime contractor and of each subcontractor (see 49.108) includes performance of accounting reviews and any necessary field audits. However, the TCO should request the Government audit agency to perform the accounting review of a subcontractor's settlement proposal when—

(i) A subcontractor objects, for competitive reasons, to an accounting review of its records by an upper tier contractor;

(ii) The Government audit agency is currently performing audit work at the subcontractor's plant, or can perform the audit more economically or efficiently;

(iii) Audit by the Government is necessary for consistent audit treatment and orderly administration; or

(iv) The contractor has a substantial or controlling financial interest in the subcontractor.

(2) The audit agency should avoid duplication of accounting reviews performed by the upper tier contractor on subcontractor settlement proposals. However, this should not preclude the Government from making additional reviews when appropriate. When the contractor is performing accounting reviews according to this section, the TCO should request the audit agency to periodically examine the contractor's accounting review procedures and

subcontractor. Consistent with this, and when in the Government's interest, the TCO may furnish audit reports under paragraph (c) of this section to prime and higher tier subcontractors for their use in settling subcontract settlement proposals.

49.108 Settlement of subcontract settlement proposals.

49.108-1 Subcontractor's rights.

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. A subcontractor may have rights against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the settlement proposals of their immediate subcontractors.

49.108-2 Prime contractor's rights and obligations.

(a) Termination for convenience clauses provide that after receipt of a termination notice the prime contractor shall, unless directed otherwise by the TCO, terminate all subcontracts to the extent that they relate to the performance of prime work terminated. Therefore, prime contractors should include a termination clause in their subcontracts for their own protection. Suggestions regarding use of subcontract termination clauses are in Subpart 49.5.

(b) The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not—

(1) Affect the Government's right to require the termination of the subcontract; or

(2) Increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(c) In any case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount due under paragraph (f) of the subcontract termination clause suggested in 49.502(e). The TCO shall allow reimbursement in excess of that amount only in unusual cases and then only to the extent that the terms of the subcontract did not unreasonably increase the rights of the subcontractor.

for adequate review by the Government. In no event will the Government pay the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see 49.108-5).

(b) Except as provided in 49.108-4, the TCO shall require that—

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with Part 45; and

(2) The prime contractor submit, for approval or ratification, all termination settlements with subcontractors.

(c) The TCO shall promptly examine each subcontract settlement received to determine that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see 49.002(b)). The TCO will also determine if the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or, if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the TCO shall generally be guided by the provisions of this part relating to the settlement of prime contracts, and shall comply with any applicable requirements of 49.107 and 49.111 relating to accounting and other reviews. After the examination, the TCO shall notify the contractor in writing of—

(1) Approval or ratification, or

(2) The reasons for disapproval.

49.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1) The TCO may, upon written request, give written authorization to the prime contractor to conclude settlements of subcontracts terminated in whole or in part without approval or ratification when the amount of settlement (see 49.002(d)) is $100,000 or less, if—

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling settlement proposals, including proposals for retention, sale, or other disposal of termination inventory of the immediate and lower tier subcontractors (the TCO shall obtain the advice and recommendations of—

(A) The appropriate audit agency relating to the adequacy of the contractor's audit administration, including personnel, and

contract.

49.109-5 Partial settlements.

The TCO should attempt to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, the TCO shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a TCO cannot promptly complete settlement under the terminated contract, a partial settlement may be entered into if—

(a) The issues on which agreement has been reached are clearly severable from other issues and

(b) The partial settlement will not prejudice the Government's or contractor's interests in disposing of the unsettled part of the settlement proposal.

49.109-6 Joint settlement of two or more settlement proposals.

(a) With the consent of the contractor, the TCO or TCO's concerned may negotiate jointly two or more termination settlement proposals of the same contractor under different contracts, even though the contracts are with different contracting offices or agencies. In such cases, accounting work shall be consolidated to the greatest extent practical. The resulting settlement may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved.--

(b) When the settlement agreement covers more than one contract, it shall—

(1) Clearly identify the contracts involved,

(2) Assign an amendment modification number to each contract,

(3) Apportion the total amount of the settlement among the several contracts on some reasonable basis,

(4) Have attached or incorporated a schedule showing the apportionment, and

(5) Be distributed and attached to each contract involved in the same manner as other contract modifications.

49.109-7 Settlement by determination.

(a) *General.* If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination of the amount due the contractor, the TCO shall give the contractor at least 15 days notice by certified mail (return receipt requested) to submit written evidence, so as to reach the TCO on or before a stated date, substantiating the amount previously proposed.

(c) *Justification of settlement proposal.* (1) The contractor has the burden of establishing, by proof satisfactory to the TCO, the amount proposed.

(2) The contractor may submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as desired. The TCO may request the contractor to submit additional documents and data, and may request appropriate accountings, investigations, and audits.

(3) The TCO may accept copies of documents and records without requiring original documents unless there is a question of authenticity.

(4) The TCO may hold any conferences considered appropriate—

(i) To confer with the contractor,

(ii) To obtain additional information from Government personnel or from independent experts, or

(iii) To consult persons who have submitted affidavits or reports.

(d) *Determinations.* After reviewing the information available, the TCO shall determine the amount due and shall transmit a copy of the determination to the contractor by certified mail (return receipt requested), or by any other method that provides evidence of receipt. The transmittal letter shall advise the contractor that the determination is a final decision from which the contractor may appeal under the Disputes clause, except as shown in paragraph (f) of this section. The determination shall specify the amount due the contractor and will be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in 49.602-1 and by additional information, schedules, and analyses as appropriate. The TCO shall explain each major item of disallowance. The TCO need not reconsider any other action relating to the terminated portion of the contract that was ratified or approved by the TCO or another contracting officer.

(e) *Preservation of evidence.* The TCO shall retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. The TCO shall return books of account, together with other original papers and documents, to the contractor within a reasonable time.

(g) *Decision on the contractor's appeal.* The TCO shall give effect to a decision of the Claims Court or a board of contract appeals, when necessary, by an appropriate modification to the contract. When appropriate, the TCO should obtain a release from the contractor. TCO's are authorized to modify the formats of settlement agreements in 49.603 to agree with this provision.

49.110 Settlement negotiation memorandum.

(a) The TCO shall, at the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities. Pricing aspects of the settlement shall be documented in accordance with 15.406-3. The memorandum shall be distributed in accordance with 15.406-3.

(b) If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually, but shall support the total amount of the recommended settlement in reasonable detail. The memorandum shall include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered. The TCO should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

49.111 Review of proposed settlements.

Each agency shall establish procedures, when necessary, for the administrative review of proposed termination settlements. When one agency provides termination settlement services for another agency, the agency providing the services shall also perform the settlement review function.

49.112 Payment.

49.112-1 Partial payments.

(a) *General.* If the contract authorizes partial payments on settlement proposals before settlement, a prime contractor may request them on the form prescribed in 49.602-4 at any time after submission of interim or final settlement proposals. The Government will process applications for partial payments promptly. A subcontractor shall submit its application through the prime contractor which shall attach its own shall consider the diligence of the contractor in settling with subcontractors and in preparing its own settlement proposal.

(b) *Amount of partial payment.* Before approving any partial payment, the TCO shall obtain any desired accounting, engineering, or other specialized reviews of the data submitted in support of the contractor's settlement proposal. If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, reasonable payments may be authorized in the discretion of the TCO up to—

(1) 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO (see 49.205);

(2) 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO under 49.108-3(c) or was authorized under 49.108-4;

(3) 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) 90 percent of other allowable costs (including settlement expense and manufacturing and administrative indirect costs) allocable to the terminated portion of the contract and not included in subparagraphs (b)(1), (2), or (3) of this section; and

(5) 100 percent of partial payments made to subcontractors under this section.

(c) *Recognition of assignments.* When an assignment of claims has been made under the contract, the Government shall not make partial payments to other than the assignee unless the parties to the assignment consent in writing (see 32.805(e)).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of termination inventory, the TCO shall protect the Government's interest. This shall be done by obtaining title to the completed end items or termination inventory, or by the creation of a lien in favor of the Government, paramount to all other liens, on the completed end items or termination inventory, or by other appropriate means.

(e) Deductions in computing amount of partial payments. The TCO shall deduct from the gross amount of any partial payment otherwise payable under 49.112-1(b)—

(1) All unliquidated balances of progress and advance payments (including interest) made to the contrac-

Settlement Proposal (Total Cost Basis); and

(iii) Reduce the gross amount of the settlement by the total of all progress and other payments.

(c) *Other basis.* Settlement proposals may not be submitted on any basis other than paragraph (a) or (b) of this section without the prior approval of the chief of the contracting or contract administration office.

49.206-3 Submission of inventory schedules.

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on the forms prescribed in 49.602-2 and in accordance with 45.606-5.

49.207 Limitation on settlements.

The total amount payable to the contractor for a settlement, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

49.208 Equitable adjustment after partial termination.

Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. The TCO shall forward the proposal to the contracting officer except when negotiation authority is delegated to the TCO. The contractor shall submit the proposal in the format of Table 15-2 of 15.408.

(a) When the contracting officer retains responsibility for negotiating the equitable adjustment and executing a supplemental agreement, the contracting officer shall ensure that no portion of an increase in price is included in a termination settlement made or in process.

(b) The TCO shall also ensure that no portion of the costs included in the equitable adjustment are included in the termination settlement.

what costs are allowable.

49.302 Discontinuance of vouchers.

(a) When the contract has been completely terminated, the contractor shall not use Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal) after the last day of the sixth month following the month in which the termination is effective. The contractor may elect to stop using vouchers at any time during the 6-month period. When the contractor has vouchered out all costs within the 6-month period, a proposal for fee, if any, may be submitted on SF 1437 (see 49.602-1) or by letter appropriately certified. The contractor must submit a substantiated proposal for fee to the TCO within 1 year from the effective date of termination, unless the period is extended by the TCO. When the use of vouchers is discontinued, the contractor shall submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

(b) When the contract is partially terminated, 49.304 shall apply.

49.303 Procedure after discontinuing vouchers.

49.303-1 Submission of settlement proposal.

The contractor shall submit a final settlement proposal covering unvouchered costs and any proposed fee to within 1 year from the effective date of termination, unless the period is extended by the TCO. The contractor shall use the form prescribed in 49.602-1, unless the TCO authorizes otherwise. The proposal shall not include costs that have been—

(a) Finally disallowed by the contracting officer; or

(b) Previously vouchered and formally questioned by the Government but not yet decided as to allowability.

49.303-2 Submission of inventory schedules.

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory sched-

49.303-4 Adjustment of indirect costs.

(a) If the contract contains the clause at 52.216-7, Allowable Cost and Payment, and it appears that adjustment of indirect costs will unduly delay final settlement, the TCO, after obtaining information from the appropriate audit agency, may agree with the contractor to—

(1) Negotiate the amount of indirect costs for the contract period for which final indirect cost rates have not been negotiated, or to use billing rates as final rates for this period if the billing rates appear reasonable; or

(2) Reserve any indirect cost adjustment in the final settlement agreement, pending establishment of negotiated rates under Subpart 42.7.

(b) When an amount of indirect cost is negotiated under subparagraph (a)(1) of this section, the contractor shall eliminate the indirect cost and the related direct costs on which it was based from the total pool and base used to compute indirect costs for other contracts performed during the applicable accounting period.

49.303-5 Final settlement.

(a) The TCO shall proceed with the settlement and execution of a settlement agreement upon receipt of the audit report, if applicable, and the contract audit closing statement covering vouchered costs.

(b) The TCO shall adjust the fee as provided in 49.305.

(c) The final settlement agreement may include all demands of the Government and proposals of the contractor under the terminated contract. However, no amount shall be allowed for any item of cost disallowed by the Government, nor for any other item of cost of the same nature.

(d) If an overall settlement of costs is agreed upon, agreement on each element of cost is not necessary. If appropriate, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not include costs that are clearly not allowable under the terms of the contract.

49.304 Procedure for partial termination.

49.304-1 General.

(a) In a partial termination, the TCO shall limit the settlement to an adjustment of the fee, if any, and with the

(b) In the case of the exceptions in paragraph (a), the procedures in 49.302 and 49.303 apply.

49.304-2 Submission of settlement proposal (fee only).

The contractor shall limit the settlement proposal to a proposed reduction in the amount of fee. The final settlement proposal shall be submitted to the TCO within one year from the effective date of termination, unless the period is extended by the TCO. The proposal may be submitted in the form prescribed in 49.602-1 or by letter appropriately certified. The contractor shall substantiate the amount of fee claimed (see 49.305).

49.304-3 Submission of vouchers.

When a partial termination settlement is limited to adjustment of fee, the contractor shall continue to submit the SF 1034, Public Voucher for Purchases and Services Other than Personal, for costs reimbursable under the contract. The contractor shall not be reimbursed for costs of settlements with subcontractors unless required approvals or ratifications have been obtained (see 49.108).

49.305 Adjustment of fee.

49.305-1 General.

(a) The TCO shall determine the adjusted fee to be paid, if any, in the manner provided by the contract. The determination is generally based on a percentage of completion of the contract or of the terminated portion. When this basis is used, factors such as the extent and difficulty of the work performed by the contractor (*e.g.*, planning, scheduling, technical study, engineering work, production and supervision, placing and supervising subcontracts, and work performed by the contractor in (1) stopping performance, (2) settling terminated subcontracts, and (3) disposing of termination inventory) shall be compared with the total work required by the contract or by the terminated portion. The contractor's adjusted fee shall not include an allowance for fee for subcontract effort included in subcontractors' settlement proposals.

(b) The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion is only one factor in computing the percentage of completion. This percentage may be either greater or less than that indicated

No amendment or modification shall increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, if the contract was negotiated under 10 U.S.C. 2304(a)(15) or 41 U.S.C. 252(c)(14), or FAR 14.404-1(f).

(d) No informal commitment shall be formalized unless—

(1) The contractor submits a written request for payment within 6 months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment; and

(2) The approving authority finds that, at the time the commitment was made, it was impracticable to use normal contracting procedures.

(e) The exercise of authority by officials below the secretarial level is subject to the following additional limitations:

(1) The action shall not—

(i) Release a contractor from performance of an obligation over $50,000;

(ii) Result in an increase in cost to the Government over $50,000;

(iii) Deal with, or directly affect, any matter that has been submitted to the General Accounting Office; or

(iv) Involve disposal of Government surplus property.

(2) Mistakes shall not be corrected by an action obligating the Government for over $1,000, unless the contracting officer receives notice of the mistake before final payment.

(3) The correction of a contract because of a mistake in its making shall not increase the original contract price to an amount higher than the next lowest responsive offer of a responsible offeror.

Subpart 50.3—Contract Adjustments

50.300 Scope of subpart.

This subpart prescribes standards and procedures for processing contractors' requests for contract adjustment under the Act and Executive order.

50.301 General.

The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by the Act. Whether appropriate action will facilitate the national mines that the circumstances warrant action.

50.302 Types of contract adjustment.

50.302-1 Amendments without consideration.

(a) When an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be amended without consideration, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) When a contractor suffers a loss (not merely a decrease in anticipated profits) under a defense contract because of Government action, the character of the action will generally determine whether any adjustment in the contract will be made, and its extent. When the Government directs its action primarily at the contractor and acts in its capacity as the other contracting party, the contract may be adjusted in the interest of fairness. Thus, when Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.

50.302-2 Correcting mistakes.

(a) A contract may be amended or modified to correct or mitigate the effect of a mistake. The following are examples of mistakes that may make such action appropriate:

(1) A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.

(2) A contractor's mistake so obvious that it was or should have been apparent to the contracting officer.

(3) A mutual mistake as to a material fact.

(b) Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly.

50.302-3 Formalizing informal commitments.

Under certain circumstances, informal commitments may be formalized to permit payment to persons who have taken action without a formal contract; for example, when a

expeditiously.

50.303 Contract adjustment.

50.303-1 Contractor requests.

A contractor seeking a contract adjustment shall submit a request in duplicate to the contracting officer or an authorized representative. The request, normally a letter, shall state as a minimum—

(a) The precise adjustment requested;

(b) The essential facts, summarized chronologically in narrative form;

(c) The contractor's conclusions based on these facts, showing, in terms of the considerations set forth in 50.301 and 50.302 above, when the contractor considers itself entitled to the adjustment; and

(d) Whether or not—

(1) All obligations under the contracts involved have been discharged;

(2) Final payment under the contracts involved has been made;

(3) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and

(4) The contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipates doing so.

50.303-2 Contractor certification.

A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that—

(a) The request is made in good faith and

(b) The supporting data are accurate and complete to the best of that person's knowledge and belief.

50.304 Facts and evidence.

(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under 50.303-1 with any of the following information:

(1) A brief description of the contracts involved, the dates of execution and amendments, the items being be received or to become due, including advance and progress payments; amounts withheld by the Government; and information as to any obligations of the Government yet to be performed under the contracts.

(4) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes.

(5) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose, be disposed of under the contract terms.

(6) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, as necessary to support the request's monetary elements.

(8) A list of persons connected with the contracts who have factual knowledge of the subject matter, including, when possible, their names, offices or titles, addresses, and telephone numbers.

(9) A statement and evidence of steps taken to reduce losses and claims to a minimum.

(10) Any other relevant statements or evidence that may be required.

(b) *Amendments without consideration—essentiality a factor.* When a request involves possible amendment without consideration, and essentiality to the national defense is a factor (50.302-1(a)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed.

(3) A statement and evidence of the contractor's estimate of the final price of the contracts, taking into account

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52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.
52.247-47 Evaluation—F.o.b. Origin.
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52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.
52.247-53 Freight Classification Description.
52.247-54 [Reserved]
52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.
52.247-56 Transit Arrangements.
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52.247-62 Specific Quantities Unknown.
52.247-63 Preference for U.S.-Flag Air Carriers.
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52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.
52.247-66 Returnable Cylinders.
52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit.
52.248-1 Value Engineering.
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52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).
52.249-2 Termination for Convenience of the Government (Fixed-Price).
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).
52.249-4 Termination for Convenience of the Government (Services) (Short Form).
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
52.249-6 Termination (Cost-Reimbursement).
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52.251-2 Interagency Fleet Management System Vehicles and Related Services.
52.252-1 Solicitation Provisions Incorporated by Reference.
52.252-2 Clauses Incorporated by Reference.
52.252-3 Alterations in Solicitation.
52.252-4 Alterations in Contract.
52.252-5 Authorized Deviations in Provisions.
52.252-6 Authorized Deviations in Clauses.
52.253-1 Computer Generated Forms.

Subpart 52.3—Provision and Clause Matrix

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

52.000 Scope of part.

This part—

(a) Gives instructions for using provisions and clauses in solicitations and/or contracts;

(b) Sets forth the solicitation provisions and contract clauses prescribed by this regulation; and

(c) Presents a matrix listing the FAR provisions and clauses applicable to each principal contract type and/or purpose (*e.g.*, fixed-price supply, cost-reimbursement research and development).

Subpart 52.1—Instructions for Using Provisions and Clauses

52.100 Scope of subpart.

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

52.101 Using Part 52.

(a) *Definitions.*

"Alternate" means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate version of a pro-

of the provision or clause (see 52.104).

"Solicitation provision" or "provision" means a term or condition used only in solicitations and applying only before contract award.

"Substantially as follows" or "substantially the same as," when used in the prescription and preface of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided, that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

(b) *Numbering*—(1) *FAR provisions and clauses.* Subpart 52.2 sets forth the text of all FAR provisions and clauses, each in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with "52.2," since the text of all FAR provisions and clauses appear in Subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned issued by a suborganization of an agency to satisfy the needs of that particular suborganization; or

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

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

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

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

(iii) The sequential number at the end of the number of a provision or clause that supplements the FAR, like its counterpart at the end of any FAR provision or clause number, indicates the subsection location of the provision or clause in Subpart 52.2 of the agency acquisition regulation

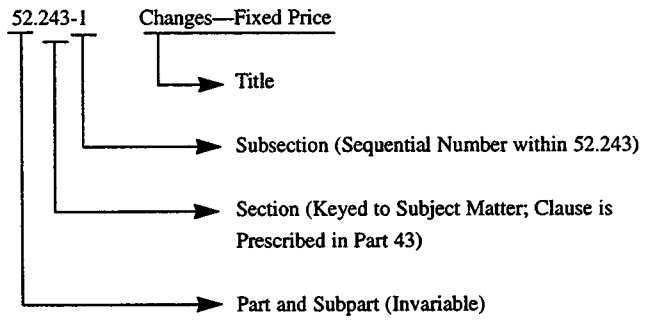

Figure 1

(3) Each quantity specified in the delivery schedule;
(4) The total item quantity for each destination;or
(5) The total quantity of each item without regard to destination.

52.211-17 Delivery of Excess Quantities.

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

DELIVERY OF EXCESS QUANTITIES (SEP 1989)

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

(End of clause)

52.211-18 Variation in Estimated Quantity.

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

VARIATION IN ESTIMATED QUANTITY (APR 1984)

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

52.212-1 Instructions to Offerors—Commercial Items.

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

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (JUN 1997)

(a) *Standard industrial classification (SIC) code and small business size standard.* The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

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

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

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

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3;

(9) Acknowledgment of Solicitation Amendments;

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

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solici-

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

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

(f) *Late offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

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

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

(i) *Availability of requirements documents cited in the solicitation.* (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the:

General Services Administration
Federal Supply Service Bureau
Specifications Section, Suite 8100
470 L'Enfant Plaza, SW
Washington, DC 20407

((202) 619-8925).

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Individual documents may be ordered from the Telespecs ordering system by touch-tone telephone. A customer number is required to use this service and can be obtained from the Standardization Documents Order Desk or the Special Assistance Desk (telephone (610) 607-2667 /2179).

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

(End of provision)

52.212-2 Evaluation—Commercial Items

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

EVALUATION—COMMERCIAL ITEMS (OCT 1997)

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

_____

_____

_____

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

Technical and past performance, when combined, are _____ [*Contracting Officer state, in accordance with FAR 15.304, the relative importance of all other evaluation factors, when combined, when compared to price.*]

proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids." Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal of a technical proposal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date, or the technical proposal, modification, or withdrawal of technical proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

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

(f) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(End of provision)

52.214-24 Multiple Technical Proposals.

As prescribed in 14.201-6(s), insert the following provision:

MULTIPLE TECHNICAL PROPOSALS (APR 1984)

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)

52.214-25 Step Two of Two-Step Sealed Bidding.

As prescribed in 14.201-6(t), insert the following provision:

STEP TWO OF TWO-STEP SEALED BIDDING (APR 1985)

(a) This invitation for bids is issued to initiate step two of two-step sealed bidding under Subpart 14.5 of the Federal Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step one of this acquisition under _____[*the Contracting Officer shall insert the identification of the step-one request for technical proposals*].

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)

52.214-26 Audit and Records—Sealed Bidding.

As prescribed in 14.201-7(a), insert the following clause:

the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.

(End of clause)

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(b), insert the following clause:

15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(c), insert the following clause in solicitations and contracts:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1(b) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR subsection 15.406–2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1).

(End of clause)

52.214-29 Order of Precedence—Sealed Bidding.

As prescribed in 14.201-7(d), insert the following clause:

ORDER OF PRECEDENCE—SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications);
(b) Representations and other instructions;
(c) Contract clauses;
(d) Other documents, exhibits, and attachments; and
(e) The specifications.

(End of clause)

52.214-30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201-6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (JAN 1997)

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

52.214-31 Facsimile Bids.

As prescribed in 14.201-6(w), insert the following provision:

FACSIMILE BIDS (DEC 1989)

(a) *Definition.* "Facsimile bid," as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

_____

(2) Compatibility characteristics of receiving facsimile equipment (*e.g.*, make and model number, receiving speed, communications protocol):

_____

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

(1) Receipt of garbled or incomplete bid.

(2) Availability or condition of the receiving facsimile equipment.

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

As prescribed in 14.201-6(c)(4), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (MAY 1997)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation; or

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(e) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(End of provision)

52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas).

As prescribed in 14.201-6(v), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (MAY 1997)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S. Federal holidays; or

(3) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (1) the use of a telegram (or mailgram) is authorized, and (2) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids."

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(e) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the office designated for receipt of technical proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(End of provision)

52.214-34 Submission of Offers in the English Language.

As prescribed in 14.201-6(x) and 25.408(d), insert the following provision:

SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 Submission of Offers in U.S. Currency.

As prescribed in 14.201-6(y) and 25.408(d), insert the following provision:

SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing" or "written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (*e.g.*, electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Late proposals and revisions.* (i) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and—

(A) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (*e.g.*, an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;

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

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision

machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

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

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(3)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(3)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars, unless otherwise permitted by the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

Alternate I (Oct 1997). As prescribed in 15.209(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

Alternate II (Oct 1997). As prescribed in 15.209(a)(2), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(c)(9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

52.215-2 Audit and Records—Negotiation.

As prescribed in 15.209(b), insert the following clause:

AUDIT AND RECORDS—NEGOTIATION (AUG 1996)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General*—(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

Alternate I (Jan 1997). As prescribed in 15.209(b)(2), in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

> The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

Alternate II (Jan 1997). As prescribed in 15.209(b)(3), in cost-reimbursement contracts with educational and other non-profit institutions, add the following paragraph (h) to the basic clause:

> (h) The provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this contract.

Alternate III (Jan 1997). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly.

52.215-3 Request for Information or Solicitation for Planning Purposes.

As prescribed in 15.209(c), insert the following provision:

(b) Although proposal and offeror are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

52.215-4 Type of Business Organization.

As prescribed in 15.209(d), insert the following provision:

TYPE OF BUSINESS ORGANIZATION (OCT 1997)

The offeror or respondent, by checking the applicable box, represents that—

(a) It operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation incorporated under the laws of the State of _____.

(b) If the offeror or respondent is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in _____.
(country)

(End of provision)

52.215-5 Facsimile Proposals.

As prescribed in 15.209(e), insert the following provision:

FACSIMILE PROPOSALS (OCT 1997)

(a) *Definition.* "Facsimile proposal," as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conforms received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(End of provision)

52.215-6 Place of Performance.

As prescribed in 15.209(f), insert the following provision:

PLACE OF PERFORMANCE (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

PLACE OF PERFORMANCE (STREET ADDRESS, CITY, STATE, COUNTY, ZIP CODE)	NAME AND ADDRESS OF OWNER AND OPERATOR OF THE PLANT OR FACILITY IF OTHER THAN OFFEROR OR RESPONDENT
_____	_____
_____	_____

(End of provision)

52.215-7 Annual Representations and Certifications—Negotiation.

As prescribed in 15.209(g), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATION (OCT 1997)

The offeror has [*check the appropriate block*]:

tions.

(End of provision)

52.215-8 Order of Precedence—Uniform Contract Format.

As prescribed in 15.209(h), insert the following clause:

ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT
(OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).
(b) Representations and other instructions.
(c) Contract clauses.
(d) Other documents, exhibits, and attachments.
(e) The specifications.

(End of clause)

52.215-9 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.408(a), insert the following clause:

CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM
(OCT 1997)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any "make" items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

Alternate II (Oct 1997). As prescribed in 15.408(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of "make" or "buy" for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

52.215-10 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.408(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
(OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.408(c), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215-12 Subcontractor Cost or Pricing Data.

As prescribed in 15.408(d), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)

52.215-13 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.408(e), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

(End of clause)

52.215-14 Integrity of Unit Prices.

As prescribed in 15.408(f)(1), insert the following clause:

INTEGRITY OF UNIT PRICES (OCT 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(f)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

52.215-15 Termination of Defined Benefit Pension Plans.

As prescribed in 15.408(g), insert the following clause:

TERMINATION OF DEFINED BENEFIT PENSION PLANS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

(End of clause)

52.215-16 Facilities Capital Cost of Money.

As prescribed in 15.408(h), insert the following provision:

FACILITIES CAPITAL COST OF MONEY (OCT 1997)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

(End of clause)

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

(End of clause)

52.215-19 Notification of Ownership Changes.

As prescribed in 15.408(k), insert the following clause:

NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of clause)

52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

As prescribed in 15.408(l), insert the following provision:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of provision)

Alternate I (Oct 1997). As prescribed in 15.408(l), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data and supporting attachments in the following format:

Alternate II (Oct 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.*]

Alternate IV (Oct 1997). As prescribed in 15.408(l), replace the text of the basic provision with the following:

Modifications.

As prescribed in 15.408(m), insert the following clause:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If—

(*1*) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(*2*) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the

original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of clause)

Alternate I (Octt 1997). As prescribed in 15.408(m), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format:

Alternate II (Oct 1997). As prescribed in 15.408(m), add the following paragraph (c) to the basic clause:

(c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format*]

Alternate IV (Oct 1997). As prescribed in 15.408(m), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: [*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403-3.*]

52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision:

TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a _____ [*Contracting Officer insert specific type of contract*] contract resulting from this solicitation.

(End of provision)

52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES (JAN 1997)

(a) The Contractor warrants that the unit price stated in the Schedule for _____ [*offeror insert Schedule line item number*] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that—

tract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective—

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit

The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD SUPPLIES (JAN 1997)

(a) The Contractor warrants that the supplies identified as line items _____ [*offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased,

applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

52.216-4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203-4(c), when contracting by negotiation, insert a clause that is substantially the same as the following clause in solicitations and contracts when the conditions specified in 16.203-4(c)(1)(i) through (iv) apply (but see 16.203-4(c)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(4), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL (JAN 1997)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under subparagraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for—

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

52.216-5 Price Redetermination—Prospective.

As prescribed in 16.205-4, insert the following clause:

PRICE REDETERMINATION—PROSPECTIVE (OCT 1997)

(a) *General.* The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that—

(1) The prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed; and

(2) In no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Price redetermination periods.* For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to _____, (see Note (1)) and the second and each succeeding period shall extend for _____ [*insert appropriate number*] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) *Data submission.* (1) Not more than _____ nor less than _____ (see Note (2)) days before the end of each redetermination period, except the last, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(ii) A statement of all costs incurred in performing this contract through the end of the _____ month (see Note (3)) before the submission of proposed prices in the format of Table 15-2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (d)(1) and (2) of this section, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting

Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) *Quarterly limitation on payments statement.* This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (h)(1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (h)(1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, dance with subdivisions (h)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits affected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) *Termination.* If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of

(2) Insert the number of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert "first," except that "second" may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

52.216-6 Price Redetermination—Retroactive.

As prescribed in 16.206-4, insert the following clause:

PRICE REDETERMINATION—RETROACTIVE (OCT 1997)

(a) *General.* The unit price and the total price stated in this contract shall be redetermined in accordance with this clause, but in no event shall the total amount paid under this contract exceed _____ [*insert dollar amount of ceiling price*].

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within _____ [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—

(i) Proposed prices;

(ii) A statement in the format of Table 15-2, FAR 15.408, or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (c)(1) of this section within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of

(e) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted

the amount under subdivision (g)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accor-

of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded,

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formed under this contract, but not reimbursed under it.

(End of clause)

52.216-15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(i), insert the following clause:

PREDETERMINED INDIRECT COST RATES (AUG 1996)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b) Not later than 90 days after the expiration of the Contractor's fiscal year (or other period specified in the Schedule), the Contractor shall submit to the cognizant Contracting Officer under Subpart 42.7 of the Federal Acquisition Regulation (FAR) and, if required by agency procedures, to the cognizant Government audit activity, proposed predetermined indirect cost rates and supporting cost data. The proposed rates shall be based on the Contractor's actual cost experience during that fiscal year or other period specified in the Schedule. Negotiation of predetermined indirect cost rates shall begin as soon as practical after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

INCENTIVE PRICE REVISION—FIRM TARGET (OCT 1997)

(a) *General.* The supplies or services identified in the Schedule as Items _____ [*Contracting Officer insert Schedule line item numbers*] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of _____ dollars ($ _____). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within _____ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall submit in the format of Table 15-2, FAR 15.408, or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this clause, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) of this clause by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) of this clause, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less _____ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus _____ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) *Contract modification.* The total final price of the items specified in paragraph (a) of this clause shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

tially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) of this clause. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with subparagraph (d)(2) of this clause, when the amount stated under subdivision (g)(1)(ii) of this clause differs from the aggregate target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted

Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) of this clause are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

Alternate I (Apr 1984). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

(o) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-17 Incentive Price Revision—Successive Targets.

As prescribed in 16.406(b), insert the following clause:

INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS
(OCT 1997)

(a) *General.* The supplies or services identified in the Schedule as Items _____ [*Contracting Officer insert line item numbers*] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of _____ dollars ($ _____). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of _____

allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Submitting data for establishing the firm fixed price or a final profit adjustment formula.* (1) Within _____ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has completed _____ (see Note 1), the Contractor shall submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, in the format of Table 15-2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, in the format of Table 15-2, FAR 15.408 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in subparagraph (1) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

initial period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Establishing firm fixed price or final profit adjustment formula.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) of this section.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by _____ percent (see Note 2) of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; *provided*, that in no event shall the total firm target profit be less than _____ percent or more than _____ percent [*Contracting Officer insert percents*] of the total initial cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less _____ percent of the amount by

profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph (d) of this section within _____ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this section, the Contractor shall submit in the format of Table 15-2, FAR 15.408 (or in any other form on which the parties agree)—

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision.* Unless a firm fixed price has been agreed to in accordance with paragraph (d) of this section, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) of this section, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) of this section, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under subparagraph (d)(4) of this section.

(g) *Contract modification.* The total final price of the items specified in paragraph (a) of this section shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) of this section. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under subparagraph (i)(1) of this section that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) of this section. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(i) *Quarterly limitation on payments statement.* This paragraph (i) shall apply until a firm fixed price or a total final price is established under subparagraph (d)(3) or (f)(2).

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted

applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (i)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (i)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(l) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other ment is made after the total final price is established, only the total final price shall be adjusted.

(n) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

NOTES:

(1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (Apr 1984). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

(q) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items.

purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after _____ [*insert date*].

(End of clause)

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than _____ [*insert date*]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

exceeding _____ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars.

(End of clause)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause:

CONTRACT DEFINITIZATION (OCT 1997)

(a) A _____ [*insert specific type of contract*] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____ [*insert specific type of proposal; e.g., fixed-price or cost-and-fee*] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [*insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data*]:

_____

_____

_____

_____

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

Alternate I (Apr 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated _____ [*insert "price ceiling" or "firm fixed price"*] in no event to exceed _____ [*insert the proposed price upon which the award was based*].

52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (APR 1984)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government shall promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing progress payments to subcontractors under fixed-price subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in Part 31 of Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term "costs" includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(ii) Direct labor;

(iii) Direct travel;

(iv) Other direct in-house costs; and

(v) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though it has not yet paid for such items or services.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be—

(1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

this solicitation.

(End of provision)

52.216-28 Multiple Awards for Advisory and Assistance Services.

As prescribed in 16.506(g), insert the following provision:

MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES (OCT 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

52.217-1 [Reserved]

52.217-2 Cancellation Under Multi-year Contracts.

As prescribed in 17.109(a), insert the following clause:

CANCELLATION UNDER MULTI-YEAR CONTRACTS (OCT 1997)

(a) "Cancellation," as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer—

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date—

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include—

(1) Reasonable nonrecurring costs (see Subpart 15.4 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

52.217-3 Evaluation Exclusive of Options.

As prescribed in 17.208(a), insert a provision substantially the same as in the following in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in 17.208(b) or (c):

EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; *i.e.*, options will not be included in the evaluation for award purposes.

(End of provision)

52.217-4 Evaluation of Options Exercised at Time of Contract Award.

As prescribed in 17.208(b), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUN 1988)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

52.217-5 Evaluation of Options.

As prescribed in 17.208(c)(1), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS (JUL 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the price of the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

52.217-6 Option for Increased Quantity.

As prescribed in 17.208(d), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY (MAR 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within [insert in the clause the period of time in which the Contracting Officer has to exercise the option]. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-7 Option for Increased Quantity—Separately Priced Line Item.

As prescribed in 17.208(e), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY—SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within [insert in the clause the period of time in which the Contracting Officer has to exercise the option]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-8 Option to Extend Services.

As prescribed in 17.208(f), insert a clause substantially the same as the following:

OPTION TO EXTEND SERVICES (AUG 1989)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than

receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms; and

(iv) Ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, PASS), guides, and other data that identify small, small disadvantaged and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating—

(A) Whether small business concerns were solicited and if not, why not;

(B) Whether small disadvantaged business concerns were solicited and if not, why not;

(C) Whether women-owned small business concerns were solicited and if not, why not; and

(D) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations; and

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small, small disadvantaged and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small, Small Disadvantaged and Women-Owned Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (Oct 1995). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (Mar 1996). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, which separately addresses subcontracting with small business concerns, small disadvantaged business concerns and women-owned negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

52.219-10 Incentive Subcontracting Program.

As prescribed in 19.708(c)(1), insert the following clause:

INCENTIVE SUBCONTRACTING PROGRAM (OCT 1997)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns, a certain percentage to small disadvantaged business concerns, and a certain percentage to women-owned small business concerns.

(b) If the Contractor exceeds its subcontracting goals in performing this contract, it will receive _____ [*insert the appropriate number between 0 and 10*] percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (*e.g.*, a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are not subject to the Disputes clause.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.404-4 of the Federal Acquisition Regulation.

(End of clause)

52.219-11 Special 8(a) Contract Conditions.

As prescribed in 19.811-3(a), insert the following clause:

SPECIAL 8(A) CONTRACT CONDITIONS (FEB 1990)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

be omitted when the design is to be performed—

(a) Outside the United States, its possessions, and Puerto Rico; or

(b) In a State or possession that does not have registration requirements for the particular field involved.

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)

52.236-26 Preconstruction Conference.

As prescribed in 36.522, insert the following clause:

PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

52.236-27 Site Visit (Construction).

As prescribed in 36.523, insert a provision substantially the same as the following:

SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters

(End of provision)

Alternate I (Feb 1995). If an organized site visit will be conducted, substitute a paragraph substantially the same as the following for paragraph (b) of the basic provision:

(b) An organized site visit has been scheduled for—

_____

[*Insert date and time*]

(c) Participants will meet at—

_____

[*Insert location*]

(End of provision)

52.236-28 Preparation of Proposals—Construction.

As prescribed in 36.520, insert the following provision:

PREPARATION OF PROPOSALS—CONSTRUCTION (OCT 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms; and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

(The next page is 52-247.)

from unpriced modifications to such contracts.

(b) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract—

(1) Is proposed to exceed $100,000; or

(2) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed $100,000.

(c) The advance notification required by paragraph (b) above shall include—

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant considerations controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;

ties considered.

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below:

_____

_____

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the acceptability of any subcontract price or of any amount paid under any subcontract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.404–4(c)(4)(i) of the Federal Acquisition Regulation (FAR).

(h) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(End of clause)

Alternate I (Apr 1984). If the Contracting Officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations (this election is not authorized for acquisition of major systems and subsystems or their components), add the following paragraph (i) to the basic clause:

(i) Paragraphs (b) and (c) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [*list subcontracts*]

tions to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either $25,000 or 5 percent of the total estimated cost of this contract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $25,000 or of any items of facilities.

(b)(1) In the case of a proposed subcontract that—

(i) Is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed $25,000, including any fee;

(ii) Is proposed to exceed $100,000; or

(iii) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (b)(2) of this clause.

(2)(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Contractor's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) of this clause without the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below:

_____

_____

_____

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph

tled to reimbursement from the Government.

(i) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(End of clause)

Alternate I (Aug 1996). If the contracting office is in DoD, the Coast Guard, or NASA, substitute the following subparagraph (a)(2) for subparagraph (a)(2) of the basic clause:

(a)(2) The proposed subcontract is fixed-price and exceeds the greater of—

(i) The simplified acquisition threshold; or

(ii) 5 percent of the total estimated cost of this contract.

52.244-3 Subcontracts (Time-and-Materials and Labor-Hour Contracts).

As prescribed in 44.204(c), insert the following clause:

SUBCONTRACTS (TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS) (OCT 1997)

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for furnishing any of the work called for in this contract, except for purchase of raw material or commercial stock items.

(b) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.404–4(c)(4)(i) of the Federal Acquisition Regulation (FAR).

(c) [illegible] conditions;

(2) Of the acceptability of any subcontract price or of any amount paid under any subcontract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(End of clause)

52.244-4 Subcontractors and Outside Associates and Consultants.

As prescribed in 44.204(d), insert the following clause in fixed-price architect-engineer contracts:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (APR 1984)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(e), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

ing contained in the clause at 52.202-1, Definitions.

"Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

52.245-1 Property Records.

As prescribed in 45.106(a), insert the following clause in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records:

PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)

and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the

highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of date of shipment. In the event the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements. This liability shall not attach if supplies are outsized or of such nature that they cannot be loaded at the highest minimum weight bracket.

(End of clause)

52.247-62 Specific Quantities Unknown.

As prescribed in 47.305-16(d)(2), insert the following clause in solicitations and contracts when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

SPECIFIC QUANTITIES UNKNOWN (APR 1984)

(a) For the purpose of evaluating "f.o.b. destination" offers, the Government estimates that the quantity specified will be shipped to the destinations indicated:

ESTIMATED QUANTITY	DESTINATION(S)
_____	_____
_____	_____

(b) If the quantity shipped to each destination varies from the quantity estimated, and if the variation results in a change in the transportation costs, appropriate adjustment shall be made.

(End of clause)

52.247-63 Preference for U.S.-Flag Air Carriers.

As prescribed in 47.405, insert the following clause:

Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

_____

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of clause)

shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(d) Except for contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to—

(1) Contracts at or below the simplified acquisition threshold;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590

Phone: 202-366-4610.

(End of clause)

Alternate I (Apr 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(b)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT													
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC
52.214-34 Submission of Offers in the English Language.	14.201-6(x) 15.407(l) 25.408(d)	P	Yes		A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.214-35 Submission of Offers in U.S. Currency.	14.201-6(y) 15.407(m) 25.408(d)	P	Yes		A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-1 Instructions to Offerors—Competitive.	15.209(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate I	15.209(a)(1)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate II	15.209(a)(2)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A
52.215-2 Audit and Records—Negotiation.	15.209(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	15.209(b)(2)	C	Yes	I														R
Alternate II	15.209(b)(3)	C	Yes	I		A		A		A		A						
Alternate III	15.209(b)(4)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-3 Request for Information or Solicitation for Planning Purposes.	15.209(c)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-4 Type of Business Organization.	15.209(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A		A	A
52.215-5 Facsimile Proposals.	15.209(e)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-6 Place of Performance.	15.209(f)	P	No	K	A	A	A	A	A	A	A	A	A	A	A		A	A
52.215-7 Annual Representations and Certifications—Negotiation.	15.209(g)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT													
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC
52.215-8 Order of Precedence—Uniform Contract Format.	15.209(h)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A		A	A
52.215-9 Changes or Additions to Make-or-Buy Program.	15.408(a)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A
Alternate I	15.408(a)(1)	C	Yes	I	A	A	A	A	A	A								
Alternate II	15.408(a)(2)	C	Yes	I	A	A	A	A	A	A								
52.215-10 Price Reduction for Defective Cost or Pricing Data.	15.408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.	15.408(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-12 Subcontractor Cost or Pricing Data.	15.408(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-13 Subcontractor Cost or Pricing Data—Modifications.	15.408(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-14 Integrity of Unit Prices.	15.408(f)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	15.408(f)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-15 Termination of Defined Benefit Pension Plans.	15.408(g)	C	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A
52.215-16 Facilities Capital Cost of Money.	15.408(h)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A
52.215-17 Waiver of Facilities Capital Cost of Money.	15.408(i)	C	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT													
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC
52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	15.408(j)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-19 Notification of Ownership Changes.	15.408(k)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate IV	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate IV	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.216-1 Type of Contract.	16.105	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.216-2 Economic Price Adjustment—Standard Supplies.	16.203-4(a)	C	No	I	O									O				

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT												
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E
52.216-3 Economic Price Adjustment—Semistandard Supplies.	16.203-4(b)	C	No	I	O									O			
52.216-4 Economic Price Adjustment—Labor and Material.	16.203-4(c)	C	Yes	I	O				O		O		O	O	O	O	O
52.216-5 Price Redetermination—Prospective.	16.205-4	C	Yes	I			A		A		A		A	A	A	A	A
52.216-6 Price Redetermination—Retroactive.	16.206-4	C	Yes	I			A		A		A		A	A		A	
52.216-7 Allowable Cost and Payment.	16.307(a)	C	Yes	I		A		A		A		A	A	A	A	A	A
Alternate I	16.307(a)(2)	C	Yes	I								A					
52.216-8 Fixed Fee.	16.307(b)	C	Yes	I		A		A		A			A	A	A	A	A
52.216-9 Fixed Fee—Construction.	16.307(c)	C	Yes									A					
52.216-10 Incentive Fee.	16.307(d)	C	Yes	I		A		A		A			A		A	A	
52.216-11 Cost Contract—No Fee.	16.307(e)(1)	C	Yes	I		A		A		A		A	A	A	A	A	
Alternate I	16.307(e)(2)	C	Yes	I				A									
52.216-12 Cost-Sharing Contract—No Fee.	16.307(f)(1)	C	Yes	I		A		A		A		A			A	A	A
Alternate I	16.307(f)(2)	C	Yes	I				A									
52.216-13 Allowable Cost and Payment —Facilities.	16.307(g)(1)	C	Yes	I													
Alternate I	16.307(g)(2)	C	Yes	I													

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT														
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	I D
52.216-14 Allowable Cost and Payment—Facilities Use.	16.307(h)	C	Yes	I														A	
52.216-15 Predetermined Indirect Cost Rates.	16.307(i)	C	Yes	I				A											
52.216-16 Incentive Price Revision—Firm Target.	16.405(a)	C	Yes	I	A		A		A		A		A	A	A	A	A		
Alternate I	16.405(a)	C	Yes	I	A				A				A	A	A				
52.216-17 Incentive Price Revision—Successive Targets.	16.405(b)	C	Yes	I	A		A		A		A		A	A	A	A	A		
Alternate I	16.405(b)	C	Yes	I	A		A		A				A	A	A				
52.216-18 Ordering.	16.506(a)	C	Yes	I															
52.216-19 Order Limitations.	16.506(b)	C	Yes	I															
52.216-20 Definite Quantity.	16.506(c)	C	Yes	I															
52.216-21 Requirements.	16.506(d)(1)	C	Yes	I															
Alternate I	16.506(d)(2)	C	Yes	I															
Alternate II	16.506(d)(3)	C	Yes	I															
Alternate III	16.506(d)(4)	C	Yes	I															
Alternate IV	16.506(d)(5)	C	Yes	I															
52.216-22 Indefinite Quantity.	16.506(e)	C	Yes	I															
52.216-23 Execution and Commencement of Work. (See Note 1.)	16.603-4 (b)(1)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRA												
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E
52.216-24 Limitation of Government Liability. (See Note 1.)	16.603-4 (b)(2)	C	No	I	R	R	R	R	R	R	R	R	R	R	R	R	R
52.216-25 Contract Definitization. (See Note 1.)	16.603-4 (b)(3)	C	No	I	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I (See Note 1.)	16.603-4 (b)(3)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A
52.216-26 Payments of Allowable Costs Before Definitization. (See Note 1.)	16.603-4(c)	C	Yes	I		A		A		A		A			A	A	A
52.216-27 Single or Multiple Awards.	16.506(f)	P	Yes	L													
52.216-28 Multiple Awards for Advisory and Assistance Services.	16.506(g)	P	Yes	L													
52.217-2 Cancellation Under Multiyear Contracts.	17.109(a)	C	Yes	I	A				A					A			
52.217-3 Evaluation Exclusive of Options.	17.208(a)	P	Yes	M	A	A			A	A			A	A			
52.217-4 Evaluation of Options Exercised at Time of Contract Award.	17.208(b)	P	Yes	M	A	A			A	A			A	A			
52.217-5 Evaluation of Options.	17.208(c)	P	Yes	M	A	A			A	A			A	A			
52.217-6 Option for Increased Quantity.	17.208(d)	C	Yes	I	A				A					A			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT													
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	C	Yes	I	A	A							A	A				
52.217-8 Option to Extend Services.	17.208(f)	C	Yes	I					A	A			A					
52.217-9 Option to Extend the Term of the Contract.	17.208(g)	C	Yes	I					A	A			A					
52.219-1 Small Business Program Representations.	19.304(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-2 Equal Low Bids.	19.304(b)	P	No	K	A				A		A			A	A	A		
52.219-6 Notice of Total Small Business Set-Aside.	19.508(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.508(c)	C	Yes	I	A								A					
52.219-7 Notice of Partial Small Business Set-Aside.	19.508(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.508(d)	C	Yes	I	A								A					
52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.	19.708(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.708(b)(1)	C	Yes	I	A		A		A		A			A		A		
Alternate II	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT													
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC
52.219-10 Incentive Subcontracting Program.	19.708(c)(1)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	0	O	O
52.219-11 Special 8(a) Contract Conditions. (See Note 2.)	19.811-3(a)	C	Yes	I														
52.219-12 Special 8(a) Subcontract Conditions. (See Note 2.)	19.811-3(b)	C	No	I														
52.219-14 Limitations on Subcontracting. (See Note 2.)	19.508(e) and 19.811-3 (e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-16 Liquidated Damages—Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-17 Section 8(a) Award. (See Note 2.)	19.811-3(c)	C	No	I														
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns. (See Note 2.)	19.811-3(d)	C	No	I														
Alternate I (See Note 2.)	19.811-3 (d)(1)	C	No	I														
Alternate II (See Note 2.)	19.811-3 (d)(2)	C	No	I														
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.	19.1007(a)	P	No	K	A	A			A	A	A	A	A				A	
52.219-20 Notice of Emerging Small Business Set-Aside.	19.1007(b)	P	No	K														

					PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT													
PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	F
52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.	19.1007(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	

(The next page is Matrix 21.)

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT												
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	C	Yes								A					A	
52.236-10 Operations and Storage Areas.	36.510	C	Yes								A					A	
52.236-11 Use and Possession Prior to Completion.	36.511	C	Yes								A						
52.236-12 Cleaning Up.	36.512	C	Yes								A					A	
52.236-13 Accident Prevention.	36.513	C	Yes								A					A	
Alternate I	36.513	C	Yes								A					A	
52.236-14 Availability and Use of Utility Services.	36.514	C	Yes								A					A	
52.236-15 Schedules for Construction Contracts.	36.515	C	Yes								O						
52.236-16 Quantity Surveys.	36.516	C	Yes								O						
Alternate I	36.516	C	Yes								O						
52.236-17 Layout of Work.	36.517	C	Yes								A						
52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.	36.518	C	Yes									R					
52.236-19 Organization and Direction of the Work.	36.519	C	Yes									R					

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	F
				PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT														
52.236-21 Specificationss and Drawings for Construction.	36.521	C	Yes								A					A		
Alternate I	36.521	C	Yes								A					A		
Alternate II	36.521	C	Yes								A					A		
52.236-22 Design Within Funding Limitations.	36.609-1(c)	C	Yes														A	
52.236-23 Responsibility of the Architect-Engineer Contractor.	36.609-2(b)	C	Yes														A	
52.236-24 Work Oversight in Architect-Engineer Contracts.	36.609-3	C	Yes														A	
52.236-25 Requirements for Registration of Designers.	36.609-4	C	Yes														A	
52.236-26 Preconstruction Conference.	36.522	C	Yes	I							A					A		
52.236-27 Site Visit (Construction).	36.523	P	Yes	L							A					A		
Alternate I	36.523	P	Yes	L							A					A		
52.236-28 Preparation of Proposals—Construction.	36.520	P	Yes	K							R	R						
52.237-1 Site Visit.	37.110(a)	P	Yes	L			A	A	A	A			A	A	A	A	A	
52.237-2 Protection of Government Buildings, Equipment, and Vegetation.	37.110(b)	C	Yes	I			A	A	A	A			A	A	A	A	A	
52.237-3 Continuity of Services.	37.110(c)	C	Yes	I					O	O								

53.102 Current editions.
53.103 Exceptions.
53.104 Overprinting.
53.105 Computer generation.
53.106 Special construction and printing.
53.107 Obtaining forms.
53.108 Recommendations concerning forms.
53.109 Forms prescribed by other regulations.
53.110 Continuation sheets.
53.111 Contract clause.

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.
53.201 Federal acquisition system.
53.201-1 Contracting authority and responsibilities (SF 1402).
53.202—53.203 [Reserved]
53.204 Administrative matters.
53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).
53.204-2 Contract reporting.
53.205 Publicizing contract actions.
53.205-1 Paid advertisements.
53.206—53.208 [Reserved]
53.209 Contractor qualifications.
53.209-1 Responsible prospective contractors.
53.210—53.211 [Reserved]
53.212 Acquisition of commercial items.
53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).
53.214 Sealed bidding.
53.215 Contracting by negotiation.
53.215-1 Solicitation and receipt of proposals.
53.216 Types of contracts.
53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).
53.217—53.218 [Reserved]
53.219 Small business programs.
53.220—53.221 [Reserved]
53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).
53.223—53.227 [Reserved]
53.228 Bonds and insurance.
53.229 Taxes (SF's 1094, 1094-A).
53.230—53.231 [Reserved]
53.232 Contract financing (SF 1443).
53.237—53.241 [Reserved]
53.242 Contract administration.
53.242-1 Novation and change-of-name agreements (SF 30).
53.243 Contract Modifications (SF 30).
53.244 [Reserved]
53.245 Government property.
53.246 [Reserved]
53.247 Transportation (U.S. Government Bill of Lading).
53.248 [Reserved]
53.249 Termination of contracts.
53.250 [Reserved]
53.251 Contractor use of Government supply sources (OF 347).

Subpart 53.3—Illustrations of Forms

53.300 Scope of subpart.
53.301 Standard forms.
53.302 Optional forms.
53.303 Agency forms.
53.301-18 SF 18, Request for Quotation.
53.301-24 SF 24, Bid Bond.
53.301-25 SF 25, Performance Bond.
53.301-25-A SF 25-A, Payment Bond.
53.301-25-B SF 25-B, Continuation Sheet (For SF's 24, 25, and 25-A).
53.301-26 SF 26, Award/Contract.
53.301-28 SF 28, Affidavit of Individual Surety.
53.301-30 SF 30, Amendment of Solicitation/Modification of Contract.
53.301-33 SF 33, Solicitation, Offer and Award.
53.301-34 SF 34, Annual Bid Bond.
53.301-35 SF 35, Annual Performance Bond.
53.301-44 SF 44, Purchase Order—Invoice—Voucher.
53.301-98 SF 98, Notice of Intention to Make a Service Contract and Response to Notice.
53.301-98a SF 98a, Notice of Intention to Make a Service Contract and Response to Notice (Attachment A).
53.301-99 SF 99, Notice of Award of Contract.
53.301-120 SF 120, Report of Excess Personal Property.
53.301-120-A SF 120-A, Continuation Sheet (Report of Excess Personal Property).
53.301-126 SF 126, Report of Personal Property for Sale.
53.301-126-A SF 126-A, Report of Personal Property for Sale (Continuation Sheet).
53.301-129 SF 129, Solicitation Mailing List Application.

53.301-275	SF 275, Reinsurance Agreement in Favor of the United States.
53.301-279	SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report.
53.301-281	SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).
53.301-294	SF 294, Subcontracting Report for Individual Contracts.
53.301-295	SF 295, Summary Subcontract Report.
53.301-298	SF 298, Report Documentation Page.
53.301-308	SF 308, Request for Determination and Response to Request.
53.301-1034	SF 1034, Public Voucher for Purchases and Services Other Than Personal.
53.301-1034A	SF 1034A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.
53.301-1035	SF 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.
53.301-1035A	SF 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.
53.301-1093	SF 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act).
53.301-1094	SF 1094, U.S. Tax Exemption Form.
53.301-1094A	SF 1094A, Tax Exemption Forms Accountability Record.
53.301-1165	SF 1165, Receipt for Cash—Subvoucher.
53.301-1402	SF 1402, Certificate of Appointment.
53.301-1403	SF 1403, Preaward Survey of Prospective Contractor (General).
53.301-1404	SF 1404, Preaward Survey of Prospective Contractor—Technical.
53.301-1405	SF 1405, Preaward Survey of Prospective Contractor—Production.
53.301-1406	SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance.
53.301-1407	SF 1407, Preaward Survey of Prospective Contractor—Financial Capability.
53.301-1408	SF 1408, Preaward Survey of Prospective Contractor—Accounting System.
53.301-1409	SF 1409, Abstract of Offers.
53.301-1410	SF 1410, Abstract of Offers—Continuation.
53.301-1413	SF 1413, Statement and Acknowledgment.
53.301-1414	SF 1414, Consent of Surety.
	Construction Contracts.
53.301-1421	SF 1421, Performance Evaluation (Architect-Engineer).
53.301-1423	SF 1423, Inventory Verification Survey.
53.301-1424	SF 1424, Inventory Disposal Report.
53.301-1426	SF 1426, Inventory Schedule A (Metals in Mill Product Form).
53.301-1427	SF 1427, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).
53.301-1428	SF 1428, Inventory Schedule B.
53.301-1429	SF 1429, Inventory Schedule B—Continuation Sheet.
53.301-1430	SF 1430, Inventory Schedule C (Work-in-Process).
53.301-1431	SF 1431, Inventory Schedule C—Continuation Sheet (Work-in-Process).
53.301-1432	SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).
53.301-1433	SF 1433, Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).
53.301-1434	SF 1434, Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).
53.301-1435	SF 1435, Settlement Proposal (Inventory Basis).
53.301-1436	SF 1436, Settlement Proposal (Total Cost Basis).
53.301-1437	SF 1437, Settlement Proposal for Cost-Reimbursement Type Contracts.
53.301-1438	SF 1438, Settlement Proposal (Short Form).
53.301-1439	SF 1439, Schedule of Accounting Information.
53.301-1440	SF 1440, Application for Partial Payment.
53.301-1442	SF 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair).
53.301-1443	SF 1443, Contractor's Request for Progress Payment.
53.301-1444	SF 1444, Request for Authorization of Additional Classification and Rate.
53.301-1445	SF 1445, Labor Standards Interview.
53.301-1446	SF 1446, Labor Standards Investigation Summary Sheet.
53.301-1447	SF 1447, Solicitation/Contract.
53.301-1449	SF 1449, Solicitation/Contract/Order for Commercial Items.
53.302-17	Optional Form 17, Offer Label.

53.302-347	Optional Form 347, Order for Supplies or Services.
53.302-348	Optional Form 348, Order for Supplies or Services Schedule—Continuation.
53.302-1419	Optional Form 1419, Abstract of Offers—Construction.
53.302-1419A	Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet.
53.303-DD-254	Department of Defense DD Form 254, Contract Security Classification Specification.
53.303-DD-441	Department of Defense DD Form 441, Security Agreement.
53.303-WH-347	Department of Labor Form WH-347, Payroll (For Contractor's Optional Use).

Forms Authorized for Local Reproduction

SF LLL	Disclosure of Lobbying Activities
SF LLL-A	Disclosure of Lobbying Activities—Continuation Sheet
SF 18	Request for Quotation
SF 34	Annual Bid Bond
SF 35	Annual Performance Bond
SF 119	Statement of Contingent or Other Fees
SF 129	Solicitation Mailing List Application
SF 273	Reinsurance Agreement for a Miller Act Performance Bond
SF 274	Reinsurance Agreement for a Miller Act Payment Bond
SF 275	Reinsurance Agreement in Favor of the United States
SF 279	Federal Procurement Data System (FPDS)—Individual Contract Action Report
SF 281	Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less)
SF 294	Subcontracting Report for Individual Contracts
SF 295	Summary Subcontract Report
SF 1403	Preaward Survey of Prospective Contractor (General)
SF 1404	Preaward Survey of Prospective Contractor—Technical
SF 1405	Preaward Survey of Prospective Contractor—Production
SF 1406	Preaward Survey of Prospective Contractor—Quality Assurance
SF 1407	Preaward Survey of Prospective Contractor—Financial Capability
SF 1424	Inventory Disposal Report
SF 1426	Inventory Schedule A (Metals in Mill Product Form)
SF 1427	Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form)
SF 1428	Inventory Schedule B
SF 1429	Inventory Schedule B—Continuation Sheet
SF 1430	Inventory Schedule C (Work-in-Process)
SF 1431	Inventory Schedule C—Continuation Sheet (Work-in-Process)
SF 1432	Inventory Schedule D (Special Tooling and Special Test Equipment)
SF 1433	Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment)
SF 1434	Termination Inventory Schedule E (Short Form For Use With SF 1438 Only)
SF 1435	Settlement Proposal (Inventory Basis)
SF 1436	Settlement Proposal (Total Cost Basis)
SF 1437	Settlement Proposal for Cost-Reimbursement Type Contracts
SF 1438	Settlement Proposal (Short Form)
SF 1439	Schedule of Accounting Information
SF 1440	Application for Partial Payment
SF 1445	Labor Standards Interview
SF 1449	Solicitation/Contract/Order for Commercial Items
OF 90	Release of Lien on Real Property
OF 91	Release of Personal Property from Escrow
OF 307	Contract Award
OF 308	Solicitation and Offer—Negotiated Acquisition
OF 309	Amendment of Solicitation
OF 347	Order for Supplies or Services

53.000 Scope of part.

This part—

(a) Prescribes standard forms (SF's) and references optional forms (OF's) and agency-prescribed forms for use in acquisition;

(b) Contains requirements and information generally applicable to the forms; and

(c) Illustrates the forms.

53.001 Definitions.

"Exception," as used in this part, means an approved departure from the established design, content, printing specifications, or conditions for use of any standard form.

erenced in this part are contained in Parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 53.2 and under "Forms" in the FAR Index.

53.102 Current editions.

The form prescriptions in Subpart 53.2 and the illustrations in Subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.

Agencies shall not—

(a) Alter a standard form prescribed by this regulation; or

(b) Use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form.

53.104 Overprinting.

Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

53.105 Computer generation.

(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided—

(1) The form is in an electronic format that complies with Federal Information Processing Standard Number 161; or

(2) There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this Part may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall either comply with Federal Information Processing Standard Number 161 or shall retain the name, content, or sequence of the data elements, and shall carry

Standard Forms	Special Construction and Printing
(a) SF 18—	(1) With vertical lines omitted (for listing of supplies and services, unit, etc.); (2) As reproducible masters; and/or (3) In carbon interleaved pads or sets.
(b) SF's 26, 30, 33, 1447—	As die-cut stencils or reproducible masters.
(c) SF 44—	(1) With serial numbers and contracting office name and address; and/or (2) On special weight of paper and with the type of construction, number of sets per book, 2and number of parts per set as specified by the contracting officer. (Executive agencies may supplement the administrative instructions on the inside front cover of the book.)
(d) SF 1442—	(1) As die-cut stencils or reproducible masters; and/or (2) With additional wording as required by the executive agency. (However, the sequence and wording of the items appearing on the prescribed form should not be altered.

53.107 Obtaining forms.

(a) Executive agencies shall obtain standard and optional forms from the General Services Administration (GSA) by using GSA Supply Catalog—Office Products (see 41 CFR 101-26.302). Standard forms adapted for computer preparation (see 53.105) or with special construction and printing (see 53.106) that are not available from GSA may be ordered directly from the Government Printing Office (GPO).

(b) Contractors and other parties may obtain standard and optional forms from the Superintendent of Documents,

the revision, elimination, or consolidation of the forms prescribed or referenced in this regulation. Recommendations from within an executive agency shall be submitted to the cognizant council in accordance with agency procedures. Recommendations from other than executive agencies should be submitted directly to the FAR Secretariat.

53.109 Forms prescribed by other regulations.

Certain forms referred to in Subpart 53.2 are prescribed in other regulations and are specified by the FAR for use in acquisition. For each of these forms, the prescribing agency is identified by means of a parenthetical notation after the form number. For example, SF 1165, which is prescribed by the General Accounting Office (GAO), is identified as SF 1165 (GAO).

53.110 Continuation sheets.

Except as may be otherwise indicated in the FAR, all standard forms prescribed by the FAR may be continued on (a) plain paper of similar specification, or (b) specially constructed continuation sheets (*e.g.*, OF 336). Continuation sheets shall be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number.

53.111 Contract clause.

Contracting officers shall insert the clause at 52.253-1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit data on Standard or Optional Forms prescribed by this regulation; and, unless prohibited by agency regulations, forms prescribed by agency supplements.

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR Part 14, Sealed Bidding, are treated in this subpart in section 53.214, Sealed Bidding; forms addressed in FAR Part 43, Contract Modifications, are treated in this

ARE ADDRESSED IN PART 43, CONTRACT MODIFICATIONS)

PART AND SUBPART (INVARIABLE)

53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

SF 1402 (10/83), Certificate of Appointment. SF 1402 is prescribed for use in appointing contracting officers, as specified in 1.603-3.

53.202 —53.203 [Reserved]

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in Subpart 4.4 and the clause at 52.204-2:

(a) *DD Form 254 (Department of Defense (DOD)), Contract Security Classification Specification.* (See 4.403(c)(1).)

(b) *DD Form 441 (DOD), Security Agreement.* (See paragraph (b) of the clause at 52.204-2.)

53.204-2 Contract reporting.

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.602(c):

(a) *SF 279 (Rev. 5/96), Federal Procurement Data System (FPDS)—Individual Contract Action Report.* (See 4.602(c).)

(b) *SF 281 (Rev. 5/96), Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).* (See 4.602(c).)

53.205 Publicizing contract actions.

53.205-1 Paid advertisements.

SF 1449, prescribed in 53.212, shall be used to place orders for paid advertisements as specified in 5.503.

Contractor (General). SF 1403 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(b) *SF 1404 (Rev. 9/88), Preaward Survey of Prospective Contractor—Technical.* SF 1404 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(c) *SF 1405 (Rev. 9/88), Preaward Survey of Prospective Contractor—Production.* SF 1405 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(d) *SF 1406 (Rev. 9/88), Preaward Survey of Prospective Contractor—Quality Assurance.* SF 1406 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(e) *SF 1407 (Rev. 9/88), Preaward Survey of Prospective Contractor—Financial Capability.* SF 1407 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(f) *SF 1408 (Rev. 9/88), Preaward Survey of Prospective Contractor—Accounting System.* SF 1408 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.210—53.211 [Reserved]

53.212 Acquisition of commercial items.

SF 1449 (10/95 Ed.), Solicitation/Contract/Order for Commercial Items. SF 1449 is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18 (Rev. 6/95), Request for Quotations, or SF 1449 (10/95 Ed.), Solicitation/Contract/Order for Commercial Items.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107. SF 1449, as prescribed in 53.212, or dures, as specified in 13.505(b).

(d) *SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher.* SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.404(e).

(e) *OF 336 (4/86 Ed.), Continuation Sheet.* OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 13.107(c).

(f) *SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items prescribed in 53.212, OF 347 (Rev. 6/95), Order for Supplies or Services, and OF 348 (10/83 Ed.), Order for Supplies or Services—Schedule Continuation.* SF 1449, OF's 347 and 348 (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505.

(2) To establish blanket purchase agreements (BPA's), as specified in 13.202, and to make purchases under BPA's, as specified in 13.204(e).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this chapter (*e.g.*, see 5.503(a)(2), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) *SF 26 (4/85), Award/Contract.* SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer and Award, as specified in 14.408-1(d)(1). Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700".

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used in amending invitations for bids, as specified in 14.208(a).

(c) *SF 33 (Rev. 4/85), Solicitation, Offer and Award.* SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201-2(a)(1), unless award is accomplished by SF 26. Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700" and in the Caution statement of "block 0" revise 52.215-10 to read 52.215-1.

and maintaining lists of potential sources, as specified in 14.205-1(d).

(f) *SF 1409 (Rev. 9/88), Abstract of Offers, and SF 1410 (9/88), Abstract of Offers—Continuation.* SF 1409 and SF 1410 are prescribed for use in recording bids, as specified in 14.403(a).

(g) *OF 17 (Rev. 12/93), Offer Label.* OF 17 may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in 14.202-3(b).

(h) *OF 336 (Rev. 3/86), Continuation Sheet.* OF 336 may be used as a continuation sheet in solicitations, as specified in 14.201-2(b).

53.215 Contracting by negotiation.

53.215-1 Solicitation and receipt of proposals.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) *SF 26 (Rev. 4/85), Award/Contract.* SF 26, prescribed in 53.214(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.509(b).

(b) *SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for amending requests for proposals and for amending requests for information, as specified in 15.210(b).

(c) *SF 33 (Rev. 4/85), Solicitation, Offer and Award.* SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either OF 307, SF 33, or SF 26, as specified in 53.214(c) and 15.509. Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700" and in the Caution statement of "block 9" revise 52.215-10 to read 52.215-1.

(d) *OF 17 (Rev. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(c).

(g) *OF 309 (Rev. 9/89), Amendment of Solicitation.* OF 309 may be used to amend solicitations of negotiated contracts, as specified in 15.210(b).

53.216 Types of contracts.

53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(f) (or an approved agency form), may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in 16.703(d)(2)(i).

53.217—53.218 [Reserved]

53.219 Small business programs.

The following standard forms are prescribed for use in reporting small, small disadvantaged and women-owned small business subcontracting data, as specified in Part 19:

(a) *SF 294 (Rev. 10/96), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (Rev. 10/96), Summary Subcontract Report.* (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

53.220—53.221 [Reserved]

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) [Reserved]

(b) *SF 99 (DOL), Notice of Award of Contract.*

(c) *SF 308 (DOL) (5/85 Ed.), Request for Determination and Response to Request.* (See 22.404-3(a) and (b).)

(d) *SF 1093 (GAO) (10/71 Ed.), Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.* (See 22.406-9(c)(1).)

(e) *SF 1413 (Rev. 6/89), Statement and Acknowledgment.* SF 1413 is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in 22.406-5. Pending issuance of a

Summary Sheet. (See 22.406-8(d).)

(i) *Form WH-347 (DOL), Payroll (For Contractor's Optional Use).* (See 22.406-6(a).)

53.223—53.227 [Reserved]

53.228 Bonds and insurance.

The following standard forms are prescribed for use for bond and insurance requirements, as specified in Part 28:

(a) *SF 24 (Rev. 1/90), Bid Bond.* (See 28.106-1.)

(b) *SF 25 (Rev. 1/90), Performance Bond.* (See 28.106-1(b).)

(c) *SF 25-A (Rev. 1/90), Payment Bond.* (See 28.106-1(c).)

(d) *SF 25-B (Rev. 10/83), Continuation Sheet* (For Standard Forms 24, 25, and 25-A). (See 28.106-1(c).)

(e) *SF 28 (Rev. 1/90), Affidavit of Individual Surety.* (See 28.106-1(e) and 28.203(b).)

(f) *SF 34 (Rev. 1/90), Annual Bid Bond.* (See 28.106-1(f).) SF 34 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(g) *SF 35 (Rev. 1/90), Annual Performance Bond.* (See 28.106-1.) SF 35 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(h) *SF 273 (Rev. 8/90) Reinsurance Agreement for a Miller Act Performance Bond.* (See 28.106-1(h) and 28.202-1(a)(4).)

(i) *SF 274 (Rev. 8/90), Reinsurance Agreement for a Miller Act Payment Bond.* (See 28.106-1(i) and 28.202-1(a)(4).)

(j) *SF 275 (Rev. 8/90), Reinsurance Agreement in Favor of the United States.* (See 28.106-1(j) and 28.202-1(a)(4).)

(k) *SF 1414 (Rev. 10/93), Consent of Surety.* SF 1414 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(l) *SF 1415 (Rev. 7/93), Consent of Surety and Increase of Penalty.* (See 28.106-1(l).) SF 1415 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(m) *SF 1416 (Rev. 1/90), Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.229 Taxes (SF's 1094, 1094-A).

SF 1094 (Rev. 12/96), U.S. Tax Exemption Form, and SF 1094-A (Rev. 12/96), Tax Exemption Forms Accountability Record. SF's 1094 and 1094-A are prescribed for use in establishing exemption from State or local taxes, as specified in 29.302(b).

53.230—53.231 [Reserved]

53.232 Contract financing (SF 1443).

SF 1443 (10/82), Contractor's Request for Progress Payment. SF 1443 is prescribed for use in obtaining contractors' requests for progress payments, as specified in 32.503-1.

53.233—52.234 [Reserved]

53.235 Research and development contracting (SF 298).

SF 298 (2/89), Report Documentation Page. SF 298 is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in 35.010.

53.236 Construction and architect-engineer contracts.

53.236-1 Construction.

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

(a) *SF 1417 (Rev. 8/90), Presolicitation Notice (Construction Contract).* SF 1417 is prescribed for use in notifying prospective offerors of solicitations estimated to be $100,000 or more and may be used if the proposed contract is estimated to be less than $100,000, as specified in 36.701(a).

(b) *SF 1420 (10/83 Ed.), Performance Evaluation—Construction Contracts.* SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in 36.701(e).

(c)—(d) [Reserved]

(f) *OF 347 (Rev. 6/95), Order for Supplies or Services.* OF 347, prescribed in 53.213(f) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

(1) Construction, alteration, or repair; or

(2) Dismantling, demolition, or removal of improvements, as specified in 36.701(c).

(g) *OF 1419 (11/88 Ed.), Abstract of Offers—Construction, and OF 1419A (11/88 Ed.), Abstract of Offers—Construction, Continuation Sheet.* OF's 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal information), as specified in 36.701(d).

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) *SF 252 (Rev. 10/83), Architect-Engineer Contract.* SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) *SF 254 (Rev. 11/92), Architect-Engineer and Related Services Questionnaire.* SF 254 is prescribed for use to obtain information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1).

(c) *SF 255 (Rev. 11/92), Architect-Engineer and Related Services Questionnaire for Specific Project.* SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254 regarding the prospective firm's qualifications for a particular architect-engineer project.

(d) *SF 1421 (10/83 Ed.), Performance Evaluation (Architect-Engineer).* SF 1421 is prescribed for use in evaluating and reporting on the performance of architect-engineer contractors within approved dollar thresholds and as otherwise specified in 36.702(c).

53.237—53.241 [Reserved]

53.242 Contract administration.

SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in amending invitation for bids, as specified in 14.208; modifying purchase and delivery orders, as specified in 13.503(b); and modifying contracts, as specified in 42.1203(f), 43.301, 49.602-5, and elsewhere in this regulation. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.210(b). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

(b) Item 3 (effective date).

* * * * *

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

* * * * *

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

53.244 [Reserved]

53.245 Government property.

The following forms are prescribed, as specified below, for use in reporting, redistribution, and disposal of contractor inventory (defined in 45.601) and in accounting for this property:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120-A (GSA), Continuation Sheet (Report of Excess Personal Property).* (See 45.608-2(b)(2) and 45.608-8.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126-A (GSA), Report of Personal Property for Sale (Continuation Sheet).* (See 45.610-1(c).)

(c) *SF 1423 (Rev. 12/96), Inventory Verification Survey.* (See 45.606-3(b).)

(d) *SF 1424 (Rev. 7/89), Inventory Disposal Report.* (See 45.615.) SF 1424 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(g) *SF 1428 (Rev. 12/96), Inventory Schedule B, and SF 1429 (Rev. 7/89), Inventory Schedule B-Continuation Sheet.* (See 45.606 and 49.602-2(b).) Standard Form 1428 and Standard Form 1429 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(h) *SF 1430 (Rev. 12/96), Inventory Schedule C (Work-in-Process) and SF 1431 (Rev. 7/89), Inventory Schedule C-Continuation Sheet (Work-in-Process).* (See 45.606 and 49.602-2(c).) Standard Form 1430 and Standard Form 1431 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(i) *SF 1432 (Rev. 12/96), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (Rev. 7/89), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment).* (See 45.606 and 49.602-2(d).) Standard Form 1432 and Standard Form 1433 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(j) *SF 1434 (Rev. 12/96), Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).* (See 45.606 and 49.602-2(e).) Standard Form 1434 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.246 [Reserved]

53.247 Transportation (U.S. Government Bill of Lading).

The U.S. Government Bill of Lading, prescribed in 41 CFR 101-41.304, shall be used for transportation of property, as specified in 47.103.

53.248 [Reserved]

53.249 Termination of contracts.

(a) The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 49.6:

(1) *SF 1034 (GAO), Public Voucher for Purchases and Services Other than Personal.* (See 49.302(a).)

(2) *SF 1435 (Rev. 7/89), Settlement Proposal (Inventory Basis).* (See 49.602-1(a).) Standard Form 1435 authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR. Pending issuance of a new edition of the form, in the "Note" of the Certification on page 4, revise the references "15.804-2, 15.804-2(a), and 15.804-6" to read "15.403, 15.406-2, and 15.408, Table 15-2," respectively.

(4) *SF 1437 (Rev. 7/89), Settlement Proposal for Cost-Reimbursement Type Contracts.* (See 49.602-1(c) and 49.302.) Standard Form 1437 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR. Pending issuance of a new edition of the form, in the "Note" of the Certification, revise the references "15.804-2, 15.804-2(a), and 15.804-6" to read "15.403, 15.406-2, and 15.408, Table 15-2," respectively.

(5) *SF 1438 (Rev. 7/89), Settlement Proposal (Short Form).* (See 49.602-1(d).) Standard Form 1438 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(6) *SF 1439 (Rev. 7/89), Schedule of Accounting Information.* (See 49.602-3.) Standard Form 1439 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(7) *SF 1440 (Rev. 7/89), Application for Partial Payment.* (See 49.602-4.) Standard Form 1440 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(b) The inventory schedule forms prescribed in 53.245(f) through (j) shall be used to support termination settlement proposals listed in paragraph (a), above, as specified in 49.602-2.

53.250 [Reserved]

53.251 Contractor use of Government supply sources (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(f), may be used by contractors when requisitioning from the VA, as specified in 51.102(e)(3)(ii).

Subpart 53.3—Illustration of Forms

53.300 Scope of subpart.

This subpart contains illustrations of forms used in acquisitions.

This section illustrates the optional forms that are specified in 53.301.

☆ ☆ ☆ ☆ ☆ ☆

become a surety for the complete and successful performance of said contract, and Whereas said surety has placed certain personal property in escrow

in Account Number _____ on deposit

at _____
(Name of Financial Institution)

located at _____ , and
(Address of Financial Institution)

Whereas I, _____ , being a duly authorized representative of the United States government as a warranted contracting officer, have determined that retention in escrow of the following property is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from escrow the property listed above, and directs the custodian of the aforementioned escrow account to deliver the listed property to the surety. If the listed property comprises the whole of the property placed in escrow in the aforementioned escrow account, the Government further directs the custodian to close the account and to return all property therein to the surety, along with any interest accruing which remains after the deduction of any fees lawfully owed to

_____ .
(Name of Financial Institution)

[Date] [Signature]

Seal

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 91 (1-90)
Prescribed by GSA-FAR (48 CFR) 53.228(o)

7. NAME AND ADDRESS OF CONTRACTOR	CODE	8. PAYMENT WILL BE MADE BY

9A. DUNS NUMBER	9B. TAXPAYER'S IDENTIFICATION NO.	10. SUBMIT INVOICES *(4 copies unless otherwise specified)* TO ☐ ITEM 5 ☐ ITEM 6 ☐ ITEM 8 ☐ OTHER *(Specify)*

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

12. BRIEF DESCRIPTION

13. TOTAL AMOUNT OF CONTRACT ▶

14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

☐ A. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. *(Check if applicable)*

B. SIGNATURE OF PERSON AUTHORIZED TO SIGN

C. NAME OF SIGNER

D. TITLE OF SIGNER

E. DATE

15. AWARD. The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

A. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*

B. NAME OF CONTRACTING OFFICER

C. DATE

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 307 (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(e)

53-208

7. FOR INFORMATION CALL *(No collect calls)*			
A. NAME	B. TELEPHONE		C. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8. BRIEF DESCRIPTION

9. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

10A. PERSONS AUTHORIZED TO NEGOTIATE	10B. TITLE	10C. TELEPHONE	
		AREA CODE	NUMBER

11. NAME AND ADDRESS OF OFFEROR	12A. SIGNATURE OF PERSON AUTHORIZED TO SIGN		
	12B. NAME OF SIGNER		
	12C. TITLE OF SIGNER		
	12D. DATE	12E. TELEPHONE	
		AREA CODE	NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 308 (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(f)

DATE		

5. ISSUED BY	6. DUE DATE	
	THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE UNLESS A DATE AND TIME IS INSERTED BELOW.	
	A. DATE	B. TIME

7. FOR INFORMATION CALL *(No collect calls)*			
A. NAME	B. TELEPHONE		C. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8.DESCRIPTION OF AMENDMENT

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

II. ACKNOWLEDGMENT OF AMENDMENT

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

9. NAME AND ADDRESS OF OFFEROR	10A. OFFEROR *(Signature of person authorized to sign)*
	10B. NAME OF SIGNER
	10C. TITLE OF SIGNER
	10D. DATE

☆U.S. GOVERNMENT PRINTING OFFICE: 1997-433-021/40011

7. NAME AND ADDRESS OF CONTRACTOR	CODE	8. PAYMENT WILL BE MADE BY

9A. DUNS NUMBER	9B. TAXPAYER'S IDENTIFICATION NO.	10. SUBMIT INVOICES *(4 copies unless otherwise specified)* TO ☐ ITEM 5 ☐ ITEM 6 ☐ ITEM 8 ☐ OTHER *(Specify)*

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

12. BRIEF DESCRIPTION

13. TOTAL AMOUNT OF CONTRACT ▶

14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

☐ A. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. *(Check if applicable)*

15. AWARD. The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

B. SIGNATURE OF PERSON AUTHORIZED TO SIGN	A. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*
C. NAME OF SIGNER	
D. TITLE OF SIGNER	B. NAME OF CONTRACTING OFFICER
E. DATE	C. DATE

7. FOR INFORMATION CALL *(No collect calls)*			
A. NAME	B. TELEPHONE		C. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8. BRIEF DESCRIPTION

9. TABLE OF CONTENTS

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	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

-- II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

10A. PERSONS AUTHORIZED TO NEGOTIATE	10B. TITLE	10C. TELEPHONE	
		AREA CODE	NUMBER

11. NAME AND ADDRESS OF OFFEROR	12A. SIGNATURE OF PERSON AUTHORIZED TO SIGN	
	12B. NAME OF SIGNER	
	12C. TITLE OF SIGNER	
	12D. DATE	12E. TELEPHONE
		AREA CODE / NUMBER

1. SOLICITATION NUMBER	2. SOLICITATION DATE	3. AMENDMENT NUMBER	4. AMENDMENT DATE

5. ISSUED BY	6. DUE DATE	
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A. NAME	B. TELEPHONE		C. E-MAIL ADDRESS
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8. DESCRIPTION OF AMENDMENT

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II. ACKNOWLEDGMENT OF AMENDMENT

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9. NAME AND ADDRESS OF OFFEROR	10A. OFFEROR *(Signature of person authorized to sign)*
	10B. NAME OF SIGNER
	10C. TITLE OF SIGNER
	10D. DATE