FEDERAL ACQUISITION CIRCULAR

December 28, 1994 Number 90-23

Federal Acquisition Circular (FAC) 90-23 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.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-23 are effective *February 27, 1995*, except for the following items:

Items XIII, XXIV, XXVII, and XXXVIII, which are effective *December 28, 1994*; and

Item XX, which is effective *February 27, 1995*, except for amendments to the following sections, which are effective *November 4, 1993*:

30.201-4(b)(b) and (b)(2), 30.601(b), 52.230-1 "Note" statement, (c)(1) and (c)(3), (c)(4) "Caution" statement, and 52.230-3.

FAC 90-23 LIST of SUBJECTS

Item	Title	Page
I	Training for Contracting Personnel	1
II	Storage of Contract Files	1
III	National Security	1
IV	Acquisition of Utility Services	1
V	Lease with Option to Purchase	2
VI	Procurement From People Who Are Blind or Severely Disabled	2
VII	Acquisition of Helium	2
VIII	Paper and Envelopes	3
IX	Debarment, Suspension, and Ineligibility	3
X	Revision to Optional Form 17, Sealed Bid Label	3
XI	Notification of Ownership Changes	3
XII	Certificates of Competency	4
XIII	Small Business Competitiveness Demonstration Program (Interim)	4
XIV	Small Business Concern Representation	4
XV	Prohibition of Department of Labor Implementation/Administration of Davis-Bacon Helper Regulations Pursuant to Fiscal Year 1994 Appropriation Act	5
XVI	Walsh-Healey Definitions	5
XVII	Section 4c Price Adjustments	5
XVIII	Collective Bargaining Agreement, Contingency Clauses	5
XIX	Cost Accounting Standards	6
XX	CAS Applicability and Thresholds	6

Item	Title	Page

FAC 90-23 LIST of SUBJECTS (CONT'D)

XXI	Advance Agreements, Composition of Total Cost, and Accounting for Unallowable Costs	6
XXII	Postretirement Benefits-Transition Costs	7
XXIII	Advance Payment Reporting	8
XXIV	Defense Production Act Amendments (Interim)	8
XXV	Defense Technical Information Center	8
XXVI	Construction Contracting	9
XXVII	Child Care Services (Interim)	9
XXVIII	Final Indirect Cost Agreements	9
XXIX	Consent to Subcontract	9
XXX	Contractors' Purchasing Systems Reviews	10
XXXI	Transfers of Government Property	10
XXXII	Commercial Bills of Lading Under Cost-Reimbursement Contracts Audit by GSA	10
XXXIII	Qualification Requirements	10
XXXIV	Small Business and Small Disadvantaged Business Subcontracting Plan	11
XXXV	Shipments to Ports and Air Terminals	11
XXXVI	Standard Form 18, Request for Quotations	11
XXXVII	Revisions to Standard Forms 1414 and 1415	11
XXXVIII	Technical Amendments	12
XXXIX	Looseleaf Amendments	12
XL	Annual Notice of Rates of Inflation	13

FAC 90-23 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 90-23 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Training for Contracting Personnel (FAR Case 93-604)

Subpart 1.6 is revised by adding "career development" to the title and by, among other things, adding language at FAR 1.603-1, General, that addresses the requirements of the Office of Federal Procurement Policy (OFPP) Letter No. 92-3, "Procurement Professionalism Program Policy-Training for Contracting Personnel, dated June 24, 1992. Office of Federal Procurement Policy (OFPP) Letter No. 92-3, contains OFPP's standards for skill-based training in performing contracting and purchasing duties. The above changes make the FAR fully reflect the policies established by OFPP Policy Letter 92-3.

Replacement pages: Structure of the FAR to the Subpart Level (pp. 1 thru 4), TOC, Pt. 1, and 1-9 & 1-10

Item II—Storage of Contract Files (FAR Case 91-101)

This final rule revises FAR Subparts 4.7 and 4.8 to permit the use of various media (paper, electronic, microfilm, etc.) for the storage of official contract files by contractors and contracting and contract administration offices.

Replacement pages: Structure of the FAR to the Subpart Level (pp. 1 thru 4), TOC, Pt. 4, and 4-3 thru 4-10.

Item III—National Security (FAR Case 93-8)

FAR 5.303(a) is revised to clarify that the requirement for public announcement of contract awards over $3 million does not apply to contracts exempted from synopsis in the Commerce Business Daily for reasons of national security.

Replacement pages: 5-9 thru 5-11.

Item IV—Acquisition of Utility Services (FAR Case 91-13)

A new Part 41, Acquisition of Utility Services, is added and replaces the existing language now located at FAR Subpart 8.3. FAR Part 41 provides uniform language pertaining to the acquisition of utilities which is applicable to all executive agencies and will enable agencies to delete most of their regulatory guidance on utilities from their agency FAR supplements. The language includes additional guidance for contracting officers in acquiring and administering contracts for utility services and includes additional definitions applicable to utility service contracts. Language was added delineating

existing statutory and delegated authority for utility service contracting and providing for use of the standard forms to acquire utility services. "Standard" specification formats and annual utility service review formats have been established for use in acquiring utility services.

Replacement pages: General Structure (pp. 1 & 2), Structure of the FAR to the Subpart Level (pp. 1 & 2; and 5 thru 7), 6-3 & 6-4, TOC, Pt. 8 (pp. 1 & 2), 8-1 thru 8-12, 15-35 & 15-36, TOC Pt. 41 (added), 41-1 thru 41-7 (added), TOC, Pt. 52 (pp 1 & 2 and 5 & 6), 52-17 & 52-18, 52-201 & 52-202, 52-202.1 thru 52-202.5 (added), 52-307 & 52-308, 52-343 & 52-344, and 52-344.1 (added).

Item V—Lease with Option to Purchase (FAR Case 91-6)

This final rule amends the Federal Acquisition Regulation by adding paragraph 7.402(b)(4), section 7.404, and the clause at 52.207-5, based on the Defense Management Review, to include information required to support a contracting officer's decision to use a lease with an option to purchase, and to outline the Government's right to purchase at any time during the performance of the contract.

Replacement pages: TOC, Pt 7, 7-7 & 7-8, TOC, Pt. 52 (pp. 1 & 2), 52-16.1, and 52-307 & 52-308.

Item VI—Procurement From People Who Are Blind or Severely Disabled (FAR Case 93-610)

FAR 8.001, 8.603, Subpart 8.7, and 9.107 are amended to reflect the Committee for Purchase From the Blind and Other Severely Handicapped name change and revisions to the Committee's regulations.

Replacement pages: Structure of the FAR to the Subpart Level (pp. 1 & 2), TOC, Pt. 8 (pp. 1 & 2), 8-1 & 8-2, 8-7 thru 8-12, and 9-3 & 9-4.

Item VII—Acquisition of Helium (FAR Case 91-9)

The FAR is being revised at 8.002, a new Subpart 8.5 is being added, and a new clause is being added at 52.208-8, to provide guidance on the acquisition of helium. The Helium Act (50 U.S.C. 167a et seq.) (Pub. L. 86-777) requires that all major helium requirements be purchased from the Secretary of the Interior. The coverage will assist Government agencies and contractors in complying with the Helium Act by ensuring that contracting officers

and contractors are aware of the requirements for using Bureau of Mines' helium in Government contracts.

Replacement pages: Structure of the FAR to the Subpart Level (pp. 1 & 2), TOC, Pt. 8 (pp. 1 & 2), 8-1 & 8-2, 8-5 and 8-6, TOC, Pt. 52 (pp. 1 & 2), 52-17 thru 52-20, 52-307 & 52-308; and 52-308.1 (added).

Item VIII—Paper and Envelopes (FAR Case 92-622)

Paragraph (c) of 8.802, Policy, has been revised to specify that paper and envelopes for use by executive agencies outside the District of Columbia and stocked by the General Services Administration (GSA) shall be requisitioned from GSA.

Replacement pages: 8-11 and 8-12.

Item IX—Debarment, Suspension, and Ineligibility (FAR Case 89-89)

This final rule revises FAR Subpart 9.4, to clarify to what extent, absent a termination by the issuing agency, an individual may place orders against an existing contract notwithstanding a debarment, suspension, or proposed debarment of the contractor. The final rule also clarifies that an optional (permissive) user may elect to place a delivery order and a compelling reason determination would not be required.

Replacement pages: 9-13 thru 9-16.

Item X—Revision to Optional Form 17, Sealed Bid Label (FAR Case 92-602)

FAR 14.202-3, 15.408, 53.214 and 53.215-1 are amended to permit use of the Optional Form 17, Offer Label, to identify offers for sealed bid and negotiated acquisitions. Use of the label is limited to envelopes larger than 6-1/8 inches by 11-1/2 inches to comply with U.S. Postal Service requirements for automation-compatible mail.

Replacement pages: 14-5 & 14-6, 15-5 & 15-6, TOC, Pt. 53 (pp. 3 & 4), 53-3 & 53-4, and 53-197 & 53-198.

Item XI—Notification of Ownership Changes (FAR Case 91-20)

FAR 15.804-8(g) and 52.215-40, Notification of Ownership Changes, are added to require contractors to notify the Government of changes in contractor ownership and their effects, and to emphasize existing recordkeeping requirements. These changes are intended to enable audit determinations that cost increases

related to contractor ownership changes are not charged to Government contracts. The clause at 52.215-40 requires contractors to: (i) notify the contracting officer when a change in contractor ownership, or a change in asset valuation or in any other costs related to an ownership change, occurs or is pending; and (ii) retain and continue to maintain, through successive changes in company ownership, asset inventory records currently required under the FAR. This rule is effective immediately.

Replacement pages: 15-29 & 15-30, TOC Pt. 52 (pp. 3 & 4), 52-51 thru 52-54, and 52-317 & 52-318.

Item XII—Certificates of Competency (FAR Case 91-107)

FAR 19.000(b) and 19.601 are revised to clarify the applicability of Certificate of Competency procedures, making it clear that the statutory requirement to refer nonresponsibility determinations to the Small Business Administration is unrelated to a contracting agency's location.

Replacement pages: 19-1 & 19-2, and 19-31 & 19-32.

Item XIII—Small Business Competitiveness Demonstration Program (FAR Case 92-302)

This interim rule implements Title II of Pub. L. 102-366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, which revises Title VII of Pub. L. 100-656, the Small Business Competitiveness Demonstration Program. Editorial amendments are made to FAR 19.1001. FAR 19.1006(b)(2) is amended to specify that agencies may reinstate the use of small business set-asides as necessary to meet assigned goals, but only within the organizational unit(s) that failed to meet the small business goals. FAR 19.1005(a)(3) is amended to revise the description of Architect and Engineering services as a Designated Industry Group.

Replacement pages: 19-45 & 19-46.

Item XIV—Small Business Concern Representation (FAR Case 91-61)

FAR 19.502-4(b) is amended to clarify that questions regarding the size status of offerors are matters of eligibility not responsiveness and must be referred to the SBA. FAR 52.219-1 is amended to remove the requirement for offerors to certify that all supplies to be furnished will be manufactured by a small business in the United States and to add a sentence to clarify that set-aside clauses contain restrictions on the source of end items to be furnished.

Replacement pages: 19-30.1 and 52-75 and 52-76.

Item XV—Prohibition of Department of Labor Implementation/Administration of Davis-Bacon Helper Regulations Pursuant to Fiscal Year 1994 Appropriation Act (FAR Case 93-618)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are implementing in the FAR the Department of Labor (DOL) suspension of its Davis-Bacon Act "Helper" regulations. The DOL regulations were suspended on October 21, 1993. A notice of suspension was published in the Federal Register at 58 FR 58954, November 5, 1993.

Replacement pages: 22-5 thru 22-8, 22-13 & 22-14, and 52-89 & 52-90.

Item XVI—Walsh-Healey Definitions (FAR Case 92-36)

FAR 22.606-2(b) is revised to add a reference to the alternate "regular dealer" qualification requirements for information systems integrators found in Department of Labor regulations (41 CFR 50-201.101).

Replacement pages: 22-19 & 22-20.

Item XVII—Section 4c Price Adjustments (FAR Case 93-609)

This final rule revises the FAR coverage at 22.1002-3, 22.1012-3, and 22.1012-5 to clarify that the requirement for successor contractors on contracts over $2,500, for substantially the same services performed in the same locality, to pay wages and fringe benefits at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract, is self executing. The requirement is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor's collective bargaining agreement in the successor contract. However, the contracting officer shall incorporate the wage and fringe benefit terms of the collective bargaining agreement itself in contract solicitations and may incorporate the terms or the agreement itself in other contract actions.

Replacement pages: 22-27 & 22-28, and 22-35 thru 22-38.

Item XVIII—Collective Bargaining Agreement, Contingency Clauses (FAR Case 92-7)

This final rule revises the coverage at FAR 22.1002-3, 22.1008-3, and 22.1021. These changes are necessary to implement the direction contained in DOL Memorandums No. 159 and 166

concerning contingencies in collective bargaining agreements subject to section 4(c) of the Service Contract Act and requests for substantial variance hearing. This rule also makes editorial changes to more accurately reflect the Department of Labor regulations on the Service Contract Act.

Replacement pages: TOC, Pt. 22 (pp. 1 & 2), 22-27 & 22-28, 22-33 & 22-34, and 22-39 thru 22-42.

Item XIX—Cost Accounting Standards (FAR Case 92-18)

The interim rule issued in FAC 90-12, which amended the FAR based on the Cost Accounting Standards Board's recodification of the Cost Accounting Standards in 48 CFR Chapter 99, is converted to a final rule with changes.

Replacement pages: 28-9 & 28-10, 30-1 thru 30-5, 32-17 & 32-18, 42-1 thru 42-4, 42-7 & 42-8, 44-5, 52-155 thru 52-158.

Item XX—CAS Applicability and Thresholds (FAR Case 93-27)

The revisions to the cost accounting standards made by the Cost Accounting Standards Board at 58 FR 58798, November 4, 1993, are incorporated into the FAR.

Replacement pages: 30-1 thru 30-4, 52-153 thru 52-156, Appendix B, pp. 3 thru 7 and 51 & 52.

Item XXI—Advance Agreements, Composition of Total Cost, and Accounting for Unallowable Costs (FAR Case 91-45)

This final rule amends FAR 31.109, Advance agreements; 31.201-1, Composition of total cost; and 31.201-6, Accounting for unallowable costs. Language is added at 31.109(a) to address the use of advance agreements to clarify allowability issues under the specific cost principles, in order to minimize subsequent disputes. The phrase in 31.109(a), "particularly for firms or their divisions that may not be under effective competitive constraints," is deleted because the determination of the reasonableness, allocability, or allowability of a cost under the specific cost principles is not significantly impacted by the business environment in which the industry operates. Changes in 31.201-1 include deleting the word "allowable" in its first sentence; redesignating the existing paragraph as "(a)"; and inserting a new paragraph "(b)" which makes it clear that while the total cost of a contract includes all allocable costs, the total allowable costs on a Government contract are limited to those allocable costs which are allowable pursuant to Part 31 and agency supplements. FAR 31.201-6(c) is revised to

clarify that there is no intended difference in the accounting and presentation of unallowable costs between contracts which are covered by the Cost Accounting Standards and those which are not.

Replacement pages: 31-7 thru 31-10.

Item XXII—Postretirement Benefits—Transition Costs (FAR Case 91-42)

This item converts the interim rule concerning the treatment of costs for postretirement benefits other than pensions (PRB) which are attributable to employees' past service to a final rule. This interim rule was published in the Federal Register at 56 FR 41738, August 22, 1991, as Item IX of FAC 90-7. The interim rule changed FAR 31.205-6 to add a new paragraph (j)(3)(v), revised the first sentence of paragraph (j)(4), redesignated the existing paragraph (o)(4) as (o)(5), and added a new paragraph (o)(4). The final rule differs from the interim rule in that it amends FAR 31.205-6(o)(2) to allow costs generated using the terminal funding method allowed for CAS-covered contractors. Both the terminal funding method and cash basis (pay-as-you-go) accounting are allowable assignment methods under CAS but are not sanctioned by the Generally Accepted Accounting Principles. It is intended that the methods allowed by CAS for prefunding retiree insurance programs be allowable for all contractors. Subsequent paragraphs are redesignated as (o)(3) through (o)(6) with minor clarifications made in paragraphs (o)(3) and (5). A change is made in the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), to reflect the change in paragraph numbering at 31.205-6(o).

The amended cost principle provides guidance for any transfer of pension funds to another employee benefit fund. In effect, the cost principle requires any increase in current or future Government costs for the pension fund due to such a withdrawal to be offset by equivalent decreases in Government costs for the employee benefit fund receiving the transfer. Transfers made without an advance agreement shall be treated as if the contractor withdrew the funds and are subject to 31.205-6(j)(4), and the deposit to the receiving fund is subject to the cost allowability rules governing the receiving fund in regards to measurement and assignment of costs. Under 31.205-6(j)(4), the Government is entitled to its equitable share of the gross amount withdrawn from pension fund assets. FAR 31.205-6(o)(5) limits the allowable amount of contractor PRB transition costs for any fiscal year to the amount which would be assigned to that year using the amortization method described in

Financial Accounting Standards Board Statement 106. This limitation is necessary because Government fiscal policy dictates that the past service cost element be amortized rather than immediately recognized.

Replacement pages: 31-19 & 31-20; 31-20.1 (added), and 52-51 & 52-52.

Item XXIII—Advance Payment Reporting (FAR Case 93-309)

FAR 32.402(a) is revised to delete the requirement for submitting an advance notice to Congress prior to making an advance payment exceeding $25 million.

Replacement pages: 32-7 and 32-8.

Item XXIV—Defense Production Act Amendments (FAR Case 93-304)

FAR Subpart 34.1, Testing, qualification and use of industrial resources developed under Title III, Defense Production Act (DPA), is added to implement pertinent provisions of the Defense Production Act Amendments of 1992 (Public Law 102-558). Title III of the DPA of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA. This interim rule expresses Government policy to pay for such testing, and provides definitions, procedures, and a contract clause to implement the policy.

Replacement pages: Structure of the FAR to the Subpart Level, (pp. 5 & 6), TOC, Pt. 34, 34-1 & 34-2; 34-3 (added), TOC, Pt. 52, (pp. 5 & 6), 52-189 & 52-190, 52-190.1 (added), and 52-341 & 52-342.

Item XXV—Defense Technical Information Center (FAR Case 93-29)

FAR 35.010, Scientific and technical reports, is revised to delete address information and language instructing DoD contractors to send copies of scientific and technical reports resulting form DoD contracts to Defense Technical Information Center (DTIC).

Replacement pages: 35-3 & 35-4.

Item XXVI—Construction Contracting (FAR Case 90-62)

This final rule revises FAR parts 36 and 52 by including a new section at 36.212, Preconstruction orientation, inserting a new clause at 52.236-26, Preconstruction conference, and a new provision at 52.236-27, Site Visit (Construction). The new clause and provision had previously been used by military activities and are considered to be beneficial to contractors as well as civilian and defense agencies.

Replacement pages: TOC, Pt. 36 (pp. 1 & 2), 36-3 thru 36-8; 36-8.1 added, TOC Pt. 52 (pp. 5 & 6), 52-199 & 52-200, and 52-343 & 52-344.

Item XXVII—Child Care Services (FAR Case 91-106)

This interim rule amends Part 37 to implement 42 U.S.C. 13041 by adding a definition of "child care services" at 37.101 and adding language at 37.103(d) requiring contracting officers to ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services.

Replacement pages: 37-1 thru 37-4.

Item XXVIII—Final Indirect Cost Agreements (FAR Case 91-103)

FAR 42.705-2 and 52.216-13 are amended to eliminate the requirements for contractors to execute a Certificate of Current Cost or Pricing Data in conjunction with final indirect cost agreements on facilities contracts and for auditors to obtain a certificate under auditor determination procedures for final indirect cost rates.

Replacement pages: 42-9 & 42-10 and 52-61 & 52-62.

Item XXIX—Consent to Subcontract (FAR Case 91-68)

FAR 44.201, 44.204, 52.244-1, and 52.244-2 are revised to eliminate the exception for contracting officer consent for major systems and subsystems. Instead, contracting officers are allowed to specify in the contract schedule all subcontracts for major systems, subsystems, or components needing special surveillance, for which consent to subcontract must be obtained by the prime contractor.

Replacement pages: TOC, Pt. 44 (pp. 1 & 2), 44-1 thru 44-4, and 52-207 thru 52-210.

Item XXX—Contractors' Purchasing Systems Reviews (FAR Case 90-53)

This final rule provides revisions to 44.302(b) and paragraphs (a) and (b) of 44.304. These revisions are in keeping with the current trends to streamline the acquisition process, reduce contractor oversight, and to eliminate regulatory burdens on both the contracting officers and contractors.

Replacement pages: 44-3 and 44-4.

Item XXXI—Transfers of Government Property (FAR Case 90-34)

This final rule revises the FAR at 45.311 and 45.603 to ensure that Government property is transferred and documented properly.

Replacement pages: TOC, Pt. 45 (pp. 1 & 2), 45-9 & 45-10, and 45-21 and 45-22.

Item XXXII—Commercial Bills of Lading Under Cost-Reimbursement Contracts Audit by GSA (FAR Case 88-56)

FAR 47.104-4 is amended to prescribe the added clause at 52.247-67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract.

Replacement pages: TOC, Pt. 47 (pp. 1 & 2), 47-3 & 47-4, TOC Pt. 52 (pp. 7 & 8), 52-279 thru 52-280.1; 52-280.2 (added), and 52-357 thru 52-358.1 (added).

Item XXXIII—Qualification Requirements (FAR Case 92-612)

FAR 52.209-1(e) is revised to allow offerors to submit evidence of qualification prior to award of the contract, rather than with their offers. This change corrects an inconsistency between paragraphs (b) and (e) of the clause highlighted by the GAO decision in Gardner Zemke Company, B-238334, April 5, 1990.

Replacement pages: 52-19 & 52-20.

Item XXXIV—Small Business and Small Disadvantaged Business Subcontracting Plan (FAR Case 92-628)

FAR 52.219-9 is amended to state that a firm may rely on the information contained in the SBA Procurement Automated Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list and as its source list.

Replacement pages: 52-79 thru 52-82.

Item XXXV—Shipments to Ports and Air Terminals (FAR Case 91-11)

The provision at 52.247-51, Evaluation of Export Offers, now requires contracting officers to publish, with the solicitation, any available information on port handling and ocean charges for DoD water terminals. Several editorial and minor technical changes were also made to the provision.

Replacement pages: 52-271 & 52-272.

Item XXXVI—Standard Form 18, Request for Quotation (FAR Case 91-84)

Standard Form 18, Request for Quotations, at 53.301-18, is revised by deleting the Small Business Concern Representation and the Notice of Small Business Small Purchase Set-Aside, from the reverse of the form and adding the Standard Industrial Classification Code and small business size standard to the face of the form. Corresponding changes were made to the face of the form for the contracting officer to indicate whether the Request for Quotation is a small business small purchase set-aside and whether additional provisions and representations are attached. Current versions of the two provisions should be attached, when appropriate.

Replacement pages: 53-3 & 53-4, and 53-9 & 53-10.

Item XXXVII—Revisions to Standard Forms 1414 and 1415 (FAR Case 92-09)

Standard Form 1414, Consent of Surety, and Standard Form 1415, Consent of Surety and Increase of Penalty, are revised to accommodate consents by individual sureties and to provide space for dates of execution.

Replacement pages: 53-5 & 53-6, and 53-129 & 53-130.

Item XXXVIII—Technical Amendments

Technical amendments have been made to FAR Part 1 to correct references and terms.

Replacement pages: 1-1 thru 1-4.

Item XXXIX—Looseleaf Amendments

The following amendments are to the looseleaf edition of the FAR:

1. In 52.301, the Provision and Clause Matrix is reissued in its entirety with the following amendments:

PROVISION OR CLAUSE	Amendment to Matrix
52.215-30	In "UCF" Column , remove "I", insert "L".
52.216-1	In "IBR column" remove "Yes", insert "No".
52.219-15	In "IBR column" remove "Yes", insert "No".
52.219-22	In "UCF" column, remove "K", insert "L".
Alternate I following 52.222-35	In "Prescribed In" column, remove "22.1308(c)" and insert "22.1308(a)"
52.225-8 and 52.225-9	In "Prescribed In" columns, remove "25.407(a)(1)" and "25.407(a)(2)", and insert "25.408(a)(1) and 25.408(a)(2), respectively.
52.225-18 and 52.225-19	In "SP" column, remove "A" both times it appears.
52.227-2	In "FP Con" column, add "A"
52.232-1	In "LMV" column, remove "R"
52.233-1	In "Prescribed in" column remove "33.214" and insert "33.215"

Replacement pages: 52-305 thru 52-361.

2. The Corrections and Subscription Problems pages found at the end of the FAR are reissued due to revisions in references and format.

Replacement pages: 2 pages.

Item XL—Annual Notice of Rates of Inflation

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of IR&D/B&P costs for major contractors under 31.205-18(c)(2)(i)(C)(2). These rates were issued by the Department of Defense Principal Deputy Comptroller in January 1994.

Federal Acquisition Circular 90-13, FAR Case 91-37, Item VII, published in the Federal Register at 57 FR 44264, September 24, 1992, provided the rates of inflation which were to be used to determine the allowability of IR&D/B&P costs for major contractors during the 3-year transition period FY 1993 through 1995. FAR 31.205-18(c)(2)(i)(C)(2) states that the annual rates of inflation will be published in the Federal Register on an annual basis.

FAC 90-20, published in the Federal Register at 59 FR 11370, March 10, 1994, provided the rates of inflation for FY 1993 through 1996. The following rates of inflation are effective immediately, supersede those published in the Federal Register on March 10, 1994, and shall remain in effect until superseded by the next publication:

FISCAL YEAR	ANNUAL PERCENTAGE RATE
1993	2.6
1994	2.7
1995	2.9
1996	3.0
1997	3.0

Replacement pages: This item is for information purposes only. It should not be filed in the FAR.

FAC 90-23 FILING INSTRUCTIONS

REMOVE PAGES	INSERT PAGES
General Structure (pp. 1 & 2)	General Structure (pp. 1 & 2)
Structure of the FAR to the Subpart Level (pp. 1 thru 7)	Structure of the FAR to the Subpart Level (pp. 1 thru 7)
TOC, Part 1	TOC, Part 1
1-1 thru 1-4	1-1 thru 1-4
1-9 & 1-10	1-9 & 1-10
TOC, Part 4	TOC, Part 4
4-3 thru 4-10	4-3 thru 4-10
5-9 thru 5-11	5-9 thru 5-11
6-3 & 6-4	6-3 & 6-4
TOC, Part 7	TOC, Part 7
7-7 & 7-8	7-7 & 7-8
TOC, Part 8 (pp. 1 & 2)	TOC, Part 8 (p. 1)
8-1 thru 8-19	8-1 thru 8-12
9-3 & 9-4	9-3 & 9-4
9-13 thru 9-16	9-13 thru 9-16
14-5 & 14-6	14-5 & 14-6
15-5 & 15-6	15-5 & 15-6
15-29 & 15-30	15-29 & 15-30
15-35 & 15-36	15-35 & 15-36
19-1 & 19-2	19-1 & 19-2
19-30.1	19-30.1
19-31 & 19-32	19-31 & 19-32
19-45 & 19-46	19-45 & 19-46
TOC, Part 22 (pp. 1 & 2)	TOC, Part 22 (pp. 1 & 2)
22-5 thru 22-8.1	22-5 thru 22-8
22-13 & 22-14	22-13 & 22-14
22-19 & 22-20	22-19 & 22-20
22-27 & 22-28	22-27 & 22-28
22-33 thru 22-42	22-33 thru 22-42

FAC 90-23 FILING INSTRUCTIONS (CONT'D)

REMOVE PAGES	INSERT PAGES
28-9 & 28-10	28-9 & 28-10
30-1 thru 30-5	30-1 thru 30-5
31-7 thru 31-10 31-19 & 31-20	31-7 thru 31-10 31-19 thru 31-20.1
32-7 & 32-8 32-17 & 32-18	32-7 & 32-8 32-17 & 32-18
TOC, Part 34 34-1 & 34-2	TOC, Part 34 34-1 thru 34-3
35-3 & 35-4	35-3 & 35-4
TOC, Part 36 (pp. 1 & 2) 36-3 thru 36-8	TOC, Part 36 (pp. 1 & 2) 36-3 thru 36-8.1
37-1 thru 37-4	37-1 thru 37-4
None None	TOC, Part 41 41-1 thru 41-7
42-1 thru 42-4 42-7 thru 42-10	42-1 thru 42-4 42-7 thru 42-10
TOC, Part 44 (pp. 1 & 2) 44-1 thru 44-5	TOC, Part 44 (pp. 1 & 2) 44-1 thru 44-5
TOC, Part 45 (pp. 1 & 2) 45-9 & 45-10 45-21 & 45-22	TOC, Part 45 (pp. 1 & 2) 45-9 & 45-10 45-21 & 45-22
TOC, Part 47 (pp. 1 & 2) 47-3 & 47-4	TOC, Part 47 (pp. 1 & 2) 47-3 & 47-4
TOC, Part 52 (pp. 1 thru 8) 52-16.1 52-17 thru 52-20 52-51 thru 52-54 52-61 & 52-62 52-75 & 52-76 52-79 thru 52-82 52-89 & 52-90	TOC, Part 52 (pp. 1 thru 8) 52-16.1 52-17 thru 52-20 52-51 thru 52-54 52-61 & 52-62 52-75 & 52-76 52-79 thru 52-82 52-89 & 52-90

FAC 90-23 FILING INSTRUCTIONS (CONT'D)

REMOVE PAGES	INSERT PAGES
52-153 thru 52-158	52-153 thru 52-158
52-189 & 52-190	52-189 thru 52-190.1
52-199 thru 52-202	52-199 thru 52-202.5
52-207 thru 52-210	52-207 thru 52-210
52-271 & 52-272	52-271 & 52-272
52-279 thru 52-280.1	52-279 thru 52-280.2
Matrix (pp. 52-305 thru 52-342)	Matrix (pp. 52-305 thru 52-361)
TOC, Part 53 (pp. 3 & 4)	TOC, Part 53 (pp. 3 & 4)
53-3 thru 53-6	53-3 thru 53-6
53-9 & 53-10	53-9 & 53-10
53-129 & 53-130	53-129 & 53-130
53-197 & 53-198	53-197 & 53-198
Forms Authorized for Local Reproduction	**Forms Authorized for Local Reproduction**
SF 1414	SF 1414
None	SF 1415
Appendix B Cover	Appendix B Cover
3 thru 7	3 thru 6
51 & 52	51 & 52
Corrections and Subscription Problems (2 pp.)	Corrections and Subscription Problems (2 pp.)

FEDERAL ACQUISITION REGULATION

GENERAL STRUCTURE

SUBCHAPTER A - GENERAL

Part 1 - Federal Acquisition Regulations System
Part 2 - Definitions of Words and Terms
Part 3 - Improper Business Practices and Personal Conflicts of Interest
Part 4 - Administrative Matters

SUBCHAPTER B - COMPETITION and ACQUISITION PLANNING

Part 5 - Publicizing Contract Actions
Part 6 - Competition Requirements
Part 7 - Acquisition Planning
Part 8 - Required Sources of Supplies and Services
Part 9 - Contractor Qualifications
Part 10 - Specifications, Standards, and Other Purchase Descriptions
Part 11 - Acquisition and Distribution of Commercial Products
Part 12 - Contract Delivery or Performance

SUBCHAPTER C - CONTRACTING METHODS and CONTRACT TYPES

Part 13 - Small Purchase and Other Simplified Purchase Procedures
Part 14 - Sealed Bidding
Part 15 - Contracting by Negotiation
Part 16 - Types of Contracts
Part 17 - Special Contracting Methods
Part 18 - Reserved

SUBCHAPTER D - SOCIOECONOMIC PROGRAMS

Part 19 - Small Business and Small Disadvantaged Business Concerns
Part 20 - Labor Surplus Area Concerns
Part 21 - Reserved
Part 22 - Application of Labor Laws to Government Acquisitions
Part 23 - Environment, Conservation, Occupational Safety, and Drug-Free Workplace
Part 24 - Protection of Privacy and Freedom of Information
Part 25 - Foreign Acquisition
Part 26 - Other Socioeconomic Programs

SUBCHAPTER E - GENERAL CONTRACTING REQUIREMENTS

Part 27 - Patents, Data, and Copyrights
Part 28 - Bonds and Insurance

Part 29 - Taxes
Part 30 - Cost Accounting Standards Administration
Part 31 - Contract Cost Principles and Procedures
Part 32 - Contract Financing
Part 33 - Protests, Disputes, and Appeals

SUBCHAPTER F - SPECIAL CATEGORIES of CONTRACTING

Part 34 - Major System Acquisition
Part 35 - Research and Development Contracting
Part 36 - Construction and Architect-Engineer Contracts
Part 37 - Service Contracting
Part 38 - Federal Supply Schedule Contracting
Part 39 - Acquisition of Information Resources
Part 40 - Reserved
Part 41 - Acquisition of Utility Services

SUBCHAPTER G - CONTRACT MANAGEMENT

Part 42 - Contract Administration
Part 43 - Contract Modifications
Part 44 - Subcontracting Policies and Procedures
Part 45 - Government Property
Part 46 - Quality Assurance
Part 47 - Transportation
Part 48 - Value Engineering
Part 49 - Termination of Contracts
Part 50 - Extraordinary Contractual Actions
Part 51 - Use of Government Sources by Contractors

SUBCHAPTER H - CLAUSES and FORMS

Part 52 - Solicitation Provisions and Contract Clauses
Part 53 - Forms

APPENDICES to THE FAR

Appendix A - Acquisition of Federal Information Processing (FIP) Resources by Contracting

Appendix B - Cost Accounting Preambles and Regulations
Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations Recodified by the Cost Accounting Standards Board at 48 CFR Chapter 99
Preambles
Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board
Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board
Part III—Preambles Published under the FAR System
Cost Accounting Standards Board Rules and Procedures

STRUCTURE OF THE FAR TO THE SUBPART LEVEL

SUBCHAPTER A—GENERAL

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM
1.1 Purpose, Authority, Issuance
1.2 Administration
1.3 Agency Acquisition Regulations
1.4 Deviations from the FAR
1.5 Agency and Public Participation
1.6 Career Development, Contracting Authority, and Responsibilities
1.7 Determinations and Findings

PART 2—DEFINITIONS OF WORDS AND TERMS
2.1 Definitions
2.2 Definitions Clause

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
3.1 Safeguards
3.2 Contractor Gratuities to Government Personnel
3.3 Reports of Suspected Antitrust Violations
3.4 Contingent Fees
3.5 Other Improper Business Practices
3.6 Contracts with Government Employees or Organizations Owned or Controlled by Them
3.7 Voiding and Rescinding Contracts
3.8 Limitation on the Payment of Funds to Influence Federal Transactions

PART 4—ADMINISTRATIVE MATTERS
4.1 Contract Execution
4.2 Contract Distribution
4.3 Reserved
4.4 Safeguarding Classified Information Within Industry
4.5 Reserved
4.6 Contract Reporting
4.7 Contractor Records Retention
4.8 Government Contract Files
4.9 Information Reporting to the Internal Revenue Service

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 5—PUBLICIZING CONTRACT ACTIONS
5.1 Dissemination of Information
5.2 Synopses of Proposed Contract Actions
5.3 Synopses of Contract Awards
5.4 Release of Information
5.5 Paid Advertisements

PART 6—COMPETITION REQUIREMENTS
6.1 Full and Open Competition
6.2 Full and Open Competition after Exclusion of Sources
6.3 Other Than Full and Open Competition
6.4 Sealed Bidding and Competitive Proposals
6.5 Competition Advocates

PART 7—ACQUISITION PLANNING
7.1 Acquisition Plans
7.2 Planning for the Purchase of Supplies in Economic Quantities
7.3 Contractor Versus Government Performance
7.4 Equipment Lease or Purchase

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES
8.1 Excess Personal Property
8.2 Jewel Bearings and Related Items
8.3 [Reserved]
8.4 Federal Supply Schedules
8.5 Acquisition of Helium
8.6 Acquisition from Federal Prison Industries, Inc.
8.7 Acquisition from the Blind and Other Severely Handicapped
8.8 Acquisition of Printing and Related Supplies
8.9 [Reserved]
8.10 [Reserved]
8.11 Leasing of Motor Vehicles

PART 9—CONTRACTOR QUALIFICATIONS
9.1 Responsible Prospective Contractors
9.2 Qualifications Requirements
9.3 First Article Testing and Approval
9.4 Debarment, Suspension, and Ineligibility
9.5 Organizational and Consultant Conflicts of Interest
9.6 Contractor Team Arrangements
9.7 Defense Production Pools and Research and Development Pools

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

PART 11—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

PART 12—CONTRACT DELIVERY OR PERFORMANCE
12.1 Delivery or Performance Schedules
12.2 Liquidated Damages
12.3 Priorities and Allocations
12.4 Variation in Quantity
12.5 Suspension of Work, Stop-Work Orders, and Government Delay of Work

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES
13.1 General
13.2 Blanket Purchase Agreements
13.3 Fast Payment Procedure
13.4 Imprest Fund
13.5 Purchase Orders

PART 14—SEALED BIDDING
14.1 Use of Sealed Bidding
14.2 Solicitation of Bids
14.3 Submission of Bids
14.4 Opening of Bids and Award of Contract
14.5 Two-Step Sealed Bidding

PART 15—CONTRACTING BY NEGOTIATION
15.1 General Requirements for Negotiation
15.2 [Reserved]
15.3 [Reserved]
15.4 Solicitation and Receipt of Proposals and Quotations
15.5 Unsolicited Proposals
15.6 Source Selection
15.7 Make-or-Buy Programs
15.8 Price Negotiation
15.9 Profit
15.10 Preaward, Award, and Postaward Notifications, Protests, and Mistakes

PART 16—TYPES OF CONTRACTS
16.1 Selecting Contract Types
16.2 Fixed-Price Contracts
16.3 Cost-Reimbursement Contracts
16.4 Incentive Contracts
16.5 Indefinite-Delivery Contracts
16.6 Time-and-Materials, Labor-Hour, and Letter Contracts
16.7 Agreements

PART 17—SPECIAL CONTRACTING METHODS
17.1 Multiyear Contracting
17.2 Options
17.3 [Reserved]
17.4 Leader Company Contracting
17.5 Interagency Acquisitions Under the Economy Act
17.6 Management and Operating Contracts

PART 18—RESERVED

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS
19.1 Size Standards
19.2 Policies
19.3 Determination of Status as a Small Business Concern
19.4 Cooperation with the Small Business Administration
19.5 Set-Asides for Small Business
19.6 Certificates of Competency and Determinations of Eligibility
19.7 Subcontracting with Small Business and Small Disadvantaged Business Concerns
19.8 Contracting with the Small Business Administration (The 8(a) Program)
19.9 Contracting Opportunities for Women-Owned Small Businesses
19.10 Small Business Competitiveness Demonstration Program

PART 20—LABOR SURPLUS AREA CONCERNS
20.1 General
20.2 Set-Asides
20.3 Labor Surplus Area Subcontracting Program

PART 21—RESERVED

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
22.1 Basic Labor Policies
22.2 Convict Labor
22.3 Contract Work Hours and Safety Standards Act
22.4 Labor Standards for Contracts Involving Construction
22.5 [Reserved]
22.6 Walsh-Healey Public Contracts Act

22.7 [Reserved]
22.8 Equal Employment Opportunity
22.9 Nondiscrimination Because of Age
22.10 Service Contract Act of 1965, as Amended
22.11 Professional Employee Compensation
22.12 [Reserved]
22.13 Special Disabled and Vietnam Era Veterans
22.14 Employment of the Handicapped
22.15 Notification of Employee Rights Concerning Payment of Union Dues or Fees

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
23.1 Pollution Control and Clean Air and Water
23.2 Energy Conservation
23.3 Hazardous Material Identification and Material Safety Data
23.4 Use of Recovered Materials
23.5 Drug-Free Workplace
23.6 Notice of Radioactive Material

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION
24.1 Protection of Individual Privacy
24.2 Freedom of Information Act

PART 25—FOREIGN ACQUISITION
25.1 Buy American Act—Supplies
25.2 Buy American Act—Construction Materials
25.3 Balance of Payments Program
25.4 Trade Agreements
25.5 Payment in Local Foreign Currency
25.6 Customs and Duties
25.7 Restrictions on Certain Foreign Purchases
25.8 International Agreements and Coordination
25.9 Additional Foreign Acquisition Clauses
25.10 Implementation of Sanctions Against Countries that Discriminate Against United States Products or Services in Government Procurement

PART 26—OTHER SOCIOECONOMIC PROGRAMS
26.1 Indian Incentive Program

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 27—PATENTS, DATA, AND COPYRIGHTS
27.1 General
27.2 Patents
27.3 Patent Rights Under Government Contracts
27.4 Rights In Data and Copyrights
27.5 [Reserved]
27.6 Foreign License and Technical Assistance Agreements

PART 28—BONDS AND INSURANCE
28.1 Bonds
28.2 Sureties
28.3 Insurance

PART 29—TAXES
29.1 General
29.2 Federal Excise Taxes
29.3 State and Local Taxes
29.4 Contract Clauses

Structure

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION
30.1 General
30.2 CAS Program Requirements
30.3 CAS Rules and Regulations
30.4 Cost Accounting Standards
30.5 [Reserved]
30.6 CAS Administration

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES
31.1 Applicability
31.2 Contracts with Commercial Organizations
31.3 Contracts with Educational Institutions
31.4 — 31.5 [Reserved]
31.6 Contracts with State, Local, and Federally Recognized Indian Tribal Governments
31.7 Contracts with Nonprofit Organizations

PART 32—CONTRACT FINANCING
32.1 General
32.2 [Reserved]
32.3 Loan Guarantees for Defense Production
32.4 Advance Payments
32.5 Progress Payments Based on Costs
32.6 Contract Debts
32.7 Contract Funding
32.8 Assignment of Claims
32.9 Prompt Payment

PART 33—PROTESTS, DISPUTES, AND APPEALS
33.1 Protests
33.2 Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 34—MAJOR SYSTEM ACQUISITION
34.0 General
34.1 Testing, Qualification, and Use of Industrial Resources Developed Under Title III, Defense Production Act.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS
36.1 General
36.2 Special Aspects of Contracting for Construction
36.3 Special Aspects of Sealed Bidding in Construction Contracting
36.4 Special Procedures for Negotiation of Construction Contracts
36.5 Contract Clauses
36.6 Architect-Engineer Services
36.7 Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

PART 37—SERVICE CONTRACTING
37.1 Service Contracts—General
37.2 Advisory and Assistance Services
37.3 Dismantling, Demolition, or Removal of Improvements
37.4 Dismantling, Demolition, or Removal of Improvements

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING
38.1 Federal Supply Schedule Program

38.2 Establishing and Administering Federal Supply Schedules

PART 39—ACQUISITION OF INFORMATION RESOURCES

PART 40—[RESERVED]

PART 41—ACQUISITION OF UTILITY SERVICES
41.1 General
41.2 Acquiring Utility Services
41.3 Requests for Assistance or Pre-Award Contract Approval.
41.4. Administration
41.5 Solicitation Provision and Contract Clauses
41.6 Forms
41.7 Formats

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 42—CONTRACT ADMINISTRATION
42.1 Interagency Contract Administration and Audit Services
42.2 Assignment of Contract Administration
42.3 Contract Administration Office Functions
42.4 Correspondence and Visits
42.5 Postaward Orientation
42.6 Corporate Administrative Contracting Officer
42.7 Indirect Cost Rates
42.8 Disallowance of Costs
42.9 Bankruptcy
42.10 Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs
42.11 Production Surveillance and Reporting
42.12 Novation and Change-of-Name Agreements
42.13 [Reserved]
42.14 Traffic and Transportation Management

PART 43—CONTRACT MODIFICATIONS
43.1 General
43.2 Change Orders
43.3 Forms

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES
44.1 General
44.2 Consent to Subcontracts
44.3 Contractors' Purchasing Systems Reviews

PART 45—GOVERNMENT PROPERTY
45.1 General
45.2 Competitive Advantage
45.3 Providing Government Property to Contractors
45.4 Contractor Use and Rental of Government Property
45.5 Management of Government Property in the Possession of Contractors
45.6 Reporting, Redistribution, and Disposal of Contractor Inventory

PART 46—QUALITY ASSURANCE
46.1 General
46.2 Contract Quality Requirements
46.3 Contract Clauses
46.4 Government Contract Quality Assurance
46.5 Acceptance
46.6 Material Inspection and Receiving Reports

46.7 Warranties
46.8 Contractor Liability for Loss of or Damage to Property of the Government

PART 47—TRANSPORTATION
47.1 General
47.2 Contracts for Transportation or for Transportation-Related Services
47.3 Transportation in Supply Contracts
47.4 Air Transportation by U.S.—Flag Carriers
47.5 Ocean Transportation by U.S.—Flag Vessels

PART 48—VALUE ENGINEERING
48.1 Policies and Procedures
48.2 Contract Clauses

PART 49—TERMINATION OF CONTRACTS
49.1 General Principles
49.2 Additional Principles for Fixed-Price Contracts Terminated for Convenience
49.3 Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience
49.4 Termination for Default
49.5 Contract Termination Clauses
49.6 Contract Termination Forms and Formats

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS
50.1 General
50.2 Delegation of and Limitations on Exercise of Authority
50.3 Contract Adjustments
50.4 Residual Powers

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS
51.1 Contractor Use of Government Supply Sources
51.2 Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

SUBCHAPTER H—CLAUSES AND FORMS

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
52.1 Instructions for Using Provisions and Clauses
52.2 Texts of Provisions and Clauses
52.3 Provision and Clause Matrix

PART 53—FORMS
53.1 General
53.2 Prescription of Forms
53.3 Illustration of Forms

PART 1

FEDERAL ACQUISITION REGULATIONS SYSTEM

TABLE OF CONTENTS

1.000 Scope of part.

SUBPART 1.1—PURPOSE, AUTHORITY, ISSUANCE

1.101 Purpose.
1.102 Authority.
1.103 Applicability.
1.104 Issuance.
1.104-1 Publication and code arrangement.
1.104-2 Arrangement of regulations.
1.104-3 Copies.
1.105 OMB Approval Under the Paperwork Reduction Act.

SUBPART 1.2—ADMINISTRATION

1.201 Maintenance of the FAR.
1.201-1 The two councils.
1.201-2 FAR Secretariat.
1.202 Agency compliance with the FAR.

SUBPART 1.3—AGENCY ACQUISITION REGULATIONS

1.301 Policy.
1.302 Limitations.
1.303 Publication and codification.
1.304 Agency control and compliance procedures.

SUBPART 1.4—DEVIATIONS FROM THE FAR

1.400 Scope of subpart.
1.401 Definition.
1.402 Policy.
1.403 Individual deviations.
1.404 Class deviations.
1.405 Deviations pertaining to treaties and executive agreements.

SUBPART 1.5—AGENCY AND PUBLIC PARTICIPATION

1.501 Solicitation of agency and public views.
1.501-1 Definition.
1.501-2 Opportunity for public comments.
1.501-3 Exceptions.
1.502 Unsolicited proposed revisions.
1.503 Public meetings.

SUBPART 1.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

1.601 General.
1.602 Contracting officers.
1.602-1 Authority.
1.602-2 Responsibilities.
1.602-3 Ratification of unauthorized commitments.
1.603 Selection, appointment, and termination of appointment.
1.603-1 General.
1.603-2 Selection.
1.603-3 Appointment.
1.603-4 Termination.

SUBPART 1.7—DETERMINATIONS AND FINDINGS

1.700 Scope of subpart.
1.701 Definition.
1.702 General.
1.703 Class determinations and findings.
1.704 Content.
1.705 Supersession and modification.
1.706 Expiration.
1.707 Signatory authority.

PART 1

FEDERAL ACQUISITION REGULATIONS SYSTEM

1.000 Scope of part.

This part sets forth basic policies and general information about the Federal Acquisition Regulations System including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation. Subparts 1.2, 1.3, and 1.4 prescribe administrative procedures for maintaining the FAR System.

SUBPART 1.1—PURPOSE, AUTHORITY, ISSUANCE

1.101 Purpose.

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).

1.102 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.

1.103 Applicability.

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

1.104 Issuance.

1.104-1 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.

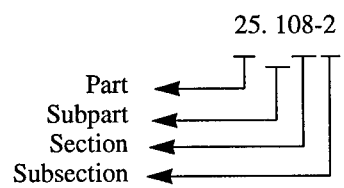
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see Subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

(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.

1.104-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which deals with a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash 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 alphanumerics 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.

1.104-3 Copies.

Copies of the FAR in Federal Register, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

1.105 OMB Approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.104-9	9000-0103
3.104-12(a)(12)	9000-0103
3.4	9000-0003
4.102	9000-0033
4.7	9000-0034
4.9	9000-0097
5.405	9000-0036
7.2	9000-0082
8.203-2	9000-0017
8.5	9000-0113
9.1	9000-0011
9.2	9000-0020
9.5	9000-0111
14.201	9000-0034
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0002
14.205-4(c)	9000-0037
14.214	9000-0105
14.406	9000-0038
14.5	9000-0041
15.106	9000-0034
15.404	9000-0037
15.7	9000-0078
15.8	9000-0013
15.804-8	9000-0115
15.812-1(b)	9000-0080
15.813-1	9000-0105
15.813-2	9000-0105
15.813-3	9000-0105
15.813-6	9000-0105
19.7	9000-0006
22.103	9000-0065
22.606-2(b)	1215-0157
22.8	1215-0072
22.11	9000-0066
22.13	1215-0072
22.14	1215-0072
22.15	9000-0127
23.602	9000-0107
27.3	9000-0095
27.4	9000-0090
28.1	9000-0045
28.106-1(b)	9000-0119
28.2	9000-0045
29.304	9000-0059
30	9000-0093
30.6	9000-0129
31.205-2	9000-0072
31.205-46	9000-0079
31.205-46(a)(3)	9000-0088
32	9000-0035
32.1	9000-0070
32.4	9000-0073
32.5	9000-0010
32.7	9000-0074
32.9	9000-0102
33	9000-0035
34.1	9000-0132
36.302	9000-0037
36.603	9000-0004 and 9000-0005
36.701	9000-0037
41.004-2(c)	9000-0125
42.203	9000-0026
42.7	9000-0013
42.12	9000-0076
42.13	9000-0076
42.14	9000-0056
45	9000-0075
46	9000-0077
47	9000-0061
48	9000-0027
49	9000-0028
50	9000-0029
51.1	9000-0031
51.2	9000-0032
52.203-2	9000-0018
52.203-4	9000-0003
52.203-7	9000-0091
52.203-8	9000-0103
52.203-9	9000-0103
52.204-3	9000-0097
52.207-3	9000-0114
52.208-1	9000-0017
52.208-2	9000-0017

FAR segment	OMB Control Number
52.208-8	9000-0113
52.208-9	9000-0113
52.209-1(b)	9000-0020
52.209-1(c)	9000-0083
52.209-5	9000-0094
52.209-6	9000-0094
52.209-7	9000-0111
52.209-8	9000-0111
52.210-5	9000-0030
52.210-6	9000-0030
52.210-8	9000-0018
52.210-9	9000-0016
52.210-10	9000-0017
52.212-1	9000-0043
52.212-2	9000-0043
52.214-2	9000-0046
52.214-14	9000-0047
52.214-15	9000-0044
52.214-16	9000-0044
52.214-17	9000-0018
52.214-21	9000-0039
52.214-26	9000-0034
52.214-28	9000-0013
52.215-1	9000-0034
52.215-2	9000-0034
52.215-6	9000-0046
52.215-11	9000-0048
52.215-19	9000-0044
52.215-20	9000-0047
52.215-21	9000-0078
52.215-24	9000-0013
52.215-25	9000-0013
52.215-26	9000-0080
52.215-32	9000-0105
52.215-40	9000-0015
52.216-2	9000-0068
52.216-3	9000-0068
52.216-4	9000-0068
52.216-5	9000-0071
52.216-6	9000-0071
52.216-7	9000-0069
52.216-10	9000-0067
52.216-13	9000-0069
52.216-15	9000-0069
52.216-16	9000-0067
52.216-17	9000-0067
52.219-9	9000-0006
52.219-10	9000-0006
52.219-19	9000-0100
52.219-20	9000-0100
52.219-21	9000-0100
52.222-2	9000-0065
52.222-4	1215-0119
52.222-6	1215-0140
52.222-8	1215-0149 and 1215-0017
52.222-11	9000-0014
52.222-18	9000-0127
52.222-21	1215-0072
52.222-22	1215-0072
52.222-23	1215-0072
52.222-25	1215-0072
52.222-26	1215-0072
52.222-27	1215-0072
52.222-35	1215-0072
52.222-36	1215-0072
52.222-41	1215-0017 and 1215-0150
52.222-46	9000-0066
52.223-1	9000-0021
52.223-6(b)(5)	9000-0101
52.223-7	9000-0117
52.225-1	9000-0024
52.225-6	9000-0023
52.225-8	9000-0025
52.225-10	9000-0022
52.225-20	9000-0130
52.228-1	9000-0045
52.228-2	9000-0045
52.228-3	9000-0045
52.229-2	9000-0059
52.230-5	9000-0129
52.232-5	9000-0070
52.232-7	9000-0070
52.232-10	9000-0070
52.232-12	9000-0073
52.232-13	9000-0010
52.232-14	9000-0010
52.232-15	9000-0010
52.232-16	9000-0010
52.232-20	9000-0074
52.232-21	9000-0074
52.232-22	9000-0074
52.232-27	9000-0102
52.233-1	9000-0035
52.234-1	9000-0133
52.236-5	9000-0062
52.236-13	1220-0029 and 9000-0060
52.236-15	9000-0058
52.236-19	9000-0064
52.237-9	9000-0103
52.241-2	9000-0122
52.241-6	9000-0123
52.241-11	9000-0126
52.241-13	9000-0124
52.242-12	9000-0056
52.243-1	9000-0026
52.243-2	9000-0026
52.243-3	9000-0026
52.243-4	9000-0026
52.243-6	9000-0026
52.243-7	9000-0026
52.245-2	9000-0075
52.245-3	9000-0075
52.245-5	9000-0075
52.245-7	9000-0075
52.245-8	9000-0075

FAR segment	OMB Control Number
52.245-9	9000-0075
52.245-10	9000-0075
52.245-11	9000-0075
52.245-16	9000-0075
52.245-17	9000-0075
52.245-18	9000-0075
52.246-2	9000-0077
52.246-3	9000-0077
52.246-4	9000-0077
52.246-5	9000-0077
52.246-6	9000-0077
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
52.247-35	9000-0061
52.247-36	9000-0061
52.247-37	9000-0061
52.247-38	9000-0061
52.247-39	9000-0061
52.247-40	9000-0061
52.247-41	9000-0061
52.247-42	9000-0061
52.247-43	9000-0061
52.247-44	9000-0061
52.247-51	9000-0057
52.247-53	9000-0055
52.247-57	9000-0061
52.247-63	9000-0054
52.247-64	9000-0054
52.248-1	9000-0027
52.248-2	9000-0027
52.248-3	9000-0027
52.249-2	9000-0028
52.249-3	9000-0028
52.249-5	9000-0028
52.249-6	9000-0028
52.249-11	9000-0028
52.250-1	9000-0029
52.253-1	9000-0104
53.105	9000-0104
53.236-1(a)	9000-0037
SF 24	9000-0045
SF 25	9000-0045
SF 25-A	9000-0045
SF 28	9000-0001
SF 34	9000-0045
SF 35	9000-0045
SF 119	9000-0003
SF 129	9000-0002
SF 254	9000-0004
SF 255	9000-0005
SF 273	9000-0045
SF 274	9000-0045
SF 275	9000-0045
SF 294	9000-0006
SF 295	9000-0007
SF 1403	9000-0011
SF 1404	9000-0011
SF 1405	9000-0011
SF 1406	9000-0011
SF 1407	9000-0011
SF 1408	9000-0011
SF 1411	9000-0013
SF 1412	9000-0013
SF 1413	9000-0014
SF 1416	9000-0045
SF 1417	9000-0037
SF 1418	9000-0119
SF 1423	9000-0015
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
SF 1435	9000-0012
SF 1436	9000-0012
SF 1437	9000-0012
SF 1438	9000-0012
SF 1439	9000-0012
SF 1440	9000-0012
SF 1443	9000-0010
SF 1444	9000-0089
SF 1445	9000-0089
SF 1446	9000-0089
All other requirements	9000-0063

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 Regulatory Council (DAR Council) and the

(5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;

(6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

1.603 Selection, appointment, and termination of appointment.

1.603-1 General.

Subsection 414(4) of title 41, United States Code, requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel, June 24, 1992.

1.603-2 Selection.

In selecting contracting officers, the appointing official shall consider the complexity and dollar value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include—

(a) Experience in Government contracting and administration, commercial purchasing, or related fields;

(b) Education or special training in business administration, law, accounting, engineering, or related fields;

(c) Knowledge of acquisition policies and procedures, including this and other applicable regulations;

(d) Specialized knowledge in the particular assigned field of contracting; and

(e) Satisfactory completion of acquisition training courses.

1.603-3 Appointment.

Contracting officers shall be appointed in writing on a "Certificate of Appointment," SF 1402, which shall state any limitation on the scope of authority to be exercised, other than limitations contained in applicable laws or regulations. Appointing officials shall maintain files containing copies of all Certificates of Appointment that have not been terminated.

1.603-4 Termination.

Termination of a contracting officer appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination shall operate retroactively.

SUBPART 1.7—DETERMINATIONS AND FINDINGS

1.700 Scope of subpart.

This subpart prescribes general policies and procedures for the use of determinations and findings (D&F's). Requirements for specific types of D&F's can be found with the appropriate subject matter.

1.701 Definition.

"Determination and Findings" (D&F) means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

1.702 General.

(a) A D&F shall ordinarily be for an individual contract action. Unless otherwise prohibited, class D&F's may be executed for classes of contract actions (see 1.703). The approval granted by a D&F is restricted to the proposed contract action(s) reasonably described in that D&F. D&F's may provide for a reasonable degree of flexibility. Furthermore, in their application, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.

(b) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

1.703 Class determinations and findings.

(a) A class D&F provides authority for a class of contracting actions. A class may consist of contracting actions for the same or related supplies or services or other contracting actions that require essentially identical justification.

(b) The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action. A class D&F shall be for a specified period, with the expiration date stated in the document.

(c) The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

1.704 Content.

Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

(a) Identification of the agency and of the contracting activity and specific identification of the document as a "Determination and Findings."

(b) Nature and/or description of the action being approved.

(c) Citation of the appropriate statute and/or regulation upon which the D&F is based.

(d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

(e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.

(f) Expiration date of the D&F, if required (see 1.706).

(g) The signature of the official authorized to sign the D&F (see 1.707) and the date signed.

1.705 Supersession and modification.

(a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of its supersession.

(b) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports the contracting action.

1.706 Expiration.

Expiration dates are required for class D&F's and are optional for individual D&F's. Authority to act under an individual D&F expires when it is exercised or on an expiration date specified in the document, whichever occurs first. Authority to act under a class D&F expires on the expiration date specified in the document. When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F will continue until award of the contract(s) resulting from the solicitation.

1.707 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations. Authority to sign or delegate signature authority for the various D&F's is as shown in the applicable FAR part.

PART 4

ADMINISTRATIVE MATTERS

TABLE OF CONTENTS

4.000 Scope of part.

SUBPART 4.1—CONTRACT EXECUTION
4.101 Contracting officer's signature.
4.102 Contractor's signature.
4.103 Contract clause.

SUBPART 4.2—CONTRACT DISTRIBUTION
4.201 Procedures.
4.202 Agency distribution requirements.
4.203 Taxpayer identification number information.

SUBPART 4.3—RESERVED

SUBPART 4.4—SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY
4.401 Definitions.
4.402 General.
4.403 Responsibilities of contracting officers.
4.404 Contract clause.

SUBPART 4.5—RESERVED

SUBPART 4.6—CONTRACT REPORTING
4.600 Scope of subpart.
4.601 Record requirements.
4.602 Federal Procurement Data System.

SUBPART 4.7—CONTRACTOR RECORDS RETENTION
4.700 Scope of subpart.
4.701 Purpose.
4.702 Applicability.
4.703 Policy.
4.704 Calculation of retention periods.
4.705 Specific retention periods.
4.705-1 Financial and cost accounting records.
4.705-2 Pay administration records.
4.705-3 Acquisition and supply records.
4.706 Microfilming records.
4.706-1 General.
4.706-2 Filing and retrieval.
4.706-3 Quality control.

SUBPART 4.8—GOVERNMENT CONTRACT FILES
4.800 Scope of subpart.
4.801 General.
4.802 Contract files.
4.803 Contents of contract files.
4.804 Closeout of contract files.
4.804-1 Closeout by the office administering the contract.
4.804-2 Closeout of the contracting office files if another office administers the contract.
4.804-3 Closeout of paying office contract files.
4.804-4 Physically completed contracts.
4.804-5 Detailed procedures for closing out contract files.
4.805 Storage, handling, and disposal of contract files.

SUBPART 4.9—INFORMATION REPORTING TO THE INTERNAL REVENUE SERVICE
4.900 Scope of subpart.
4.901 Definitions.
4.902 Contract information.
4.903 Payment information.
4.904 Solicitation provision.

(1) Agencies covered by the DISP shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized representative, is the approving official for the form and shall ensure that it is prepared and distributed in accordance with Section VII of the ISR.

(2) Contracting officers in agencies not covered by the DISP shall follow agency procedures.

4.404 Contract clause.

(a) The contracting officer shall insert the clause at 52.204-2, Security Requirements, in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in paragraph (d) below apply.

(b) If a cost contract (see 16.302) for research and development with an educational institution is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) If a construction or architect-engineer contract where employee identification is required for security reasons is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the contracting agency is not covered by the DISP and has prescribed a clause and alternates that are substantially the same as those at 52.204-2, the contracting officer shall use the agency-prescribed clause as required by agency procedures.

SUBPART 4.5—[RESERVED]

SUBPART 4.6—CONTRACT REPORTING

4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Record requirements.

(a) Each executive agency shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements exceeding $25,000.

(b) With respect to each procurement carried out using competitive procedures, agencies shall be able to access from the computer file, as a minimum, the following information:

(1) The date of contract award.

(2) Information identifying the source to whom the contract was awarded.

(3) The property or services obtained by the Government under the procurement.

(4) The total cost of the procurement.

(5) Those procurements which result in the submission of a single bid or proposal so that they can be separately categorized and designated noncompetitive procurements using competitive procedures.

(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—

(1) The reason under Subpart 6.3 for the use of such procedures; and

(2) The identity of the organization or activity which conducted the procurement.

(d) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.

4.602 Federal Procurement Data System.

(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public; (2) a means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small business concerns and small disadvantaged business concerns are sharing in Federal contracts; and (3) data for other policy and management control purposes.

(b) *The FPDS Reporting Manual* provides a complete list of reporting and nonreporting agencies and organizations. This manual (available at no charge from the General Services Administration, Federal Procurement Data Center, 7th & D Streets, SW, Room 5652, Washington, DC 20407, telephone (202) 401-1529, FTS 441-1529, FAX (202) 401-1546) provides the necessary instruction to the data collection point in each agency as to what data are required and how often to provide the data.

(c) Data collection points in each agency report data on SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less), or computer-generated equivalent. Although the SF 279 and SF 281 are not mandatory for use by the agencies, they do provide the mandatory format for submitting data to the FPDS.

(d) The contracting officer shall obtain and report a Contractor Establishment Code for each awardee from information on file or available to the contracting office. The contracting office or other designated agency office shall request a code using the procedures in the FPDS Reporting Manual or in accordance with agency procedures. Requests for codes shall be made by Government offices and only for the apparent awardees.

SUBPART 4.7—CONTRACTOR RECORDS RETENTION

4.700 Scope of subpart.

This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms "contracts" and "contractors" include "subcontracts" and "subcontractors."

4.701 Purpose.

The purpose of this subpart is to generally describe records retention requirements and to allow reductions in the retention period for specific classes of records under prescribed circumstances.

4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

(1) Examination of Records by Comptroller General (52.215-1).

(2) Audit—Sealed Bidding (52.214-26).

(3) Audit—Negotiation (52.215-2).

(b) This subpart is not mandatory on Department of Energy contracts for which the Comptroller General allows alternative records retention periods. Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., and the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 471, et seq.

4.703 Policy.

(a) Except as stated in 4.703(b), contractors shall make available books, records, documents, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 through 4.705-3, whichever of these periods expires first.

(b) Contractors shall make available the foregoing documents and supporting evidence for a longer period of time than is required in 4.703(a) if—

(1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or

(2) The contractor, for its own purposes, retains the foregoing documents and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.

(3) The contractor does not meet the original 90-day due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original 90-day due date.

(c) Contractors need not retain duplicate copies of records or supporting documents unless they contain significant information not shown on the record copy.

(d) Contractors may retain records in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written or graphic images, completely, accurately, and clearly. Data transfer, storage, and retrieval procedures shall protect the original data from alteration.

(e) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

4.704 Calculation of retention periods.

(a) The retention periods in 4.705 are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the final entry is made. The contractor should cut off the records in annual blocks and retain them for block disposal under the prescribed retention periods.

(b) When records generated during a prior contract are relied upon by a contractor for cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.

(c) If two or more of the record categories described in 4.705 are interfiled and screening for disposal is not practical, the contractor shall retain the entire record series for the longest period prescribed for any category of records.

4.705 Specific retention periods.

The contractor shall retain the records identified in 4.705-1 through 4.705-3 for the periods designated, provided retention is required under 4.702. Records are identified in this subpart in terms of their purpose or use and not by specific name or form number. Although the descriptive identifications may not conform to normal contractor usage or filing practices, these identifications apply

to all contractor records that come within the description.

4.705-1 Financial and cost accounting records.

(a) Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices: Retain 4 years.

(b) Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies: Retain 4 years.

(c) Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses: Retain 4 years.

(d) Paid, canceled, and voided checks, other than those issued for the payment of salary and wages: Retain 4 years.

(e) Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda: Retain 4 years.

(f) Labor cost distribution cards or equivalent documents: Retain 2 years.

(g) Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents: Retain 2 years.

4.705-2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

(b) Clock cards or other time and attendance cards: Retain 2 years.

(c) Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees: Retain 2 years.

4.705-3 Acquisition and supply records.

(a) Store requisitions for materials, supplies, equipment, and services: Retain 2 years.

(b) Work orders for maintenance and other services: Retain 4 years.

(c) Equipment records, consisting of equipment usage and status reports and equipment repair orders: Retain 4 years.

(d) Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract: Retain 4 years.

(e) Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials: Retain 4 years.

(f) Purchase order files for supplies, equipment, material, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda; e.g., memoranda of negotiations showing the principal elements of subcontract price negotiations (see 52.244-1 and 52.244-2): Retain 4 years.

(g) Production records of quality control, reliability, and inspection: Retain 4 years.

4.706 Microfilming records.

4.706-1 General.

(a) Contractors may use microfilm (e.g., film chips, jackets, aperture cards, microprints, roll film, and microfiche) for recordkeeping, subject to the limitations in this subpart.

(b) In the process of microfilming documents, the contractor shall also microfilm all relevant notes, worksheets, and other papers necessary for reconstructing or understanding the records.

(c) The contractor shall review all microfilm before destroying the hard-copy documents to ensure legibility and reproducibility of the microfilm.

(d) Unless earlier retirement of records is permitted by 4.705, or the administrative contracting officer agrees to a lesser retention period when the contractor has established adequate internal controls including continuing surveillance over the microfilm system, the contractor shall not destroy original records that have been microfilmed, until—

(1) All claims under the contract are settled;

(2) Eighteen months have passed since final payment; or

(3) The time original records are required to be kept by other laws or regulations has elapsed.

4.706-2 Filing and retrieval.

The contractor shall—

(a) Maintain an effective indexing system to permit timely and convenient access to the microfilmed records by the Government;

(b) Provide strict security measures to prevent the loss of microfilm and to safeguard classified information;

(c) Store microfilm in a fireproof cabinet in an environment ensuring the safety of these records for the specified retention periods; and

(d) Have adequate viewing equipment and provide printouts the approximate size of the original material.

4.706-3 Quality control.

(a) Microfilm, when displayed on a microfilm reader

(viewer) or reproduced on paper, must exhibit a high degree of legibility and readability.

(b) The quality of the contractor's record microfilming process is subject to periodic review by the administrative contracting officer.

SUBPART 4.8—GOVERNMENT CONTRACT FILES

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to small purchases and other simplified procedures covered by Part 13 is optional. See also documentation requirements in 13.106(c).

4.801 General.

(a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.

(b) The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of—

(1) Providing a complete background as a basis for informed decisions at each step in the acquisition process;

(2) Supporting actions taken;

(3) Providing information for reviews and investigations; and

(4) Furnishing essential facts in the event of litigation or congressional inquiries.

(c) The files to be established include—

(1) A file for cancelled solicitations;

(2) A file for each contract; and

(3) A file such as a contractor general file, containing documents relating—for example—to (i) no specific contract, (ii) more than one contract, or (iii) the contractor in a general way (e.g., contractor's management systems, past performance, or capabilities).

4.802 Contract files.

(a) A contract file should generally consist of—

(1) The contracting office contract file, which shall document the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office;

(2) The contract administration office contract file, which shall document actions reflecting the basis for and the performance of contract administration responsibilities; and

(3) The paying office contract file, which shall document actions prerequisite to, substantiating, and reflecting contract payments.

(b) Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined; e.g., if all functions or any combination of the functions are performed by the same office.

(c) Files shall be maintained at organizational levels that shall ensure—

(1) Effective documentation of contract actions;

(2) Ready accessibility to principal users;

(3) Minimal establishment of duplicate and working files;

(4) The safeguarding of classified documents; and

(5) Conformance with agency regulations for file location and maintenance.

(d) If the contract files or file segments are decentralized (e.g., by type or function) to various organizational elements or to other outside offices, responsibility for their maintenance shall be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.

(e) Contents of contract files that are proprietary or source selection information as defined in 3.104-4 shall be protected from disclosure to unauthorized persons (see 3.104-5).

(f) Agencies may retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied.

4.803 Contents of contract files.

The following are examples of the records normally contained, if applicable, in contract files:

(a) *Contracting office contract file.* (1) Purchase request, acquisition planning information, and other presolicitation documents.

(2) Justifications and approvals, determinations and findings, and associated documents.

(3) Evidence of availability of funds.

(4) Synopsis of proposed acquisition as published in the Commerce Business Daily or reference thereto.

(5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.

(6) Set-aside decision.

(7) Government estimate of contract price.

(8) A copy of the solicitation and all amendments thereto.

(9) Security requirements and evidence of required clearances.

(10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are—

(i) Completed solicitation sections A, B, and K;

(ii) Technical and management proposals;

(iii) Cost/price proposals; and

(iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.

(11) Contractor's contingent fee representation and other certifications and representations.

(12) Preaward survey reports or reference to previous preaward survey reports relied upon.

(13) Source selection documentation.

(14) Contracting officer's determination of the contractor's responsibility.

(15) Small Business Administration Certificate of Competency.

(16) Records of contractor's compliance with labor policies including equal employment opportunity policies.

(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver.

(18) Packaging and transportation data.

(19) Cost or price analysis.

(20) Audit reports or reasons for waiver.

(21) Record of negotiation.

(22) Justification for type of contract.

(23) Authority for deviations from this regulation, statutory requirements, or other restrictions.

(24) Required approvals of award and evidence of legal review.

(25) Notice of award.

(26) The original of (i) the signed contract or award, (ii) all contract modifications, and (iii) documents supporting modifications executed by the contracting office.

(27) Synopsis of award or reference thereto.

(28) Notice to unsuccessful quoters or offerors and record of any debriefing.

(29) Acquisition management reports (see Subpart 4.6).

(30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.

(31) Report of postaward conference.

(32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.

(33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.

(34) Approvals or disapprovals of requests for waivers or deviations from contract requirements.

(35) Rejected engineering change proposals. These proposals may be filed separately for early disposal (see 4.805(h)).

(36) Royalty, invention, and copyright reports (including invention disclosures) or reference thereto.

(37) Contract completion documents.

(38) Documentation regarding termination actions for which the contracting office is responsible.

(39) Cross-references to pertinent documents that are filed elsewhere.

(40) Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract.

(41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.

(42) All certifications required by 3.104-9(e)(1).

(43) For contracts and contract modifications in excess of $100,000, a record of all persons or classes of persons authorized to have access to proprietary or source selection information and, to the maximum extent practicable, the names of all individuals within the class.

(b) *Contract administration office contract file.* (1) Copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.

(2) Any document modifying the normal assignment of contract administration functions and responsibility.

(3) Security requirements.

(4) Cost and pricing data, Certificates of Current Cost or Pricing Data, cost or price analysis, and other documentation supporting contractual actions executed by the contract administration office.

(5) Preaward survey information.

(6) Purchasing system information.

(7) Consent to subcontract or purchase.

(8) Performance and payment bonds and surety information.

(9) Postaward conference records.

(10) Orders issued under the contract.

(11) Notice to proceed and stop orders.

(12) Insurance policies or certificates of insurance or references to them.

(13) Documents supporting advance or progress payments.

(14) Progressing, expediting, and production surveillance records.

(15) Quality assurance records.

(16) Property administration records.

(17) Documentation regarding termination actions for which the contract administration office is responsible.

(18) Cross reference to other pertinent documents that are filed elsewhere.

(19) Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract.

(20) Contract completion documents.

(c) *Paying office contract file.* (1) Copy of the contract and any modifications.

(2) Bills, invoices, vouchers, and supporting documents.

(3) Record of payments or receipts.

(4) Other pertinent documents.

4.804 Closeout of contract files.

4.804-1 Closeout by the office administering the contract.

(a) Except as provided in paragraph (c) below, time standards for closing out contract files are as follows:

(1) Small purchase files should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

(2) Files for all firm-fixed-price contracts other than small purchases should be closed within 6 months of the month in which the contracting officer receives evidence of physical completion.

(3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

(4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

(b) When closing out the contract files at 4.804-1(a)(2), (3), and (4), the contracting officer shall use the closeout procedures at 4.804-5. However, these closeout actions may be modified to reflect the extent of administration that has been performed. Quick closeout procedures (see 42.708) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

(c) A contract file shall not be closed if (1) the contract is in litigation or under appeal, or (2) in the case of a termination, all termination actions have not been completed.

4.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Small purchase files should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

(b) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

4.804-3 Closeout of paying office contract files.

The paying office shall close the contract file upon issuance of the final payment voucher.

4.804-4 Physically completed contracts.

(a) Except as provided in paragraph (b) below, a contract is considered to be physically completed when—

(1)(i) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;

(ii) The contractor has performed all services and the Government has accepted these services; and

(iii) All option provisions, if any, have expired; or

(2) The Government has given the contractor a notice of complete contract termination.

(b) Facilities contracts and rental, use, and storage agreements are considered to be physically completed when—

(1) The Government has given the contractor a notice of complete contract termination; or

(2) The contract period has expired.

4.804-5 Detailed procedures for closing out contract files.

(a) The office administering the contract is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, an initial contract funds status review shall be accomplished, and where appropriate, excess funds identified to the contracting office. When complete, the administrative closeout procedures shall ensure that—

(1) Disposition of classified material is completed;

(2) Final patent report is cleared;

(3) Final royalty report is cleared;

(4) There is no outstanding value engineering change proposal;

(5) Plant clearance report is received;

(6) Property clearance is received;

(7) All interim or disallowed costs are settled;

(8) Price revision is completed;

(9) Subcontracts are settled by the prime contractor;

(10) Prior year indirect cost rates are settled;

(11) Termination docket is completed;

(12) Contract audit is completed;

(13) Contractor's closing statement is completed;

(14) Contractor's final invoice has been submitted; and

(15) Contract funds review is completed and deobligation of any excess funds is recommended.

(b) When the actions in paragraph (a) of this subsection have been verified, the contracting officer administering the contract shall ensure that a contract completion statement, containing the following information, is prepared:

(1) Contract administration office name and address (if different from the contracting office).

(2) Contracting office name and address.

(3) Contract number.

(4) Last modification number.

(5) Last call or order number.

(6) Contractor name and address.

(7) Dollar amount of excess funds, if any.

(8) Voucher number and date, if final payment has been made.

(9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown.

(10) A statement that all required contract administration actions have been fully and satisfactorily accomplished.

(11) Name and signature of the contracting officer.

(12) Date.

(c) When the statement is completed, the contracting officer shall ensure that—

(1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract administration office is different from the contracting office); and

(2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

4.805 Storage, handling, and disposal of contract files.

(a) Agencies shall prescribe procedures for the handling, storing, and disposing of contract files. Such procedures shall take into account documents held in other than paper format, such as microfilm and various electronic media. The original medium on which the document was created may be changed to facilitate storage as long as the requirements of Part 4, law and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures shall protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the record copies on alternate media and copies reproduced from the record copy are verified to be accurate, complete and clear representations of the originals. Agency procedures for contract file disposal shall include provisions that the documents specified in paragraph (b) of this section shall not be destroyed before the times indicated. When original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section shall apply to the record copies on the alternate media instead of the original documents.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents, specified below, are part of a subject or case file which documents activities different from those specified below, they should be treated in the same manner as the files of which they are a part.

Document	Retention Period
(1) Records pertaining to exceptions or protests, claims for or against the United States, investigations, cases pending or in litigation, or similar matters.	Until final clearance or settlement, or until the retention period otherwise specified for the document in paragraphs (b)(2) through (13) below is completed, whichever is later.
(2) Signed originals of constructions contracts over $2,000 and all other contracts over $25,000.	6 years and 3 months after final payment.
(3) Signed originals of justifications and approvals and determination and findings required by Part 6, and copies of supporting documents and data.	6 years and 3 months after final payment.
(4) Signed originals of construction contracts of $2,000 or less and all other contracts of $25,000 or less.	3 years after final payment.
(5) All unsuccessful offers or quotations that pertain to contracts below the appropriate small purchase limitation in Part 13.	Retain 1 year after date of award or until final payment, whichever is later; but if the contracting officer determines that the files have future value to the Government, retain as long as advisable.
(6) Contract status (progressing), expediting, and production surveillance records.	6 months after final payment.
(7) Rejected engineering change proposals.	6 months after final payment.
(8) Labor compliance records, including equal employment opportunity records.	3 years after final payment.
(9) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(10) Records or documents other than those in paragraphs 4.805(b)(1)-(9) above pertaining to contracts below the appropriate small purchase limitation in Part 13.	1 year after final payment.
(11) Records or documents other than those in paragraphs 4.805(b)(1)-(10) above pertaining to contracts above the appropriate small purchase limitation in Part 13.	6 years and 3 months after final payment.
(12) Files for cancelled solicitations (see 4.801(c)(1)).	5 years after cancellation.
(13) Solicited and unsolicited unsuccessful offers and quotations above the appropriate small purchase limitation in Part 13:	
(i) When filed separately from contract case files.	Until contract completion date.
(ii) When filed with contract case files.	6 years and 3 months after final payment.

(c) Documents listed in subparagraph (b)(1) shall not be destroyed until final clearance or settlement.

SUBPART 4.9—INFORMATION REPORTING TO THE INTERNAL REVENUE SERVICE

4.900 Scope of subpart.

This subpart provides policies and procedures applicable 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 agencies, to report to the IRS payments made to certain contractors.

(b) The following payments are exempt from this reporting requirement:

(1) Payments to corporations. However, payments to corporations providing medical and health care services or engaged in the billing and collecting of payments for such services are not exempted.

(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.

(4) The contract action is an order placed under a requirements contract;

(5) The award is made for perishable subsistence supplies; or

(6) The award is for utility services, other than telecommunications services, and only one source is available.

(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 small purchase limitation in 13.000, 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

(2) For awards after negotiation, the information prescribed by 15.1001(c), and after competitive negotiation (either price or design competition), a statement to this effect, and in general terms the basis for selection.

SUBPART 5.4—RELEASE OF INFORMATION

5.401 General.

(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.

5.404 Release of long-range acquisition estimates.

To assist industry planning and to locate additional sources of supply, it may be desirable to publicize estimates of unclassified long-range acquisition requirements. Estimates may be publicized as far in advance as possible.

5.404-1 Release procedures.

(a) *Application.* The agency head, or a designee, may release long-range acquisition estimates if the information will—

(1) Assist industry in its planning and facilitate meeting the acquisition requirements;

(2) Not encourage undesirable practices (e.g., attempts to corner the market or hoard industrial materials); and

(3) Not indicate the existing or potential mobilization

of the industry as a whole.

(b) *Conditions.* The agency head shall ensure that—

(1) Classified information is released through existing security channels in accordance with agency security regulations;

(2) The information is publicized as widely as practicable to all parties simultaneously by any of the means described in this part;

(3) Each release states that (i) the estimate is based on the best information available, (ii) the information is subject to modification and is in no way binding on the Government, and (iii) more specific information relating to any individual item or class of items will not be furnished until the proposed acquisition is synopsized in the CBD, or the solicitation is issued;

(4) Each release contains the name and address of the contracting officer that will process the acquisition;

(5) Modifications to the original release are publicized as soon as possible, in the same manner as the original; and

(6) Each release—

(i) Is coordinated in advance with small business, public information, and public relations personnel, as appropriate;

(ii) Contains, if applicable, a statement that small business or LSA set-asides may be involved, but that a determination can be made only when acquisition action is initiated; and

(iii) Contains the name or description of the item, and the estimated quantity to be acquired by calendar quarter, fiscal year, or other period. It may also contain such additional information as the number of units last acquired, the unit price, and the name of the last supplier.

5.404-2 Announcements of long-range acquisition estimates.

Further publication, consistent with the needs of the individual case, may be accomplished by announcing in the CBD that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

5.405 Exchange of acquisition information.

(a) When the same item or class of items is being acquired by more than one agency, or by more than one contracting activity within an agency, the exchange and coordination of pertinent information, particularly cost and pricing data, between these agencies or contracting activities is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. The exchange and coordination of information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and preaward survey.

(b) When substantial acquisitions of major items are involved or when the contracting activity deems it desirable, the contracting activity shall request appropriate information (on both the end item and on major subcontracted components) from other agencies or contracting activities responsible for acquiring similar items. Each agency or contracting activity receiving such a request shall furnish the information requested. The contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, shall request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components.

SUBPART 5.5—PAID ADVERTISEMENTS

5.501 Definitions.

"Advertisement," as used in this subpart, means any single message prepared for placement in communication media, regardless of the number of placements.

"Publication," as used in this subpart, means (a) the placement of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed medium, or (b) the broadcasting of an advertisement over radio or television.

5.502 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated (5 U.S.C. 302 (b)). Contracting officers shall obtain written authorization in accordance with policy procedures before advertising in newspapers.

(b) *Other media.* Unless the agency head determines otherwise, advance written authorization is not required to place advertisements in media other than newspapers.

5.503 Procedures.

(a) *General.* Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small and disadvantaged business concerns maximum opportunity to participate in these acquisitions.

(b) *Rates.* Advertisements may be paid for at rates not over the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703).

(c) *Forms.* (1) When contracting directly with the media for advertising, contracting officers shall—

(i) Use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the small purchase dollar limitations (see 13.000); or

(ii) Use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dol-

lar amount of the acquisition does not exceed the small purchase dollar limitations (see 13.000).

(2) When issuing a delivery order under a basic ordering agreement with an advertising agency for advertising, contracting officers should use Optional Form 347, or an approved agency form.

(d) *Proof of advertising.* Every invoice for advertising shall be accompanied by a copy of the advertisement or an affidavit of publication furnished by the publisher, radio or television station, or advertising agency concerned (44 U.S.C. 3703). Paying offices shall retain the proof of advertising until the General Accounting Office settles the paying office's account.

(e) *Payment.* Upon receipt of an invoice supported by proof of advertising, the contracting officer shall attach a copy of the written authority (see 5.502(a)) and submit the invoice for payment under agency procedures.

5.504 Use of advertising agencies.

(a) *General.* Basic ordering agreements may be placed with advertising agencies for assistance in producing and placing advertisements when a significant number will be placed in several publications and in national media. Services of advertising agencies include, but are not limited to, counseling as to selection of the media for placement of the advertisement, contacting the media in the interest of the Government, placing orders, selecting and ordering typography, copywriting, and preparing rough layouts.

(b) *Use of commission-paying media.* The services of advertising agencies in placing advertising with media often can be obtained at no cost to the Government, over and above the space cost, as many media give advertising agencies a commission or discount on the space cost that is not given to the Government.

(c) *Use of noncommission-paying media.* Some media do not grant advertising agencies a commission or discount, meaning the Government can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertisements in noncommission-paying media as a no-cost service, the basic ordering agreement shall so provide. If the advertising agency will not agree to place advertisements at no cost, the agreement shall (1) provide that the Government may place orders directly with the media, or (2) specify an amount that the Government will pay if the agency places the orders.

(d) *Art work, supplies, and incidentals.* The basic ordering agreement also may provide for the furnishing by the advertising agency of art work, supplies, and incidentals, including brochures and pamphlets, but not their printing. "Incidentals" may include telephone calls, telegrams, and postage incurred by the advertising agency on behalf of the Government.

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 officers shall use the U.S. Code citation applicable to their agency (see 6.302).

(c) Contracting without providing for full and open competition shall not be justified on the basis of (1) a lack of advance planning by the requiring activity or (2) concerns related to the amount of funds available (e.g., funds will expire) to the agency 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 (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) or 41 U.S.C. 253 (d)(1)(B).)

(iii) For DOD, NASA, and the Coast Guard, services may be deemed to be available only from the original 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 provide for full and open competition regardless of the

number of sources solicited. It shall be justified and approved in accordance with FAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit 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. (See 15.402(h).)

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; or engineering, developmental, or research capability.

(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 (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain 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.

(b) *Application.* (1) Use of the authority in paragraph (a)(2)(i) of this subsection may be appropriate when it is necessary to—

(i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(ii) Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);

(iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;

(vi) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production;

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or

(viii) Acquire items covered by Subpart 8.2, Jewel Bearings and Related Items.

(2) Use of the authority in paragraph (a)(2)(ii) of this subsection may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) of this subsection.

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

6.302-4 International agreement.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(4) or 41 U.S.C. 253(c)(4).

PART 7

ACQUISITION PLANNING

TABLE OF CONTENTS

7.000 Scope of part.

SUBPART 7.1—ACQUISITION PLANS
7.101 Definitions.
7.102 Policy.
7.103 Agency-head responsibilities.
7.104 General procedures.
7.105 Contents of written acquisition plans.
7.106 Additional requirements for major systems.

SUBPART 7.2—PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES
7.200 Scope of subpart.
7.201 Reserved.
7.202 Policy.
7.203 Solicitation provision.
7.204 Responsibilities of contracting officers.

SUBPART 7.3—CONTRACTOR VERSUS GOVERNMENT PERFORMANCE
7.300 Scope of subpart.
7.301 Policy.
7.302 General.
7.303 Determining availability of private commercial sources.
7.304 Procedures.
7.305 Solicitation provisions and contract clause.
7.306 Evaluation.
7.307 Appeals.

SUBPART 7.4—EQUIPMENT LEASE OR PURCHASE
7.400 Scope of subpart.
7.401 Acquisition considerations.
7.402 Acquisition methods.
7.403 General Services Administration assistance.
7.404 Contract clause.

comparison is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

7.306 Evaluation.

The evaluation procedure to be followed after the contracting officer receives the cost estimate for Government performance (see 7.304(b)) and the responses to the solicitation 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 envelope containing the cost comparison form 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 (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.

(b) *Negotiation.* The contracting officer shall receive proposals, evaluate them (see Subpart 15.6), conduct negotiations, and select the most advantageous proposal in accordance with normal contracting procedures (see Part 15). The contracting officer shall, before public announcement, open the sealed estimate in the presence of the preparer, enter the amount of the most advantageous proposal on the cost comparison form, and return the form to 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 case of subparagraph (b)(2) of this section, cancel the solicitation or award the contract, as appropriate.

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost comparison result. The appeals procedure shall provide for an independent, objective review of 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 14.407-8, Protests against award. 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:

(1) Availability of purchase options.

(2) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.

(3) Trade-in or salvage value.

(4) Imputed interest.

(5) Availability of a servicing capability, especially for highly complex equipment; e.g., can the equipment be serviced by the Government or other sources if it is purchased?

7.402 Acquisition methods.

(a) *Purchase method.* (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(2) Agencies should not rule out the purchase method of equipment acquisition in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Lease method.* (1) The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances—

(i) Require immediate use of equipment to meet program or system goals; but

(ii) Do not currently support acquisition by purchase.

(2) If a lease is justified, a lease with option to purchase is preferable.

(3) Generally, a long term lease should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

(4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

7.403 General Services Administration assistance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing information such as—

(1) Pending price adjustments to Federal Supply Schedule contracts;

(2) Recent or imminent technological developments;

(3) New techniques; and

(4) Industry or market trends.

(b) Agencies may request information from the following GSA offices:

(1) Office of Information Resources Management Policy (KMA), Washington, DC 20405, for information on automatic data processing and telecommunications equipment acquisitions.

(2) Office of Commodity Management (FC), Washington, DC 20406, for information on other types of equipment.

7.404 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause in 52.207-5, Option to Purchase Equipment, in solicitations and contracts involving a lease with option to purchase.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

TABLE OF CONTENTS

8.000 Scope of part.
8.001 Priorities for use of Government supply sources.
8.002 Use of other Government supply sources.

SUBPART 8.1—EXCESS PERSONAL PROPERTY
8.101 Definition.
8.102 Policy.
8.103 Information on available excess personal property.
8.104 Obtaining nonreportable property.

SUBPART 8.2—JEWEL BEARINGS AND RELATED ITEMS
8.201 Definitions.
8.202 Policy.
8.203 Procedures.
8.203-1 Contract clause and solicitation provision.
8.203-2 Offeror's certification.
8.203-3 Declination or rejection of orders.

SUBPART 8.3—[RESERVED]

SUBPART 8.4—FEDERAL SUPPLY SCHEDULES
8.401 General.
8.402 Applicability.
8.403 [Reserved]
8.404 Using schedules.
8.404-1—8.404-2 [Reserved]
8.404-3 Requests for waivers.
8.405 Ordering office responsibilities.
8.405-1 [Reserved]
8.405-2 Order placement.
8.405-3 Inspection and acceptance.
8.405-4 Delinquent performance.
8.405-5 Termination for default.
8.405-6 Termination for convenience.
8.405-7 Disputes.

SUBPART 8.5—ACQUISITION OF HELIUM
8.500 Scope of subpart.
8.501 Definitions.
8.502 Policy.
8.503 Exception.
8.504 Procedures.
8.505 Contract clause.

SUBPART 8.6—ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.
8.601 General.
8.602 Policy.
8.603 Purchase priorities.
8.604 Ordering procedures.
8.605 Clearances.
8.606 Exceptions.

SUBPART 8.7—ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED
8.700 Scope of subpart.
8.701 Definitions.
8.702 General.
8.703 Procurement List.
8.704 Purchase priorities.
8.705 Procedures.
8.705-1 General.
8.705-2 Direct-order process.
8.705-3 Allocation process.
8.705-4 Compliance with orders.
8.706 Purchase exceptions.
8.707 Prices.
8.708 Shipping.
8.709 Payments.
8.710 Quality of merchandise.
8.711 Quality complaints.
8.712 Specification changes.
8.713 Optional acquisition of supplies and services.
8.714 Communications with the central nonprofit agencies and the Committee.
8.715 Replacement commodities.

SUBPART 8.8—ACQUISITION OF PRINTING AND RELATED SUPPLIES
8.800 Scope of subpart.
8.801 Definitions.
8.802 Policy.

SUBPARTS 8.9 AND 8.10—[RESERVED]

SUBPART 8.11—LEASING OF MOTOR VEHICLES
8.1100 Scope of subpart.
8.1101 Definitions.
8.1102 Presolicitation requirements.
8.1103 Contract requirements
8.1104 Contract clauses.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.000 Scope of part.

This part deals with the acquisition of supplies and services from or through Government supply sources.

8.001 Priorities for use of Government supply sources.

(a) Except as required by 8.002, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority—

(1) *Supplies.*

(i) Agency inventories;

(ii) Excess from other agencies (see Subpart 8.1);

(iii) Federal Prison Industries, Inc. (see Subpart 8.6);

(iv) Products available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points;

(vi) Mandatory Federal Supply Schedules (see Subpart 8.4);

(vii) Optional use Federal Supply Schedules (see Subpart 8.4); and

(viii) Commercial sources (including educational and nonprofit institutions).

(2) *Services.* (i) Services available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see subpart 8.7);

(ii) Mandatory Federal Supply Schedules (see Subpart 8.4) and mandatory GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1);

(iii) Optional use Federal Supply Schedules (see Subpart 8.4) and optional use GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1); and

(iv) Federal Prison Industries, Inc. (see Subpart 8.6), or commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) of this section may be used as prescribed in 41 CFR 101-26.301 and in an unusual and compelling urgency as prescribed in 6.302-2 and in 41 CFR 101-25.101-5.

8.002 Use of other Government supply sources.

Agencies shall satisfy requirements for the following supplies or services from or through specified sources, as applicable:

(a) Jewel bearings and related items (see Subpart 8.2);

(b) Public utility services (see Part 41 of this title);

(c) Printing and related supplies (see Subpart 8.8);

(d) Automatic data processing and telecommunications acquisitions (see Part 39);

(e) Leased motor vehicles (see Subpart 8.11);

(f) Strategic and critical materials (e.g., metals and ores) from inventories exceeding National Defense Stockpile requirements (detailed information is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Building #4, Suite 100, Arlington, VA 22202); and

(g) Helium (see Subpart 8.5—Acquisition of Helium).

SUBPART 8.1—EXCESS PERSONAL PROPERTY

8.101 Definition.

"Excess personal property" means any personal property (see 45.601) under the control of a Federal agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

8.102 Policy.

When it is practicable to do so, agencies shall use excess personal property as the first source of supply in fulfilling their requirements and those of their cost-reimbursement contractors. Accordingly, agencies shall ensure that all personnel make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating contracting action.

8.103 Information on available excess personal property.

Information regarding the availability of excess personal property can be obtained through—

(a) Review of excess personal property catalogs and bulletins issued by the General Services Administration (GSA);

(b) Personal contact with GSA or the activity holding the property;

(c) Submission of supply requirements to the regional offices of GSA (GSA Form 1539, Request for Excess Personal Property, is available for this purpose); and

(d) Examination and inspection of reports and samples of excess personal property in GSA regional offices.

8.104 Obtaining nonreportable property.

GSA will assist agencies in meeting their requirements for supplies of the types excepted from reporting as excess by the Federal Property Management Regulations (41 CFR 101-43.312). Federal agencies requiring such supplies should contact the appropriate GSA regional office.

SUBPART 8.2—JEWEL BEARINGS AND RELATED ITEMS

8.201 Definitions.

"Jewel bearing" means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this subpart, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota.

"Related item," as used in this subpart, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (a) is made from material produced by the Verneuil flame fusion process, (b) has a geometric shape up to a maximum of 1 inch in any dimension, (c) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (d) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

8.202 Policy.

Except as otherwise provided in this subpart, (a) jewel bearings shall be acquired from the Plant and (b) related items shall be acquired either from domestic manufacturers or from the Plant.

8.203 Procedures.

8.203-1 Contract clause and solicitation provision.

(a) The contracting officer shall insert the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in paragraph (b) of this subsection, except for—

(1) Small purchases under Part 13;

(2) Items purchased and used outside the United States, its possessions, and Puerto Rico; or

(3) Items that the contracting officer knows do not contain jewel bearings or related items (the contractor's certification required by 8.203-2 does not in itself satisfy this requirement).

(b) Federal supply classes and groups:

(1)	Federal Supply Classes
6605	Navigational Instruments
6610	Flight Instruments
6615	Autopilot Mechanisms and Airborne Gyro Components
6620	Engine Instruments
6625	Electrical- and Electronic-Properties Measuring and Testing Instruments
6630	Chemical-Analysis Instruments
6635	Physical-Properties Testing Equipment
6636	Environmental Chambers and Related Equipment
6640	Laboratory Equipment and Supplies
6645	Time-Measuring Instruments
6650	Optical Instruments
6655	Geophysical and Astronomical Instruments
6660	Meteorological Instruments and Apparatus
6665	Hazard-Detecting Instruments and Apparatus
6670	Scales and Balances
6675	Drafting, Surveying, and Mapping Instruments
6680	Liquid- and Gas-Flow, Liquid-Level, and Mechanical-Motion Measuring Instruments
6685	Pressure-, Temperature-, and Humidity-Measuring and Controlling Instruments
6695	Combination and Miscellaneous Instruments

(2)	Federal Supply Groups
12	Fire-Control Equipment
14	Guided Missiles
15	Aircraft, Airframe Structural Components
16	Aircraft Components and Accessories
18	Space Vehicles
23	Motor Vehicles and Motorcycles
25	Vehicular Equipment Components

(2)	Federal Supply Groups (Cont'd)
42	Firefighting, Rescue, and Safety Equipment
52	Measuring Tools
58	Communications Equipment
59	Electrical and Electronic Equipment Components
63	Alarm and Signal Systems
65	Medical, Dental, and Veterinary Equipment and Supplies
67	Photographic Equipment
69	Training Aids and Devices

(c) The contracting officer shall insert the solicitation provision at 52.208-2, Jewel Bearings and Related Items Certificate (see 8.203-2 following), in solicitations that contain the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, except those for research and development.

8.203-2 Offeror's certification.

(a) The provision at 52.208-2 requires the offeror to (1) certify as to whether or not jewel bearings and/or related items will be incorporated into contract end items, (2) accept certain purchase requirements, and (3) attach an estimate of the jewel bearings and related items required. While failure to submit the certificate set forth in the provision with the offer does not make the offer nonresponsive, the contracting officer must obtain the certificate before award.

(b) The contracting officer shall annotate any affirmative certificate from a successful offeror with (1) the number of the contract awarded that offeror, (2) identification of the contract administration office cognizant of that contract, and (3) the date of award. The contracting officer shall forward one copy of the certificate and the attachment it calls for to the Plant and one copy of the certificate and attachment to the cognizant contract administration office. The Plant will compare the attachment with actual orders and notify the contract administration office of any serious discrepancies.

(c) The contract administration office shall review contractor records and require corrective action, if necessary, if (1) the Plant informs it of serious discrepancies between certifications and orders or (2) the contract administration office believes that there is noncompliance with the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items.

8.203-3 Declination or rejection of orders.

(a) The Plant may initially decline to accept a contractor's or subcontractor's order because of the customer's current excessive and overdue indebtedness to the Plant. The Plant's declination under these circumstances is not in itself justification for (1) a waiver of the requirement to purchase from the Plant and (2) adjustment in the contract price. If the contractor or subcontractor disagrees with the Plant as to this indebtedness, the contracting officer may require the Plant to accept the order and to make shipment on a cash-on-delivery (c.o.d.) basis.

(b) Rejection of orders by the Plant—or by any other domestic manufacturer—for reasons other than those in paragraph (a) above shall not provide relief from the requirement to purchase from the Plant or other domestic manufacturer, unless the contracting officer determines that such relief is in the Government's best interest. The contracting officer shall evaluate the impact of the rejection and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted.

SUBPART 8.3—[RESERVED]

SUBPART 8.4—FEDERAL SUPPLY SCHEDULES

8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying. Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. The schedule contracting office issues publications, titled Federal Supply Schedules, containing the information necessary for placing delivery orders with the contractors. Ordering offices issue delivery orders directly to the schedule contractors for the required supplies or services.

(b) Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7CAFL), P.O. Box 6477, Fort Worth, Texas 76115. Copies of GSA Form 457 and the GSA publication titled "Federal Supply Schedule Program Guide" may also be obtained from the above address. The "Federal Supply Schedule Program Guide," includes a listing of Federal Supply Schedules and information on the use of schedules.

8.402 Applicability.

This subpart does not apply to agencies placing orders for automatic data processing and telecommunications items or services from schedules. See Part 39 for policies and procedures for placing orders for those items or services.

8.403 [Reserved]

8.404 Using schedules.

(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this Subpart 8.4, the policies and procedures of

FAR Part 13 do not apply. When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsize the requirement, or make a separate determination of fair and reasonable pricing.

(b) *Optional use.* (1) Ordering activities can place orders of $2,500 or less with any Federal Supply Schedule contractor. GSA has already determined the prices of items under these contracts to be fair and reasonable.

(2) To reasonably ensure that a selection represents the best value and meets the agency's needs at the lowest overall cost, before placing an order of more than $2,500, an ordering activity should—

(i) Consider reasonably available information about products offered under Multiple Award Schedule (MAS) contracts; this standard is met if the ordering activity does the following:

(A) Considers products and prices contained in any GSA MAS automated information system; or

(B) If automated information is not available, reviews at least three (3) price lists.

(ii) In selecting the best value item at the lowest overall cost (the price of the item plus administrative costs), the ordering activity may consider such factors as—

(A) Special features of one item not provided by comparable items which are required in effective program performance;

(B) Trade-in considerations;

(C) Probable life of the item selected as compared with that of a comparable item;

(D) Warranty conditions; and

(E) Maintenance availability.

(iii) Give preference to the items of small business concerns when two or more items at the same delivered price will meet an ordering activity's needs.

(3) MAS contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order. There may be circumstances where an ordering activity finds it advantageous to request a price reduction, such as where the ordering activity finds that a schedule product is available elsewhere at a lower price, or where the quantity of an individual order clearly indicates the potential for obtaining a reduced price.

(4) Ordering activities should document orders of $2,500 or less by identifying the contractor the item was purchased from, the item purchased, and the amount paid. For orders over $2,500, MAS ordering files should be documented in accordance with internal agency practices. Agencies are encouraged to keep documentation to a minimum.

(c) *Mandatory use.* (1) This paragraph (c) applies only to orders against schedule contracts with mandatory users. When ordering from multiple-award schedules, mandatory users shall also follow the procedures in paragraphs (a) and (b) of this section.

(2) In the case of mandatory schedules, ordering offices shall not solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules.

(3) Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. Mandatory use of schedules is not a requirement if—

(i) The schedule contractor is unable to satisfy the ordering office's urgent delivery requirement;

(ii) The order is below the minimum order thresholds;

(iii) The order is above the maximum order limitation;

(iv) The consignee is located outside the area of geographical coverage stated in the schedule; and

(v) A lower price for an identical item (i.e., same make and model) is available from another source.

(4) *Absence of follow-on award.* Ordering offices, after any consultation required by the schedule, are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

8.404-1 and 8.404-2 [Reserved]

8.404-3 Requests for waivers.

(a) When an ordering office that is a mandatory user under a schedule determines that items available from the schedule will not meet its specific needs, but similar items from another source will, it shall submit a request for waiver to the Commissioner, Federal Supply Service (F), GSA, Washington, DC 20406, except as provided in paragraph (b) of this subsection. Requests shall contain the following information:

(1) A complete description of the required items, whenever possible; e.g., descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.

(2) A comparison of prices and the technical differences between the requested item and the schedule item, identifying as a minimum the—

(i) Inadequacies of the schedule item to perform required functions; and

(ii) Technical, economic, or other advantages of the item requested.

(3) Quantity required.

(4) Estimated annual usage or a statement that the requirement is nonrecurrent or unpredictable.

(b) Ordering offices shall not initiate action to acquire similar items from nonschedule sources until a request for waiver is approved, except as otherwise provided in interagency agreements.

8.405 Ordering office responsibilities.

8.405-1 [Reserved]

8.405-2 Order placement.

Ordering offices may use Optional Form 347, or an agency-prescribed form, to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. Orders shall include, at a minimum, the following information in addition to any information required by the schedule:

(a) Complete shipping and billing addresses.

(b) Contract number and date.

(c) Agency order number.

(d) F.o.b. delivery point; i.e., origin or destination.

(e) Discount terms.

(f) Delivery time.

(g) Special item number or national stock number.

(h) Brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).

(i) Quantity and any variation in quantity.

(j) Number of units.

(k) Unit price.

(l) Total price of order.

(m) Points of inspection and acceptance.

(n) Other pertinent data; e.g., delivery instructions or receiving hours and size-of-truck limitation.

(o) Marking requirements.

(p) Level of preservation, packaging, and packing.

8.405-3 Inspection and acceptance.

(a) Consignees shall inspect supplies at destination except when—

(1) The schedule provides for the schedule contracting agency to perform source inspection (in this case, the schedule will indicate that mandatory source inspection is required); or

(2) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (inspection assistance may be based on the ordering volume, the complexity of items, or the past performance of the supplier).

(b) When the schedule contracting agency performs the inspection, as specified in the schedule, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(c) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(d) Unless otherwise provided in the schedule, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

8.405-4 Delinquent performance.

If the contractor fails to perform on the order, the ordering office may terminate the order for default or give the contractor further opportunity to perform by modifying the order to establish a new delivery date (obtaining consideration as necessary).

8.405-5 Termination for default.

(a)(1) An ordering office may terminate any one or more orders for default in accordance with Part 49, Termination of Contracts. The schedule contracting office shall be notified of all cases where an ordering office has declared a Federal Supply Schedule contractor in default or fraud is suspected.

(2) Should the contractor claim that the failure was excusable, the ordering office shall promptly refer the matter to the schedule contracting office. In the absence of a decision by the schedule contracting office (or by the head of the schedule contracting agency, on appeal) excusing the failure, the ordering office may charge the contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as reasonable a price as possible considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation "Repurchase against the account of _____ [*insert contractor's name*] under Delivery Order _____ [*insert number*] under Contract _____ [*insert number]*".

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering office is unable to collect excess costs, it shall take the following actions:

(i) Notify the schedule contracting office within 60 days after final payment to the replacement contractor. The notice shall include the following information about the defaulted order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) In addition to the above, the notice shall include the following information about the replacement contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(b) Only the schedule contracting officer may terminate for default any or all items covered by the schedule contract. When notified of default action by the schedule contracting officer with respect to defaulted items, ordering offices shall—

(1) Refuse to accept further performance by the contractor;

(2) Not place further orders with the contractor;

(3) Repurchase against the contractor in default from sources designated by the schedule contracting officer; or

(4) Proceed as otherwise directed by the schedule contracting officer.

(c) All actions taken regarding terminations for default shall comply with the applicable requirements in Part 49.

8.405-6 Termination for convenience.

(a) Ordering offices may terminate individual orders for the convenience of the Government. Only the schedule contracting officer may terminate any or all items covered by the schedule contract for the convenience of the Government.

(b) Before terminating orders for convenience, the ordering office shall endeavor to enter into a "no cost" cancellation agreement with the contractor.

(c) All actions taken regarding terminations for convenience shall comply with the applicable requirements in Part 49.

8.405-7 Disputes.

The ordering office shall refer all unresolved disputes under orders to the schedule contracting office for action under the Disputes clause of the contract.

SUBPART 8.5—ACQUISITION OF HELIUM

8.500 Scope of subpart.

This subpart implements the requirements of the Helium Act (50 U.S.C. 167a, et seq.) concerning the acquisition of liquid or gaseous helium by Federal agencies or by Government contractors or subcontractors for use in the performance of a Government contract (also see 30 CFR parts 601 and 602).

8.501 Definitions.

"Bureau helium" distributor means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Mines, as specified in 30 CFR 602.

"Bureau of Mines," as used in this subpart, means the Department of the Interior, Bureau of Mines, Helium Field Operations, located at 801 South Fillmore Street, Amarillo, TX 79101-3545.

"Helium requirement forecast" means an estimate by the contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

"Major helium requirement" means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature), including liquid helium gaseous equivalent. In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement.

8.502 Policy.

To the extent that supplies are readily available, all major helium requirements purchased by a Government agency or used in the performance of a Government contract shall be purchased from the Bureau of Mines. This requirement may be satisfied as follows:

(a) By ordering against a GSA Federal Supply Schedule contract (for contractor use and authorization procedures, see subpart 51.1).

(b) For requirements not covered by a Federal Supply Schedule contract, by purchasing from—

(1) The Bureau of Mines; or

(2) A Bureau helium distributor. A copy of the "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies" may be obtained from the Bureau of Mines.

8.503 Exception.

The requirements of this subpart do not apply to contracts or subcontracts in which the helium was acquired by the contractor prior to award of the contract or subcontract.

8.504 Procedures.

(a) Upon receipt of the helium requirement forecast, point of contact, and telephone number from the contractor, the contracting officer shall forward this information, along with a copy of the contract, to the Bureau of Mines.

(b) Upon notification by the Bureau of Mines of an apparent discrepancy between helium sales data and the contractor's helium requirement forecast, the contracting officer shall determine appropriate action and inform the Bureau of Mines.

8.505 Contract clause.

The contracting officer shall insert the clause at 52.208-8, Helium Requirement Forecast and Required Sources for Helium, in solicitations and contracts if it is anticipated that performance of the contract involves a major helium requirement.

SUBPART 8.6—ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

8.601 General.

(a) Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation of the District of Columbia

(b) FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies (18 U.S.C. 4121-4128).

(c) FPI diversifies its supplies and services to prevent private industry from experiencing unfair competition from prison workshops or activities.

8.602 Policy.

(a) Agencies shall purchase required supplies of the classes listed in the Schedule of Products made in Federal Penal and Correctional Institutions (referred to in this subpart as "the Schedule") at prices not to exceed current market prices, using the procedures in this subpart.

(b) Subject to the priorities in 8.001 and 8.603, agencies are encouraged to use the facilities of FPI to the maximum extent practicable in purchasing (1) supplies that are not listed in the Schedule, but that are of a type manufactured in Federal penal and correctional institutions, and (2) services that are listed in the Schedule.

(c) If a supply not listed in the Schedule is of a type normally produced by Federal penal and correctional institutions, agencies are encouraged to suggest that FPI consider the feasibility of adding the item to its Schedule.

8.603 Purchase priorities.

(a) FPI and nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program (see Subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(1) *Supplies.* (i) Federal Prison Industries, Inc. (41 U.S.C. 48).

(ii) JWOD participating nonprofit agencies.

(iii) Commercial sources.

(2) *Services.* (i) JWOD participating nonprofit agencies.

(ii) Federal Prison Industries, Inc., or commercial sources.

(b) Supplies and services manufactured or performed by FPI are in strict conformity with Federal Specifications. These supplies and services are listed in the Schedule. Copies of the Schedule are available from Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

8.604 Ordering procedures.

(a) Contracting officers shall order (1) less-than-carload lots of common-use items (Schedule A of the Schedule) from the regional warehouses of GSA, unless it is more practical and economical to purchase directly from FPI, and (2) carload lots of common-use items, and other items listed in the Schedule, from FPI.

(b) Contracting officers shall prepare orders to FPI using the procedures in the Schedule.

(c) When the contracting officer believes that the FPI price exceeds the market price, the matter may be referred to the cognizant product division identified in the Schedule or to the FPI Washington office for resolution.

8.605 Clearances.

(a) Clearance is required from FPI before supplies on the Schedule are acquired from other sources, except when the conditions in 8.606 apply. FPI clearances ordinarily are of the following types:

(1) General or blanket clearances issued when classes of articles or services are not available from FPI.

(2) Formal clearances issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the Schedule and not covered by a general clearance. Requests should be addressed to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

(b) Purchases from other sources because of a lower price are not normally authorized, and clearances will not be issued on this basis except as a result of action taken to resolve questions of price under 8.604(c).

(c) Disputes regarding price, quality, character, or suitability of supplies produced by FPI are subject to arbitration as specified in 18 U.S.C. 4124. The statute provides that the arbitration shall be conducted by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

8.606 Exceptions.

FPI clearances are not required when—

(a) Public exigency requires immediate delivery or performance;

(b) Suitable used or excess supplies are available;

(c) Purchases are made from GSA of less-than-carload lots of common-use items stocked by GSA (see Schedule A of the Schedule);

(d) The supplies are acquired and used outside the United States; or

(e) Orders are for listed items totaling $25 or less that require delivery within 10 days.

SUBPART 8.7—ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing the Javits-Wagner-O'Day Act (41 U.S.C. 46-

48c), referred to in this subpart as "the JWOD Act," and the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR Chapter 51).

8.701 Definitions.

"Allocation," as used in this subpart, means an action taken by a central nonprofit agency to designate the JWOD participating nonprofit agencies that will furnish definite quantities of supplies or perform specific services upon receipt of orders from ordering offices.

"Central nonprofit agency," as used in this subpart, means National Industries for the Blind (NIB), which has been designated to represent people who are blind; or NISH, which has been designated to represent JWOD participating nonprofit agencies serving people with severe disabilities other than blindness.

"Committee", as used in this subpart, means the Committee for Purchase from People Who Are Blind or Severely Disabled.

"Government" or "entity of the Government" means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

"Ordering office" means any activity in an entity of the Government that places orders for the purchase of supplies or services under the JWOD Program.

"Procurement List," as used in this subpart, means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the Javits-Wagner-O'Day Act.

"Nonprofit agency serving people who are blind" or "nonprofit agency serving people with other severe disabilities" (referred to jointly as JWOD participating nonprofit agencies) means a qualified nonprofit agency employing people who are blind or have other severe disabilities approved by the Committee to furnish a commodity or a service to the Government under the Act.

8.702 General.

The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

(a) Determining those supplies and services to be purchased by all entities of the Government from JWOD participating nonprofit agencies;

(b) Establishing prices for the supplies and services; and

(c) Establishing rules and regulations to implement the JWOD Act.

8.703 Procurement List.

The Committee maintains a Procurement List of all supplies and services required to be purchased from JWOD participating nonprofit agencies. Questions concerning whether a supply item or service is on the Procurement List should be referred to the Committee offices at the following address and telephone number:

Committee for Purchase from People
Who Are Blind or Severely Disabled
Crystal Square 3, Room 403
1735 Jefferson Davis Highway
Arlington, VA 22202-3461
(703) 603-7740

Many items on the Procurement List are identified in the General Services Administration (GSA) Supply Catalog and GSA's Customer Service Center Catalogs with a black square and the words "NIB/NISH Mandatory Source," and in similar catalogs issued by the Defense Logistics Agency (DLA) and the Department of Veterans Affairs (VA). GSA, DLA, and VA are central supply agencies from which other Federal agencies are required to purchase certain supply items on the Procurement List.

8.704 Purchase priorities.

(a) The JWOD Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available within the period required. When identical supplies or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering offices shall purchase supplies and services in the following priorities:

(1) Supplies:

(i) Federal Prison Industries, Inc. (41 U.S.C. 48).

(ii) JWOD participating nonprofit agencies.

(iii) Commercial sources.

(2) Services:

(i) JWOD participating nonprofit agencies.

(ii) Federal Prison Industries, Inc., or commercial sources.

(b) No other provision of the FAR shall be construed as permitting an exception to the mandatory purchase of items on the Procurement List.

(c) The Procurement List identifies those supplies for which the ordering office must obtain a formal clearance (8.605) from Federal Prison Industries, Inc., before making any purchases from JWOD participating nonprofit agencies.

8.705 Procedures.

8.705-1 General.

(a) Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated JWOD participating nonprofit agencies, except that supplies identified on the Procurement List as available from DLA, GSA, or VA supply distribution facilities shall be obtained through DLA, GSA, or VA pro-

cedures. If a distribution facility cannot provide the supplies, it shall inform the ordering office, which shall then order from the JWOD participating nonprofit agency designated by the Committee.

(b) Supply distribution facilities in DLA and GSA shall obtain supplies on the Procurement List from the central nonprofit agency identified or its designated JWOD participating nonprofit agency.

8.705-2 Direct-order process.

Central nonprofit agencies may authorize ordering offices to transmit orders for specific supplies or services directly to a JWOD participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance lead time required by the nonprofit agency. The ordering office shall reflect this lead time in its orders.

8.705-3 Allocation process.

(a) When the direct order process has not been authorized, the ordering office shall submit a letter request for allocation (requesting the designation of the JWOD participating nonprofit agency to produce the supplies or perform the service) to the central nonprofit agency designated in the Procurement List. Ordering offices shall request allocations in sufficient time for a reply, for orders to be placed, and for the nonprofit agency to produce the supplies or provide the service within the required delivery or performance schedule.

(b) The ordering office's request to the central nonprofit agency for allocation shall include the following information:

(1) For supplies—Item name, stock number, latest specification, quantity, unit price, date delivery is required, and destination to which delivery is to be made.

(2) For services—Type and location of service required, latest specification, work to be performed, estimated volume, and required date or dates for completion.

(3) Other requirements; e.g., packing, marking, as necessary.

(c) When an allocation is received, the ordering office shall promptly issue an order to the specified JWOD participating nonprofit agency or to the central nonprofit agency, as instructed by the allocation. If the issuance of an order is to be delayed for more than 15 days beyond receipt of the allocation, or canceled, the ordering office shall advise the central nonprofit agency immediately.

(d) Ordering offices may issue orders without limitation as to dollar amount and shall record them upon issuance as obligations. Each order shall include, as a minimum, the information contained in the request for allocation. Ordering offices shall also include additional instructions necessary for performance under the order; e.g., on the handling of Government-furnished property, reports required, and notification of shipment.

8.705-4 Compliance with orders.

(a) The central nonprofit agency shall inform the ordering office of changes in lead time experienced by its JWOD participating nonprofit agencies to minimize requests for extension once the ordering office places an order.

(b) The ordering office shall grant a request by a central nonprofit agency or JWOD participating nonprofit agency for revision in the delivery or completion schedule, if feasible. If extension of the delivery or completion date is not feasible, the ordering office shall notify the appropriate central nonprofit agency and request that it reallocate the order, or grant a purchase exception authorizing acquisition from commercial sources.

(c) When a JWOD participating nonprofit agency fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the nonprofit agency involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the nonprofit agency, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

(d) When, after complying with 8.705-4(c), the ordering office determines that it must cancel an order, it shall notify the central nonprofit agency and, if practical, request a reallocation of the order. When the central nonprofit agency cannot reallocate the order, it shall grant a purchase exception permitting use of commercial sources, subject to approval by the Committee when the value of the purchase exception is $25,000 or more.

8.706 Purchase exceptions.

(a) Ordering offices may acquire supplies or services on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency.

(b) The central nonprofit agency shall promptly grant purchase exceptions when—

(1) The JWOD participating nonprofit agencies cannot provide the supplies or services within the time required, and commercial sources can provide them significantly sooner in the quantities required; or

(2) The quantity required cannot be produced or provided economically by the JWOD participating nonprofit agencies.

(c) The central nonprofit agency granting the exception shall specify the quantity and delivery or performance period covered by the exception.

(d) When a purchase exception is granted, the contracting officer shall—

(1) Initiate purchase action within 15 days following

the date of the exception or any extension granted by the central nonprofit agency; and

(2) Provide a copy of the solicitation to the central nonprofit agency when it is issued.

(e) The Committee may also grant a purchase exception, under any circumstances it considers appropriate.

8.707 Prices.

(a) The prices of items on the Procurement List are fair market prices established by the Committee. All prices for supplies ordered under this subpart are f.o.b. origin.

(b) Prices for supplies are normally adjusted semiannually. Prices for services are normally adjusted annually.

(c) The Committee may request the agency responsible for acquiring the supplies or service to assist it in establishing or revising the fair market price. The Committee has the authority to establish prices without prior coordination with the responsible contracting office.

(d) Price changes shall normally apply to all orders received by the JWOD participating nonprofit agency on or after the effective date of the change. In special cases, after considering the views of the ordering office, the Committee may make price changes applicable to orders received by the JWOD participating nonprofit agency prior to the effective date of the change.

(e) If an ordering office desires packing, packaging, or marking of supplies other than the standard pack as provided on the Procurement List, any difference in costs shall be included as a separate item on the nonprofit agency's invoice. The ordering office shall reimburse the nonprofit agency for these costs.

(f) Ordering offices may make recommendations to the Committee at any time for price revisions for supplies and services on the Procurement List.

8.708 Shipping.

(a) Delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. The time of delivery is the date shipment is released to and accepted by the initial carrier.

(b) Shipment is normally under Government bills of lading. However, for small orders, ordering offices may specify other shipment methods.

(c) When shipments are under Government bills of lading, the bills of lading may accompany orders or be otherwise furnished promptly. Failure of an ordering office to furnish bills of lading or to designate a method of transportation may result in an excusable delay in delivery.

(d) JWOD participating nonprofit agencies shall include transportation costs for small shipments paid by the nonprofit agencies as an item on the invoice. The ordering office shall reimburse the nonprofit agencies for these costs.

8.709 Payments.

The ordering office shall make payments for supplies or services on the Procurement List within 30 days after shipment or after receipt of a proper invoice or voucher.

8.710 Quality of merchandise.

Supplies and services provided by JWOD participating nonprofit agencies shall comply with the applicable Government specifications and standards cited in the order. When no specifications or standards exist—

(a) Supplies shall be of the highest quality and equal to similar items available on the commercial market; and

(b) Services shall conform to good commercial practices.

8.711 Quality complaints.

(a) When the quality of supplies or services received is unsatisfactory, the using activity shall take the following actions:

(1) For supplies received from DLA supply centers, GSA supply distribution facilities, or Department of Veterans Affairs distribution division, notify the supplying agency.

(2) For supplies or services received from JWOD participating nonprofit agencies, address complaints to the individual nonprofit agency involved, with a copy to the appropriate central nonprofit agency.

(b) When quality problems cannot be resolved by the JWOD participating nonprofit agency and the ordering office, the ordering office shall first contact the central nonprofit agency and then, if necessary, the Committee for resolution.

8.712 Specification changes.

(a) The contracting activity shall notify the JWOD participating nonprofit agency and appropriate central nonprofit agency of any change in specifications or descriptions. In the absence of such written notification, the JWOD participating nonprofit agency shall furnish the supplies or services under the specification or description cited in the order.

(b) The contracting activity shall provide 90-days advance notification to the Committee and the central nonprofit agency on actions that affect supplies on the Procurement List and shall permit them to comment before action is taken, particularly when it involves—

(1) Changes that require new national stock numbers or item designations;

(2) Deleting items from the supply system;

(3) Standardization; or

(4) Developing new items to replace items on the Procurement List.

(c) For services, the contracting activity shall notify the JWOD participating nonprofit agency and central nonprofit agency concerned at least 90 days prior to the date that any changes in the scope of work or other conditions will be required.

(d) When, in order to meet its emergency needs, a contracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the JWOD participating nonprofit agency and the central nonprofit agency in writing of the reasons that it cannot meet the 90-day notification requirement.

8.713 Optional acquisition of supplies and services.

(a) Ordering offices may acquire supplies and services not included on the Procurement List from a JWOD participating nonprofit agency that is the low responsive, responsible offeror under a solicitation issued by other authorized acquisition methods.

(b) Ordering offices should forward solicitations to JWOD participating nonprofit agencies that may be qualified to provide the supplies or services required.

8.714 Communications with the central nonprofit agencies and the Committee.

(a) The addresses of the central nonprofit agencies are:

(1) National Industries for the Blind
1901 N. Beauregard St., Suite 200
Alexandria, VA 22311-1727
(703) 998-0770; and

(2) NISH
2235 Cedar Lane
Vienna, VA 22182-5200
(703) 560-6800

(b) Any matter requiring referral to the Committee shall be addressed to the Executive Director of the Committee at 1735 Jefferson-Davis Highway, Crystal Square 3, Suite 403, Arlington, VA 22202-3461.

8.715 Replacement commodities.

When a commodity on the Procurement List is replaced by another commodity which has not been previously acquired, and a qualified JWOD participating nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules and at a fair market price, the replacement commodity is automatically on the Procurement List and shall be acquired from the JWOD participating nonprofit agency designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

SUBPART 8.8—ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.800 Scope of subpart.

This subpart provides policy for the acquisition of Government printing and related supplies.

8.801 Definitions.

"Government printing" means printing, binding, and blankbook work for the use of an executive department, independent agency, or establishment of the Government.

"Related supplies," as used in this subpart, means supplies that are used and equipment that is usable in printing and binding operations.

8.802 Policy.

(a) Government printing must be done by or through the Government Printing Office (GPO) (44 U.S.C. 501), unless—

(1) The GPO cannot provide the printing service (44 U.S.C. 504);

(2) The printing is done in field printing plants operated by an executive agency (44 U.S.C. 501(2));

(3) The printing is acquired by an executive agency from allotments for contract field printing (44 U.S.C. 501(2)); or

(4) The printing is specifically authorized by statute to be done other than by the GPO.

(b) The head of each agency shall designate a central printing authority; that central printing authority may serve as the liaison with the Congressional Joint Committee on Printing (JCP) and the Public Printer on matters related to printing. Contracting officers shall obtain approval from their designated central printing authority before contracting in any manner, whether directly or through contracts for supplies or services, for the items defined in 8.801 and for composition, platemaking, presswork, binding, and micrographics (when used as a substitute for printing).

(c) (1) Further, 44 U.S.C. 1121 provides that the Public Printer may acquire and furnish paper and envelopes (excluding envelopes printed in the course of manufacture) in common use by two or more Government departments, establishments, or services within the District of Columbia, and provides for reimbursement of the Public Printer from available appropriations or funds. Paper and envelopes that are furnished by the Public Printer may not be acquired in any other manner.

(2) Paper and envelopes for use by Executive agencies outside the District of Columbia and stocked by GSA shall be requisitioned from GSA in accordance with the procedures listed in Federal Property Management Regulations (FPMR) Subpart 101-26.3.

SUBPARTS 8.9 AND 8.10—[RESERVED]

SUBPART 8.11—LEASING OF MOTOR VEHICLES

8.1100 Scope of subpart.

This subpart covers the procedures for the leasing, from commercial concerns, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable

State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States.

8.1101 Definitions.

"Leasing," as used in this subpart, means the acquisition of motor vehicles, other than by purchase from private or commercial sources, and includes the synonyms "hire" and "rent."

"Motor vehicle" means an item of equipment, mounted on wheels and designed for highway and/or land use, that (a) derives power from a self-contained power unit or (b) is designed to be towed by and used in conjunction with self-propelled equipment.

8.1102 Presolicitation requirements.

(a) Except as specified in 8.1102(b), before preparing solicitations for leasing of motor vehicles, contracting officers shall obtain from the requiring activity a written certification that—

(1) The vehicles requested are of maximum fuel efficiency and minimum body size, engine size, and equipment (if any) necessary to fulfill operational needs, and meet prescribed fuel economy standards;

(2) The head of the requiring agency, or a designee, has certified that the requested passenger automobiles (sedans and station wagons) larger than Type IA, IB, or II (small, subcompact, or compact) are essential to the agency's mission;

(3) Internal approvals have been received; and

(4) The General Services Administration has advised that it cannot furnish the vehicles.

(b) With respect to requirements for leasing motor vehicles for a period of less than 60 days, the contracting officer need not obtain the certification specified in 8.1102(a)—

(1) If the requirement is for type 1A, 1B, or II vehicles, which are by definition fuel efficient; or

(2) If the requirement is for passenger vehicles larger than 1A, 1B, or II, and the agency has established procedures for advance approval, on a case-by-case basis, of such requirements.

(c) Generally, solicitations shall not be limited to current-year production models. However, with the prior approval of the head of the contracting office, solicitations may be limited to current models on the basis of overall economy.

8.1103 Contract requirements.

Contracting officers shall include the following items in each contract for leasing motor vehicles:

(a) Scope of contract.

(b) Method of computing payments.

(c) A listing of the number and type of vehicles required, and the equipment and accessories to be provided with each vehicle.

(d) Responsibilities of the contractor or the Government for furnishing gasoline, motor oil, antifreeze, and similar items.

(e) Unless it is determined that it will be more economical for the Government to perform the work, a statement that the contractor shall perform all maintenance on the vehicles.

(f) A statement as to the applicability of pertinent State and local laws and regulations, and the responsibility of each party for compliance with them.

(g) Responsibilities of the contractor or the Government for emergency repairs and services.

8.1104 Contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for leasing of motor vehicles, unless the motor vehicles are leased in foreign countries:

(a) The clause at 52.208-4, Vehicle Lease Payments.

(b) The clause at 52.208-5, Condition of Leased Vehicles.

(c) The clause at 52.208-6, Marking of Leased Vehicles.

(d) A clause substantially the same as the clause at 52.208-7, Tagging of Leased Vehicles, for vehicles leased over 60 days (see 41 CFR 101-38.6).

(e) The provisions and clauses prescribed elsewhere in the FAR for solicitations and contracts for supplies when a fixed-price contract is contemplated, but excluding—

(1) The clause at 52.212-9, Variation in Quantity;

(2) The clause at 52.232-1, Payments;

(3) The clause at 52.222-20, Walsh-Healey Public Contracts Act; and

(4) The clause at 52.246-16, Responsibility for Supplies.

concerning the adequacy of prospective contractors' accounting systems and these systems' suitability for use in administering the proposed type of contract.

(ii) If the surveying activity is not a contract administration office, the contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs, the adequacy of their accounting systems, and these systems' suitability for use in administering the proposed type of contract.

(3) Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

(c) The contracting officer should use the following sources of information to support determinations of responsibility or nonresponsibility:

(1) The list entitled Parties Excluded from Procurement Programs (list of contractors debarred, suspended, proposed for debarment, and declared ineligible) maintained in accordance with Subpart 9.4.

(2) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(3) The prospective contractor—including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.

(4) Preaward survey reports (see 9.106).

(5) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(6) If the contract is for construction, the contracting officer may consider performance evaluation reports (see 36.201(c)(2)).

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

9.105-2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the contracting officer determines and documents that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in Subpart 19.6. When a certificate of competency is issued for a small business concern (see Subpart 19.6), the contracting officer may accept the factors covered by the certificate without further inquiry.

(b) *Support documentation.* Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports and any applicable Certificate of Competency, must be included in the contract file.

9.105-3 Disclosure of preaward information.

(a) Except as provided in Subpart 24.2, Freedom of Information Act, information (including the preaward survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

(b) The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. After award, the contracting officer or, if it is appropriate, the head of the surveying activity or a designee may discuss the findings of the preaward survey with the company surveyed.

(c) Preaward survey information may contain proprietary and/or source selection information and should be marked with the appropriate legend and protected accordingly (see 3.104-4(j) and (k)).

9.106 Preaward surveys.

9.106-1 Conditions for preaward surveys.

(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract (1) will be for $25,000 or less or (2) will have a fixed price of less than $100,000 and will involve commercial products (see 11.001) only, the contracting officer should *not* request a preaward survey unless circumstances justify its cost.

(b) When a cognizant contract administration office becomes aware of a prospective award to a contractor about which unfavorable information exists and no preaward survey has been requested, it shall promptly obtain and transmit details to the contracting officer.

(c) Before beginning a preaward survey, the surveying activity shall ascertain whether the prospective contractor is debarred, suspended, or ineligible (see Subpart 9.4). If the prospective contractor is debarred, suspended, or ineligible, the surveying activity shall advise the contracting officer promptly and not proceed with the preaward survey unless specifically requested to do so by the contracting officer.

9.106-2 Requests for preaward surveys.

The contracting officer's request to the surveying activity (Preaward Survey of Prospective Contractor (General), SF 1403) shall—

(a) Identify additional factors about which information is needed;

(b) Include the complete solicitation package (unless it has previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(c) State whether the contracting office will participate in the survey;

(d) Specify the date by which the report is required. This date should be consistent with the scope of the survey requested and normally shall allow at least 7 working days to conduct the survey; and

(e) When appropriate, limit the scope of the survey.

9.106-3 Interagency preaward surveys.

(a) When the contracting office and the surveying activity are in different agencies, the procedures of this section 9.106 and Subpart 42.1 shall be followed along with the regulations of the agency in which the surveying activity is located, except that reasonable special requests by the contracting office shall be accommodated.

(b) For contracts or contract modifications expected to exceed $100,000, the surveying activity shall furnish with its report a list of all persons, classes of persons, and to the maximum extent practicable, the names of all individuals within the class, who have been provided access to the proprietary or source selection information (see 3.104-5(d)) at or by the surveying activity.

9.106-4 Reports.

(a) The surveying activity shall complete the applicable parts of 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; and SF 1408, Preaward Survey of Prospective Contractor—Accounting System; and provide a narrative discussion sufficient to support both the evaluation ratings and the recommendations.

(b) When the contractor surveyed is a small business that has received preferential treatment on an ongoing contract under Section 8(a) of the Small Business Act (15 U.S.C. 637) or has received a Certificate of Competency during the last 12 months, the surveying activity shall consult the appropriate Small Business Administration field office before making an affirmative recommendation regarding the contractor's responsibility or nonresponsibility.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity shall specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance. The narrative shall report any persistent pattern of need for costly and burdensome Government assistance (e.g., engineering, inspection, or testing) provided in the Government's interest but not contractually required.

(d) When the surveying activity possesses information that supports a recommendation of complete award without an on-site survey and no special areas for investigation have been requested, the surveying activity may provide a short-form preaward survey report. The short-form report shall consist solely of the Preaward Survey of Prospective Contractor (General), SF 1403. Sections III and IV of this form shall be completed and block 21 shall be checked to show that the report is a short-form preaward report.

9.107 Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. 46-48c, determines what supplies and services Federal agencies are required to purchase from JWOD participating nonprofit agencies serving people who are blind or have other severe disabilities (see Subpart 8.7). The Committee is required to find a JWOD participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the JWOD Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the JWOD participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the JWOD participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

SUBPART 9.2—QUALIFICATIONS REQUIREMENTS

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 2319 and 41 U.S.C. 253c and prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements.

9.201 Definitions.

"Procuring activity," as used in this part or subpart, 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.

"Qualification requirement" means a Government requirement for testing or other quality assurance demon-

from Procurement Programs is also available by calling GSA, at (202) 501-0688. The inquiry will be answered within one working day.

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head or a designee determines that there is a compelling reason for such action (see 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see Part 28).

(d)(1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Procurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the agency head or a designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head or a designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.

9.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the agency head or a designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) Ordering activities may continue to place orders against existing contracts, including indefinite delivery contracts, in the absence of a termination.

(c) Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the agency head or a designee authorized representative states, in writing, the compelling reasons for renewal or extension.

9.405-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the agency head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the list of Parties Excluded from Procurement Programs (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(c) The contractor's compliance with the requirements of 52.209-6 will be reviewed during Contractor Purchasing System Reviews (see Subpart 44.3).

9.406 Debarment.

9.406-1 General.

(a) It is the debarring official's responsibility to deter-

mine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see 9.406-3(c)).

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

9.406-2 Causes for debarment.

The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:

(a) The debarring official may debar a contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(i) Willful failure to perform in accordance with

the terms of one or more contracts; or

(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(2) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—

(i) The offeror's submission of a false certification;

(ii) The contractor's failure to comply with its certification; or

(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(3) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)).

(4) Commission of an unfair trade practice as defined in Section 9.403 (see section 201 of the Defense Production Act (Pub. L. 102-558)).

(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.406-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

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

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being considered;

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under 9.406-2 for proposing debarment;

(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of the agency's procedures governing debarment decisionmaking;

(6) Of the effect of the issuance of the notice of proposed debarment; and,

(7) Of the potential effect of an actual debarment.

(d) *Debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective

throughout the executive branch of the Government unless the head of an agency or a designee makes the statement called for by 9.406-1(c).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

9.406-4 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of 9.406-3 above shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

9.406-5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

9.407 Suspension.

9.407-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 9.407-2, using the procedures in 9.407-3.

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in 9.406-1(a). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 9.407-3(c)).

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)(1) When the suspending official has authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 101-45.6, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of

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.

(6) Inspection and acceptance, quality assurance, and reliability requirements.

(7) Place of delivery, performance and delivery dates, period of performance, and f.o.b. point.

(8) Other item-peculiar information as necessary (e.g., individual fund citations).

(c) *Clauses.* Include the clauses required by this regulation. 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 36.303(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; (3) anticipated extent of subcontracting; (4) whether use was made of presolicitation notices; (5) geographic distribution of bidders; and (6) normal mailing time for both invitations and bids.

14.202-2 Telegraphic bids.

(a) Telegraphic bids and mailgrams shall be authorized only when—

(1) The date for the opening of bids will not allow bidders sufficient time to submit bids on the prescribed forms; or

(2) Prices are subject to frequent changes.

(b) If telegraphic bids are to be authorized, see 14.201-6(g). Unauthorized telegraphic bids shall not be considered (see 14.301(b)).

14.202-3 Bid envelopes.

(a) Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for

bids or otherwise supplied to prospective bidders.

(b) To provide for ready identification and proper handling of bids, Optional Form 17, Offer Label, may be furnished with each bid set. The form may be obtained from the General Services Administration (see 53.107).

14.202-4 Bid samples.

(a) *Definition.* "Bid sample" means a sample to be furnished by a bidder to show the characteristics of the product offered in a bid.

(b) *Policy.*

(1) Bidders shall not be required to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specification or purchase description.

(2) Bid samples will be used only to determine the responsiveness of the bid and will not be used to determine a bidder's ability to produce the required items.

(3) Bid samples may be examined for any required characteristic, whether or not such characteristic is adequately described in the specification, if listed in accordance with subdivision (e)(1)(ii) of this subsection.

(4) Bids will be rejected as nonresponsive if the sample fails to conform to each of the characteristics listed in the invitation.

(c) *When to use.* The use of bid samples would be appropriate for products that must be suitable from the standpoint of balance, facility of use, general "feel," color, pattern, or other characteristics that cannot be described adequately in the specification. However, when more than a minor portion of the characteristics of the product cannot be adequately described in the specification, products should be acquired by two-step sealed bidding or negotiation, as appropriate.

(d) *Justification.* The reasons why acceptable products cannot be acquired without the submission of bid samples shall be set forth in the contract file, except where the submission is required by the formal specifications (Federal, Military, or other) applicable to the acquisition.

(e) *Requirements for samples in invitations for bids.* (1) Invitations for bids shall—

(i) State the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required; and

(ii) List all the characteristics for which the samples will be examined.

(2) If bid samples are required, see 14.201-6(o).

(f) *Waiver of requirement for bid samples.* (1) The requirement for furnishing bid samples may be waived when a bidder offers a product previously or currently being contracted for or tested by the Government and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids. When the requirement may be waived, see 14.201-6(o)(2).

(2) Where samples required by a Federal, Military, or other formal specification are not considered necessary and a waiver of the sample requirements of the specification has been authorized, a statement shall be included in the invitation that notwithstanding the requirements of the specification, samples will not be required.

(g) *Unsolicited samples.* Bid samples furnished with a bid that are not required by the invitation generally will not be considered as qualifying the bid and will be disregarded. However, the bid sample will not be disregarded if it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid. (See 14.404-2(d) if the qualification does not conform to the solicitation.)

(h) *Handling of bid samples.*

(1) Samples that are not destroyed in testing shall be returned to bidders at their request and expense, unless otherwise specified in the invitation.

(2) Disposition instructions shall be requested from bidders and samples disposed of accordingly.

(3) Samples ordinarily will be returned collect to the address from which received if disposition instructions are not received within 30 days. Small items may be returned by mail, postage prepaid.

(4) Samples that are to be retained for inspection purposes in connection with deliveries shall be transmitted to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished.

(5) Where samples are consumed or their usefulness is impaired by tests, they will be disposed of as scrap unless the bidder requests their return.

14.202-5 Descriptive literature.

(a) *Definition.* "Descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(b) *Policy.* Bidders shall not be required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(c) *Justification.* The reasons why product acceptability cannot be determined without the submission of descriptive literature shall be set forth in the contract file, except when such submission is required by formal specifications (Federal, Military, or other) applicable to the acquisition.

(d) *Requirements of invitation for bids.*

(1) The invitation shall clearly state (i) what descriptive literature is to be furnished, (ii) the purpose for which it is required, (iii) the extent to which it will be

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.

(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-33, Order of Precedence, in solicitations and contracts to which the uniform contract format applies.

(c) Any alteration pertaining to the contract shall be included in this section as part of the clause at 52.252-4, Alterations in Contract. See Part 52, Solicitation Provisions and Contract Clauses.

15.406-4 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.

15.406-5 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 or quoters.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors or quoters.

(b) *Section L, Instructions, conditions, and notices to offerors or quoters.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separation of technical and cost or pricing data. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, and (4) cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify all factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors that will be considered in awarding the contract (see 15.605(e) and (f) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors.

15.407 Solicitation provisions.

(a) "Solicitations," as used in this section, means requests for proposals (RFP's) and requests for quotations (RFQ's) other than those excluded by 15.401 and those for information or planning purposes. See 15.405-2 for the solicitation provision used with solicitations for information or planning purposes.

(b) The contracting officer may, upon the approval of the chief of the contracting office, insert the provision at 52.215-4, Notice of Possible Standardization, in solicitations for supplies that subsequently might be standardized. See 14.201-6(n) regarding use of the provision in invitations for bids.

(c) The contracting officer shall insert in solicitations the provisions at—

(1) 52.215-5, Solicitation Definitions;

(2) 52.215-6, Type of Business Organization;

(3) 52.215-7, Unnecessarily Elaborate Proposals or Quotations;

(4) 52.215-8, Amendments to Solicitations;

(5) 52.215-9, Submission of Offers;

(6) 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, for solicitations issued in the United States and Canada for submission of offers to a contracting office in the United States or Canada;

(7) 52.215-11, Authorized Negotiators;

(8) 52.215-12, Restriction on Disclosure and Use of Data; and

(9) 52.215-36, Late Submissions, Modifications, and Withdrawals of Proposals (Overseas), for solicitations under which offers are to be submitted to a contracting office outside the United States or Canada.

(d) The contracting officer shall—

(1) Insert in RFP's for other than construction the provision at 52.215-13, Preparation of Offers;

(2) Insert in RFP's the provision at 52.215-14, Explanation to Prospective Offerors;

(3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer; and

(4) Insert in RFP's the provision at 52.215-16, Contract Award.

(i) Civilian agencies, other than the Coast Guard and the National Aeronautics and Space Administration, shall use the basic provision as stated.

(ii) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I.

(iii) The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate II if the contracting officer intends that proposals will be evaluated with, and award made after, discussions with the offerors.

(iv) The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate III if the contracting officer intends that proposals will be evaluated, and award made, without discussions with offerors.

(e)(1) The contracting officer shall insert the provision at 52.215-17, Telegraphic Proposals, in solicitations that authorize telegraphic proposals or quotations.

(2) The contracting officer shall insert the basic provision with its Alternate I in solicitations that are for perish-

able subsistence and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

(f) The contracting officer shall insert the provision at 52.215-19, Period for Acceptance of Offer, in RFP's that are not issued on SF 33 or SF 1447, except those (1) for construction work or (2) in which the Government specifies a minimum acceptance period.

(g) The contracting officer shall insert the provision at 52.215-20, Place of Performance, in solicitations except those in which the place of performance is specified by the Government.

(h) The contracting officer shall insert the provision at 52.215-34, Evaluation of Offers for Multiple Awards, in requests for proposals if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(i) The contracting officer shall insert the provision at 52.215-35, Annual Representations and Certifications—Negotiation, in requests for proposals if annual representations and certifications are utilized (see 14.213).

(j) The contracting officer shall insert the provision at 52.215-18, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.402(i)).

(k) The contracting officer shall insert in RFP's for construction the provision at 52.215-38, Preparation of Offers—Construction.

(l) 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.

(m) 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.

15.408 Issuing solicitations.

(a) The contracting officer shall issue unclassified solicitations to potential sources in conformance with the policy and procedures in Parts 5 and 6.

(b) Solicitations involving classified information shall be handled as prescribed by agency regulations.

(c) If the contracting office is located in the United States and the security classification permits, any solicitation or related correspondence sent to a foreign address shall be sent by international air mail. Similarly, if the security classification permits, contracting offices located outside the United States shall use international air mail in appropriate circumstances.

(d) A master solicitation may be used for negotiated acquisitions, subject to the criteria and procedures in 14.203-3.

(e) To provide for ready identification and proper handling of proposals, Optional Form 17, Offer Label, may be furnished with each request for proposals. The form may be obtained from the General Services Administration (see 53.107).

15.409 Pre-proposal conferences.

(a) A pre-proposal conference may be held to brief prospective offerors after a solicitation has been issued but before offers are submitted. Generally, the Government uses these conferences in complex negotiated acquisitions to explain or clarify complicated specifications and requirements.

(b) The contracting officer shall decide if a pre-proposal conference is required and make the necessary arrangements, including the following:

(1) If notice was not in the solicitation, give all prospective offerors who received the solicitation adequate notice of the time, place, nature, and scope of the conference.

(2) If time allows, request prospective offerors to submit written questions in advance. Prepared answers can then be delivered during the conference.

(3) Arrange for technical and legal personnel to attend the conference, if appropriate.

(c) The contracting officer or a designated representative shall conduct the pre-proposal conference, furnish all prospective offerors identical information concerning the proposed acquisition, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors. Conferees shall be advised that—

(1) Remarks and explanations at the conference shall not qualify the terms of the solicitation; and

(2) Terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

15.410 Amendment of solicitations before closing date.

(a) After issuance of a solicitation, but before the date set for receipt of proposals, it may be necessary to (1) make changes to the solicitation, including, but not limited to, significant changes in quantity, specifications, or delivery schedules, (2) correct defects or ambiguities, or (3) change the closing date for receipt of proposals. Standard Form 30, Amendment of Solicitation/Modification of Contract (53.301-30), shall be used for amending a request for proposals (RFP).

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by telegram or telephone of an extension of the closing date, and the notification shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between (i) the subcontract price used for pricing the prime contract, and (ii) either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except (i) firm-fixed-price contracts, and (ii) 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 15.804-8. The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.804-8 Contract clauses.

(a) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-22, 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 15.804-2).

(b) *Price Reduction for Defective Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when (1) it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.804-2) for the pricing of contract modifications, and (2) the clause prescribed in paragraph (a) of this subsection has not been included.

(c) *Subcontractor Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215-24, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (a) above is included.

(d) *Subcontractor Cost or Pricing Data—Modifications.* The contracting officer shall insert the clause at 52.215-25, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (b) above is included.

(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in all solicitations and contracts for which it is anticipated that certified cost or pricing data will be required and for which any preaward or postaward cost determinations will be subject to Subpart 31.2.

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to Subpart 31.2

(g) *Notification of ownership changes.* The contracting officer shall insert the clause at 52.215-40, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2.

15.805 Proposal analysis.

15.805-1 General.

(a) The contracting officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts and request and evaluate the advice of specialists in such fields as contracting, finance, law, contract audit, packaging, quality control, engineering traffic management, and contract pricing. The contracting officer should have appropriate specialists attend the negotiations when complex problems involving significant matters will be addressed. The contracting officer may assign responsibility to a negotiator or price analyst for (1) determining the extent of specialists' advice needed and evaluating that advice, (2) coordinating a team of experts, (3) consolidating pricing data and developing a prenegotiation objective (see 15.807), and (4) conducting negotiations.

(b) When cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the contracting officer shall make a price analysis to ensure that the overall price offered is fair and reasonable.

(c) The contracting officer shall require prospective contractors to perform (1) price analysis for all significant proposed subcontracts and purchase orders, and (2) cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis (see 15.806 (a)(2)).

15.805-2 Price analysis.

The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

(a) Comparison of proposed prices received in response to the solicitation.

(b) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items. To provide a suitable basis for comparison, the contracting officer should consider differences in specifications, quantities ordered, time for delivery, Government-furnished materials, experienced trends of improvement in production efficiency, and when prior acquisitions occurred. Any comparison will not be valid unless the reasonableness of the prior price was established. The comparison may not detect an unreasonable proposed price

unless changes in the general level of business in the industry which may impact prices are taken into account.

(c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(e) Comparison of proposed prices with independent Government cost estimates (see 15.803(b)).

15.805-3 Cost analysis.

The contracting officer shall, as appropriate, use the techniques and procedures outlined in paragraphs (a) through (f) below to perform cost analysis:

(a) Verification of cost or pricing data and evaluation of cost elements, including—

(1) The necessity for and reasonableness of proposed costs, including allowances for contingencies;

(2) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(3) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and

(4) The application of audited or negotiated indirect cost rates (see Subpart 42.7), labor rates, and cost of money or other factors.

(b) 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 make a trend analysis of basic labor and materials even in periods of relative price stability.

(c) Comparison of costs proposed by the offeror for individual cost elements with—

(1) Actual costs previously incurred by the same offeror;

(2) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(3) Other cost estimates received in response to the Government's request;

(4) Independent Government cost estimates by technical personnel; and

(5) Forecasts or planned expenditures.

(d) 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 B, FAR looseleaf edition), Cost Accounting Standards.

(e) 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.

(f) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

15.805-4 Technical analysis.

When cost or pricing data are required, the contracting officer should generally request a technical analysis of proposals, asking that requirements, logistics, or other appropriate qualified personnel review and assess, as a minimum—

(a) The quantities and kinds of material proposed;

(b) The need for the number and kinds of labor hours and the labor mix;

(c) The special tooling and facilities proposed;

(d) The reasonableness of proposed scrap and spoilage factors; and

(e) Any other data that may be pertinent to the cost or price analysis.

15.805-5 Field pricing support.

(a)(1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of $500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price. Information of the type described in subdivisions (a)(1)(i) through (a)(1)(vi) of this subsection, which is often available to the contracting officer from the Administrative Contracting Officer or from the cognizant auditor, may be useful in determining the extent of any field pricing support that is needed—

(i) An engineering determination of the level of effort required for research and development or study contracts;

(ii) Audited cost information from contract awards in process or recently negotiated contracts;

(iii) Analyzed data on proposed subcontract items which constitute the major portion of the prime contract price proposal;

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal;

(v) Special forward pricing formulae or rates prescribed in an existing advance agreement or forecasted overhead rates;

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and actual costs and labor hours for production lots. No single category of information is necessarily sufficient by itself; for example, information on the rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.— to which the rates apply. When available data are con-

promptly reported to the ACO. If the ACO determines that a changed condition has invalidated the agreement, the ACO shall notify all interested parties of the extent of its effect and initiate revision of the agreement.

(f) When an FPRA has been invalidated, the contractor, ACO, and contracting officer shall reflect the changed conditions in proposals, cost analyses, and negotiations, pending revision of the agreement. 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 achieving recommended rates. In the absence of a FPRA or FPRR, field pricing reports will include support for rates utilized.

15.810 Should-cost analysis.

(a) Should-cost analysis is a specialized form of cost analysis which is used to evaluate the cost of production programs by evaluating and challenging a contractor's management and operating systems or portions thereof. It does not assume the use of the contractor's existing workforce, methods, materials, facilities, or management and operating systems. It addresses significant cost drivers and may be tailored to a specific part of the contractor's operations, for example, indirect expense activities, factory layout, etc. This analysis is accomplished by an integrated team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost analysis is to promote both short- and long-range improvements in the contractor's economy and efficiency by evaluating and challenging the contractor's existing workforce, methods, materials, facilities, or management and operating systems to identify uneconomical or inefficient practices. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic price objectives for negotiation.

(b) A should-cost analysis should be considered, particularly in the case of a major system acquisition (see Part 34), when—

(1) Some initial production has already taken place;

(2) The contract will be awarded on a sole-source basis;

(3) There are future year production requirements for substantial quantities of like items;

(4) The items being acquired have a history of increasing costs;

(5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(6) Sufficient time is available to plan and conduct the should-cost analysis adequately; and

(7) Personnel with the required skills are available or can be assigned for the duration of the should-cost analysis.

(c) The scope of a should-cost analysis can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale review examining specific portions of a contractor's operation. When a should-cost analysis is conducted relative to a contractor proposal, a separate audit report on the proposal is required. In determining the team size for the review, the various factors outlined in this paragraph (c) should be considered.

(d) 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. 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 analysis.

(e) In acquisitions for which a should-cost analysis is conducted, a separate should-cost analysis team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the should-cost analysis team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer 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.

(f) When a should-cost analysis is planned, the contracting officer should state this fact (1) in the acquisition plan (see Subpart 7.1) and (2) in the solicitation.

15.811 Estimating systems.

(a) The consistent preparation of proposals using an acceptable estimating system 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 (1) reduce the scope of reviews to be performed on individual proposals, (2) expedite the negotiation process, and (3) 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 corrective action required to each contracting office and con-

tract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor shall be a consideration in subsequent proposal analyses and negotiations.

(c) In determining the acceptability of a contractor's estimating system, the auditor should consider—

(1) The source of data for estimates and the procedures for ensuring that the data are accurate, complete, and current;

(2) The documentation developed and maintained in support of the estimate;

(3) The assignment of responsibilities for originating, reviewing, and approving estimates;

(4) The procedures followed for developing estimates for direct and indirect cost elements;

(5) The extent of coordination and communication between organizational elements responsible for the estimate; and

(6) Management support, including estimate approval, establishment of controls, and training programs.

15.812 Unit prices.

15.812-1 General.

(a) Direct and indirect costs are generally allocated to contracts in accordance with the Cost Accounting Standards of 48 CFR Chapter 99 (when applicable) and the Contract Cost Principles and Procedures of Part 31. However, for the purpose of pricing all items of supplies, distribution of those costs within contracts shall be on a basis that ensures that unit prices are in proportion to the 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.

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public. A price is "based on" a catalog or market price only if the item is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804-3(b)). The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate.

15.812-2 Contract clause.

(a) The contracting officer shall insert the clause at 52.215-26, Integrity of Unit Prices, in all solicitations and contracts for other than—

(1) Small purchases under Part 13;

(2) Construction or architect-engineer services under Part 36;

(3) Utility services under Part 41 of this title;

(4) Service contracts where supplies are not required;

(5) Contracts for petroleum products.

(b) The contracting officer shall insert the clause with its *Alternate I* when contracting without full and open competition or when prescribed by agency regulations.

15.813 [Reserved]

15.814 Unbalanced offers.

(a) Offers shall also be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the relationship of the price for first article tests or test items to the price for the production units, and in evaluating the prices for options in relationship to the prices for the basic requirement.

(b) An offer is mathematically unbalanced if it is based on prices which are significantly less than cost for some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced, and if—

(1) There is a reasonable doubt that the offer would result in the lowest overall cost to the Government, even though it is the lowest evaluated offer; or

(2) The offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment.

(c) Offers that are materially unbalanced may be rejected.

(d) Depending on the nature of the acquisition, contracting officers shall use either price analysis or cost analysis techniques, or a combination of the two techniques, to

PART 19

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act (15 U.S.C. 631, et seq.), applicable sections of the Armed Services Procurement Act (10 U.S.C. 2301, et seq.), the Federal Property and Administrative Services Act (41 U.S.C. 252), and Executive Order 12138, May 18, 1979. It covers—

(1) The determination that a concern is eligible for participation in the programs identified in this part;

(2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;

(3) Setting acquisitions aside for exclusive competitive participation by small business concerns;

(4) The certificate of competency program;

(5) The subcontracting assistance program;

(6) The "8(a)" program, under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern; and

(7) The use of women-owned small business concerns.

(b) This part, except for Subpart 19.6, applies only inside the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. Subpart 19.6 applies worldwide.

19.001 Definitions.

"Concern," as used in this part, means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

"Determination of eligibility," as used in this part, means the written determination issued by the SBA or the Department of Labor certifying that the holder is a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act (see 22.608-2(f)(2)).

"Fair market price," as used in this part, means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.202-6).

"Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

"Industry," as used in this part, means all concerns primarily engaged in similar lines of activity, as listed and described in the Standard Industrial Classification (SIC) Manual.

"Nonmanufacturer rule" means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.906).

"Public or private organization for the handicapped" means one which (a) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (b) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (c) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see 19.102). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

"Small disadvantaged business concern" means a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR 124.

(a) "Socially disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

(b) "Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) are to be considered socially and economically disadvantaged.

(1) "Subcontinent Asian Americans" means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(2) "Asian Pacific Americans" means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

(3) "Native Americans" means American Indians, Eskimos, Aleuts, and Native Hawaiians.

(c) "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

(d) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.

SUBPART 19.1—SIZE STANDARDS

19.101 Explanation of terms.

"Affiliates." As used in this subpart, business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; *provided,* that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located inside the United States.

(a) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(b) *Meaning of "party or parties."* The term "party" or "parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(c) *Control through stock ownership.* (1) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern's voting stock.

(2) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(3) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.

(c)(1) The contracting officer shall award the non-set-aside portion using normal contracting procedures.

(2)(i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see (ii) below). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.

(ii) If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part of the acquisition shall have first priority with respect to negotiations for the set-aside.

19.502-4 Methods of conducting set-asides.

(a) Total and partial small business set-asides may be conducted by using sealed bids (see Part 14) or competitive proposals (see Part 15). (See Part 6 for competition requirements.)

(b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered non-responsive and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see Subpart 19.3).

19.502-5 Insufficient causes for not setting aside an acquisition.

None of the following is, in itself, sufficient cause for not setting aside an acquisition:

(a) A large percentage of previous contracts for the required item(s) has been placed with small business concerns.

(b) The item is on an established planning list under the Industrial Readiness Planning Program. However, a total set-aside shall not be made when the list contains a large business Planned Emergency Producer of the item(s) who has conveyed a desire to supply some or all of the required items.

(c) The item is on a Qualified Products List. However, a total set-aside shall not be made if the list contains the products of large businesses unless none of the large businesses desire to participate in the acquisition.

(d) A period of less than 30 days is available for receipt of offers.

(e) The contract is classified.

(f) Small business concerns are already receiving a fair proportion of the agency's contracts for supplies and services.

(g) A class set-aside of the item or service has been made by another contracting activity.

(h) A "brand name or equal" product description will be used in the solicitation.

19.503 Setting aside a class of acquisitions.

(a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in 19.502-1, 19.502-2, or 19.502-3(a). The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen.

(b) The determination to set aside a class of acquisitions may be either unilateral or joint.

(c) Each class set-aside determination shall be in writing and must—

(1) Specifically identify the product(s) and service(s) it covers;

(2) Provide that the set-aside does not apply to any acquisition accomplished using small purchase procedures;

(3) Provide that the set-aside applies only to the (named) contracting office(s) making the determination; and

(4) Provide that the set-aside does not apply to any individual acquisition if the requirement is not severable into two or more economic production runs or reasonable lots, in the case of a partial class set-aside.

(d) The contracting officer shall review each individual acquisition arising under a class set-aside to identify any changes in the magnitude of requirements, specifications, delivery requirements, or competitive market conditions that have occurred since the initial approval of the class

(The next page is 19-31.)

set-aside. If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (if one is assigned), stating the reasons.

19.504 Set-aside program order of precedence.

(a) In carrying out small business set-aside programs, contracting officers of agencies other than the Department of Defense (DOD) shall award contracts and encourage placement of subcontracts in the following order of precedence (see 15 U.S.C. 644(e) and (f) and Pub. L. 96-302):

(1) A total set-aside for small business concerns located in labor surplus areas.

(2) A total set-aside for small business concerns.

(3) A partial set-aside for small business concerns located in labor surplus areas.

(4) A partial set-aside for small business concerns.

(5) Total labor surplus area set-aside for concerns that are not small businesses.

(b) Set-aside priorities of DOD are different from the above and are set forth in the DOD FAR Supplement.

19.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 business days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 business days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 business days. Pending issuing the decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—

(1) Within 1 business day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) below); and

(2) The SBA shall be allowed 15 business days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.

(d) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.

(e) The agency head shall reply to the SBA within 30 business days after receiving the appeal. The decision of the agency head shall be final.

(f) A request to suspend action on an acquisition need not be honored if the contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.

19.506 Withdrawing or modifying set-asides.

(a) If, before award of a contract involving a set-aside for small business, the contracting officer considers that award to a small business concern would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small and disadvantaged business utilization specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.

(b) If the agency small and disadvantaged business utilization representative does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small and disadvantaged business utilization representative and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of small business-small purchase set-asides (see 13.105).

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a set-aside and include it in the contract file.

19.507 Automatic dissolution of a set-aside.

(a) If a set-aside acquisition or portion of an acquisition is not awarded, the unilateral or joint determination to set the acquisition aside is automatically dissolved for the unawarded portion of the set-aside. The required sup-

plies and/or services for which no award was made may be acquired by sealed bidding or negotiation, as appropriate.

(b) Before issuing a solicitation for the items called for in a small business set-aside that was dissolved, the contracting officer shall ensure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small business concerns.

19.508 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside, in each written solicitation of quotations or offers to provide supplies and/or services when (1) the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands, (2) the contract amount is expected to be $25,000 or less, and (3) the acquisition is subject to small purchase procedures; unless purchase on an unrestricted basis is appropriate, as specified in 13.105(d).

(b) (This paragraph (b) does not apply to DOD.) The contracting officer shall insert the clause at 52.219-5, Notice of Total Small Business-Labor Surplus Area Set-Aside, in solicitations and contracts involving total small business-labor surplus area set-asides (see 19.504(a)(1)). The clause at 52.219-5 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(c) The contracting officer shall insert the clause at 52.219-6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides (see 19.504(a)(2)). The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(d) The contracting officer shall insert the clause at 52.219-7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides (see 19.504(a)(4)). The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8, except those awarded using small purchase procedures in Part 13.

(f) The contracting officer shall insert the clause at 52.219-15, Notice of Participation by Organizations for the Handicapped, in solicitations and contracts issued through September 30, 1993, involving total or partial small business set-asides.

SUBPART 19.6—CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF ELIGIBILITY

19.601 General.

(a) A Certificate of Competency is the certificate issued by the Small Business Administration (SBA) stating that the holder is responsible (with respect to all elements of responsibility, including but not limited to capability, competency, capacity, credit, integrity, perseverance, and tenacity) for the purpose of receiving and performing a specific Government contract.

(b) The COC program empowers the Small Business Administration (SBA) to certify to Government contracting officers as to all elements of responsibility of any small business concern to receive and perform a specific Government contract. The COC program does not extend to questions concerning regulatory requirements imposed and enforced by other Federal agencies.

(c) Under this program, SBA may certify to Government contracting officers that an otherwise qualified small business concern is an eligible Government contractor under the Walsh-Healey Public Contracts Act. Requirements of the Walsh-Healey Public Contracts Act are covered in Subpart 22.6. For information regarding the contracting officer's responsibility to determine that a contractor is eligible or ineligible, see 22.608-2(f)(3).

(d) Contracting officers, including those located overseas, are required to comply with this subpart for U.S. small business concerns.

19.602 Procedures.

19.602-1 Referral.

(a) Upon determining and documenting that a responsive small business lacks certain elements of responsibility (including, but not limited to, competency, capability, capacity, credit, integrity, perseverance, and tenacity), the contracting officer shall—

(1) Withhold contract award (see 19.602-3); and

(2) Refer the matter to the cognizant SBA Regional Office in accordance with agency procedures, except that referral is not necessary if the small business concern—

(i) Is determined to be unqualified and ineligible because it does not meet the standard in 9.104-1(g); *provided,* that the determination is approved by the chief of the contracting office; or

(ii) Is suspended or debarred under Executive Order 11246 or Subpart 9.4.

if any, shall be distributed to both the SBA and the firm in accordance with the timeframes set forth in 4.201.

(c) To the extent consistent with the contracting activity's capability and resources, 8(a) contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(d) Section 407 of Public Law 100-656 requires that an 8(a) contract be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm, unless the Administrator of the SBA, on a nondelegable basis, waives the requirement for contract termination. The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the statutory requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, action must be taken immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer should immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head shall either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer shall terminate the contract for convenience upon receipt of a written request by the SBA. This statutory requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

SUBPART 19.9—CONTRACTING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES

19.901 Policy.

In response to the need to aid and stimulate women's business enterprise, Executive Order 12138, May 18, 1979, directs agencies to take appropriate action to facilitate, preserve, and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system. Appropriate action includes the award of subcontracts under Federal prime contracts.

19.902 Contract clause.

To encourage the use of women-owned small businesses in subcontracting, the contracting officer shall insert the clause at 52.219-13, Utilization of Women-Owned Small Businesses, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation, except—

(a) Contracts that, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; or

(b) Contracts for personal services.

SUBPART 19.10—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100-656, as amended by Title II of Pub. L. 102-366 and implemented by an OFPP Policy Directive and Test Plan, dated August 31, 1989, as amended on April 16, 1993. The program will be conducted over the period from January 1, 1989, through September 30, 1996. Pursuant to Section 713(a) of Pub. L. 100-656, the requirements of the FAR that are inconsistent with the program procedures are waived. The program consists of two major components—

(a) A test of unrestricted competition in four designated industry groups; and

(b) A test of enhanced small business participation in 10 agency targeted industry categories.

19.1002 Definition.

"Emerging small business," as used in this subpart, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

19.1003 Purpose.

The purpose of the demonstration program is to—

(a) Test the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in section 19.1005.

(b) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only. This portion of the program is also limited to the four designated industry groups listed in section 19.1005.

(c) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.

19.1004 Participating agencies.

The following agencies have been identified as participants in the demonstration program:

The Department of Agriculture.
The Department of Defense, except the Defense Mapping Agency.
The Department of Energy.
The Department of Health and Human Services.
The Department of the Interior.
The Department of Transportation.
The Department of Veterans Affairs.
The Environmental Protection Agency.
The General Services Administration.
The National Aeronautics and Space Administration.

19.1005 Applicability.

(a) *Designated industry groups.* (1) Construction under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) Refuse systems and related services including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713, which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (see Subpart 36.6) (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404).

(4) Nonnuclear ship repair (including overhauls and conversions) performed on nonnuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

(b) *Targeted industry categories.* Each participating agency, in consultation with the Small Business Administration, shall designate its own targeted industry categories for enhanced small business participation.

19.1006 Procedures.

(a) *General.* (1) All solicitations shall include the applicable SIC code and size standards.

(2) The face of each award made pursuant to the program shall contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) *Designated industry groups.* (1) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989, through September 30, 1996, that have an anticipated dollar value greater than $25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see subparagraphs (b)(2) and (c)(1) of this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see Subpart 19.8).

(2) Agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational unit(s) that failed to meet the small business participation goal.

(c) *Emerging small business set-aside.* (1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal Procurement Policy shall be set aside for ESB's; *provided* that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB's that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall—

(i) For acquisitions $25,000 or less, proceed in accordance with 13.105 or Subpart 19.5; or

(ii) For acquisitions over $25,000, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with paragraph (c)(1) (i) or (ii) of this section.

(3) When using other than small purchase procedures for ESB set-asides, the clause at 52.219-14, Limitations on Subcontracting, shall be placed in all solicitations and resulting contracts.

(d) To expand small business participation in the targeted industry categories, each participating agency will develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.

19.1007 Solicitation provisions.

(a) The contracting officer shall insert in full text the provision at 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the four designated industry groups.

(b) The contracting officer shall insert in full text the provision at 52.219-20, Notice of Emerging Small Business Set-Aside, in all solicitations for emerging small businesses in accordance with 19.1006(c).

(c) The contracting officer shall insert in full text the provision at 52.219-21, Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of $25,000.

PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

TABLE OF CONTENTS

22.000 Scope of part.
22.001 Definition.

SUBPART 22.1—BASIC LABOR POLICIES
22.101 Labor relations.
22.101-1 General.
22.101-2 Contract pricing and administration.
22.101-3 Reporting labor disputes.
22.101-4 Removal of items from contractors' facilities affected by work stoppages.
22.102 Federal and State labor requirements.
22.102-1 Policy.
22.102-2 Administration.
22.103 Overtime.
22.103-1 Definitions.
22.103-2 Policy.
22.103-3 Procedures.
22.103-4 Approvals.
22.103-5 Contract clauses.

SUBPART 22.2—CONVICT LABOR
22.201 General.
22.202 Contract clause.

SUBPART 22.3—CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
22.300 Scope of subpart.
22.301 Statutory requirement.
22.302 Liquidated damages and overtime pay.
22.303 Administration and enforcement.
22.304 Variations, tolerances, and exemptions.
22.305 Contract clause.

SUBPART 22.4—LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION
22.400 Scope of subpart.
22.401 Definitions.
22.402 Applicability.
22.403 Statutory and regulatory requirements.
22.403-1 Davis-Bacon Act.
22.403-2 Copeland Act.
22.403-3 Contract Work Hours and Safety Standards Act.
22.403-4 Department of Labor regulations.
22.404 Davis-Bacon Act wage determinations.
22.404-1 Types of wage determinations.
22.404-2 General requirements.
22.404-3 Procedures for requesting wage determinations.
22.404-4 Solicitations issued without wage determinations.
22.404-5 Expiration of project wage determinations.
22.404-6 Modifications of wage determinations.
22.404-7 Correction of wage determinations containing clerical errors.
22.404-8 Notification of improper wage determination before award.
22.404-9 Award of contract without required wage determination.
22.404-10 Posting wage determinations and notice.
22.404-11 Wage determination appeals.
22.405 Labor standards for construction work performed under facilities contracts.
22.406 Administration and enforcement.
22.406-1 Policy.
22.406-2 Wages, fringe benefits, and overtime.
22.406-3 Additional classifications.
22.406-4 Apprentices and trainees.
22.406-5 Subcontracts.
22.406-6 Payrolls and statements.
22.406-7 Compliance checking.
22.406-8 Investigations.
22.406-9 Withholding from or suspension of contract payments.
22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.
22.406-11 Contract terminations.
22.406-12 Cooperation with the Department of Labor.
22.406-13 Semiannual enforcement reports.
22.407 Contract clauses.

SUBPART 22.5—RESERVED

SUBPART 22.6—WALSH-HEALEY PUBLIC CONTRACTS ACT
22.601 Definitions.
22.602 Statutory requirements.
22.603 Applicability.
22.604 Exemptions.
22.604-1 Statutory exemptions.
22.604-2 Regulatory exemptions.

22.605 Rulings and interpretations of the Act.
22.606 Eligibility as a manufacturer or regular dealer.
22.606-1 Manufacturer.
22.606-2 Regular dealer.
22.607 Agents.
22.608 Procedures.
22.608-1 Offeror's representation.
22.608-2 Determination of eligibility.
22.608-3 Protests against eligibility.
22.608-4 Award pending final determination.
22.608-5 Award.
22.608-6 Postaward.
22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.
22.610 Solicitation provision and contract clause.

SUBPART 22.7—RESERVED

SUBPART 22.8—EQUAL EMPLOYMENT OPPORTUNITY
22.800 Scope of subpart.
22.801 Definitions.
22.802 General.
22.803 Responsibilities.
22.804 Affirmative action programs.
22.804-1 Nonconstruction.
22.804-2 Construction.
22.805 Procedures.
22.806 Inquiries.
22.807 Exemptions.
22.808 Complaints.
22.809 Enforcement.
22.810 Solicitation provisions and contract clauses.

SUBPART 22.9—NONDISCRIMINATION BECAUSE OF AGE
22.901 Policy.
22.902 Handling complaints.

SUBPART 22.10—SERVICE CONTRACT ACT OF 1965, AS AMENDED
22.1000 Scope of subpart.
22.1001 Definitions.
22.1002 Statutory requirements.
22.1002-1 General
22.1002-2 Wage determinations based on prevailing rates.
22.1002-3 Wage determinations based on collective bargaining agreements.
22.1002-4 Application of the Fair Labor Standards Act minimum wage.
22.1003 Applicability.
22.1003-1 General.
22.1003-2 Geographical coverage of the Act.
22.1003-3 Statutory exemptions.
22.1003-4 Administrative limitations, variations, tolerances, and exemptions.
22.1003-5 Some examples of contracts covered.
22.1003-6 Repair distinguished from remanufacturing of equipment.
22.1003-7 Questions concerning applicability of the Act.
22.1004 Department of Labor responsibilities and regulations.
22.1005 Clause for contracts of $2,500 or less.
22.1006 Clauses for contracts over $2,500.
22.1007 Requirement to submit Notice (SF 98/98a).
22.1008 Procedures for preparing and submitting Notice (SF 98/98a).
22.1008-1 Preparation of Notice (SF 98/98a).
22.1008-2 Preparation of SF 98a.
22.1008-3 Section 4(c) successorship with incumbent contractor collective bargaining agreement.
22.1008-4 Procedures when place of performance is unknown.
22.1008-5 Multiple-year contracts.
22.1008-6 Contract modifications (options, extensions, changes in scope) and anniversary dates.
22.1008-7 Required time of submission of Notice.
22.1009 Place of performance unknown.
22.1009-1 General.
22.1009-2 Attempt to identify possible places of performance.
22.1009-3 All possible places of performance identified.
22.1009-4 All possible places of performance not identified.
22.1010 Notification to interested parties under collective bargaining agreements.
22.1011 Response to Notice by Department of Labor.
22.1011-1 Department of Labor action.
22.1011-2 Requests for status or expediting of response.
22.1012 Late receipt or nonreceipt of wage determination.
22.1012-1 General.
22.1012-2 Response to timely submission of Notice—no collective bargaining agreement.
22.1012-3 Response to timely submission of Notice—with collective bargaining agreement.
22.1012-4 Response to late submission of Notice—no collective bargaining agreement.
22.1012-5 Response to late submission of Notice—with collective bargaining agreement.
22.1013 Review of wage determination.
22.1014 Delay of acquisition dates over 60 days.
22.1015 Discovery of errors by the Department of Labor.
22.1016 Statement of equivalent rates for Federal hires.
22.1017 Notice of award.
22.1018 Notification to contractors and employees.
22.1019 Additional classes of service employees.
22.1020 Seniority lists.
22.1021 Requests for hearing.

contractor inadvertently violated the provisions of the Act notwithstanding the exercise of due care, the agency head or a designee may—

(1) Make an adjustment in, or release the contractor or subcontractor from the liability for, liquidated damages of $500 or less; or

(2) Make a recommendation to the Secretary of Labor for an adjustment in or release from the liability when the liquidated damages are over $500.

(d) Upon final administrative determination, funds withheld or collected for liquidated damages shall be disposed of in accordance with agency procedures.

22.303 Administration and enforcement.

The procedures and reports required for construction contracts in Subpart 22.4 also apply to investigations of alleged violations of the Act on other than construction contracts.

22.304 Variations, tolerances, and exemptions.

(a) The Secretary of Labor, under 40 U.S.C. 331, upon the Secretary's initiative or at the request of any Federal agency, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the Act (see 29 CFR 5.15).

(b) The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of applicable parts of 29 CFR when the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship (see 29 CFR 5.14).

22.305 Contract clause.

The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering and blanket purchase agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:

(a) Construction contracts of $2,000 or less.

(b) Contracts, other than construction contracts, of $2,500 or less. Indefinite quantity or requirements contracts, including basic ordering agreements and blanket purchase agreements are exempt, if it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed $2,500. A determination shall be made annually thereafter if the contract or agreement is extended and the contract or agreement modified if necessary.

(c) Contracts for supplies, materials, or articles ordinarily available in the open market.

(d) Contracts for transportation by land, air, or water, or for the transmission of intelligence.

(e) Contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.

(f) Contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6).

(g) Contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.

(h) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15).

SUBPART 22.4—LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

22.400 Scope of subpart.

This subpart implements the statutes which prescribe labor standards requirements for contracts in excess of $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works. (See definition of "Construction" in section 22.401.) Labor relations requirements prescribed in other subparts of Part 22 may also apply.

22.401 Definitions.

"Building" or "work," as used in this subpart, generally means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of the regulations in this subpart unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

"Construction, alteration, or repair," as used in this subpart, means all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and deco-

rating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed by the contractor or subcontractor.

"Laborers or mechanics," as used in this subpart, includes—

(a) Those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(b) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The terms "apprentice" and "trainee" are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(c) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR Part 541, for the time so spent; and

(d) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals.

The terms exclude workers whose duties are primarily executive, supervisory (except as provided in paragraph (c) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics.

"Public building" or "public work," as used in this subpart, means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

"Site of the work," as used in this subpart, is defined as follows:

(a) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it is completed, and nearby property, as described in paragraph (b) of this definition, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site."

(b) Except as provided in paragraph (c) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the "site of the work," provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) The "site of the work" does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work", even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

"Wages," as used in this subpart, means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bonafide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

22.402 Applicability.

(a) *Contracts for construction work.* (1) The requirements of this subpart apply—

(i) Only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality,

and only to construction work that is performed by laborers and mechanics at the site of the work;

(ii) To dismantling, demolition, or removal of improvements if a part of the construction contract, or if construction at that site is anticipated by another contract as provided in Subpart 37.3;

(iii) To the manufacture or fabrication of construction materials and components conducted in connection with the construction and on the site of the work by the contractor or a subcontractor under a contract otherwise subject to this subpart; and

(iv) To painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure.

(2) The requirements of this subpart do not apply to—

(i) The manufacturing of components or materials off the site of the work or their subsequent delivery to the site by the commercial supplier or materialman;

(ii) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development (see paragraph (b) of this section for applicability of this subpart to research and development contracts or portions thereof involving construction, alteration, or repair of a public building or public work);

(iii) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(iv) Employees who work at contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, if the employees go to the site of the work and perform construction activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to or from the site of the work.

(b) *Nonconstruction contracts involving some construction work.* (1) The requirements of this subpart apply to construction work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if—

(i) The construction work is to be performed on a public building or public work;

(ii) The contract contains specific requirements for a substantial amount of construction work exceeding the monetary threshold for application of the Davis-Bacon Act (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(iii) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The requirements of this subpart do not apply if—

(i) The construction work is incidental to the furnishing of supplies, equipment, or services (for example, the requirements do not apply to simple installation or alteration at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or

(ii) The construction work is so merged with nonconstruction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

22.403 Statutory and regulatory requirements.

22.403-1 Davis-Bacon Act.

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a clause (see 52.222-6) that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

22.403-2 Copeland Act.

The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

22.403-3 Contract Work Hours and Safety Standards Act.

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) requires that certain contracts (see 22.305) contain a clause (see 52.222-4) specifying that no laborer

or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay (see 22.301).

22.403-4 Department of Labor regulations.

Under the statutes referred to in this 22.403 and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp., p. 1007), the Secretary of Labor has issued regulations in Title 29, Subtitle A, Code of Federal Regulations, prescribing standards and procedures to be observed by the Department of Labor and the Federal contracting agencies. Those standards and procedures applicable to contracts involving construction are implemented in this subpart. The Department of Labor regulations include—

(a) Part 1, relating to Davis-Bacon Act minimum wage rates;

(b) Part 3, relating to the Copeland (Anti-Kickback) Act and requirements for submission of weekly statements of compliance and the preservation and inspection of weekly payroll records;

(c) Part 5, relating to enforcement of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act;

(d) Part 6, relating to rules of practice for appealing the findings of the Administrator, Wage and Hour Division, in enforcement cases under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-Kickback) Act, and Service Contract Act, and by which Administrative Law Judge hearings are held; and

(e) Part 7, relating to rules of practice by which contractors and other interested parties may appeal to the Department of Labor Wage Appeals Board, decisions issued by the Administrator, Wage and Hour Division, or administrative law judges under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland (Anti-Kickback) Act. All questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection shall be referred to the Administrator, Wage and Hour Division.

22.404 Davis-Bacon Act wage determinations.

The Department of Labor is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the site of the work including drivers who transport to or from the site materials and equipment used in the course of contract operations. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

22.404-1 Types of wage determinations.

(a) *General wage determinations.* (1) A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract. These determinations shall be used whenever possible. They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative.

(2) General wage determinations are published weekly in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." Notices of general wage determinations are published in the Federal Register. General wage determinations are effective on the publication date of the notice or upon receipt of the determination by the contracting agency, whichever occurs first.

(3) The GPO publication is available for examination at each of the 50 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. Subscriptions may be obtained by contacting: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The GPO publication is divided into three volumes East, Central, and West, which may be ordered separately. The States covered by each volume are as follows:

Volume I - East

Alabama	Maryland	Rhode Island
Connecticut	Massachusetts	South Carolina
Delaware	Mississippi	Tennessee
District of Columbia	New Hampshire	Vermont
	New Jersey	Virginia
Florida	New York	Virgin Islands
Georgia	North Carolina	West Virginia
Kentucky	Pennsylvania	
Maine	Puerto Rico	

Volume II - Central

Arkansas	Louisiana	New Mexico
Illinois	Michigan	Ohio
Iowa	Minnesota	Oklahoma
Indiana	Missouri	Texas
Kansas	Nebraska	Wisconsin

Volume III - West

Alaska	Hawaii	Oregon
Arizona	Idaho	South Dakota
California	Montana	Utah
Colorado	Nevada	Washington
Guam	North Dakota	Wyoming

(4) On or about January 1 of each year, an annual

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

22.406-2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR 3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at 52.222-6, Davis-Bacon Act, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if a contractor pays a monthly health insurance premium of $112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing $112 by 125 hours, which equals $0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with a hourly rate of pay of $5.00 is determined by multiplying $5.00 by 72 (9 days at 8 hours each), and dividing the result of $360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, (i.e., 1 1/2 times the basic hourly rate of pay) the contractor shall use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

22.406-3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at 52.222-6, Davis-Bacon Act, shall require that the contractor submit to the contracting officer, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of SF 1444 from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this subsection are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of SF 1444) of that action to the Administrator, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the con-

tracting officer shall submit a report (including a copy of SF 1444) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)(1) Within 30 days of receipt of the report, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the contracting officer shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at 52.222-6 and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

22.406-4 Apprentices and trainees.

(a) The contracting officer shall review the contractor's employment and payment records of apprentices and trainees made available pursuant to the clause at 52.222-8, Payrolls and Basic Records, to ensure that the contractor has complied with the clause at 52.222-9, Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices, trainees, or helpers without complying with the requirements of the clause at 52.222-9, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

22.406-5 Subcontracts.

In accordance with the requirements of the clause at 52.222-11, Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, Statement and Acknowledgment, upon award of each subcontract.

22.406-6 Payrolls and statements.

(a) *Submission.* In accordance with the clause at 52.222-8, Payrolls and Basic Records, the contractor must submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the contract, and (2) weekly payroll statements of compliance. The contractor may use the Department of Labor Form WH-347, Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) *Withholding for nonsubmission.* If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(c) *Examination.* (1) The contracting officer shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to—

(i) The correctness of classifications and rates;

(ii) Fringe benefits payments;

(iii) Hours worked;

(iv) Deductions; and

(v) Disproportionate employment ratios of laborers, apprentices or trainees to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The contracting agency shall retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reason, but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(e) *Disclosure of payroll records.* Contractor payroll records in the Government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

22.406-7 Compliance checking.

(a) *General.* The contracting officer shall make checks and investigations on all contracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirements of the contract.

(b) *Regular compliance checks.* Regular compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See Standard Form 1445.)

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report

(d) Agricultural commodities or the products thereof purchased under contract by the Secretary of Agriculture.

22.604-2 Regulatory exemptions.

(a) Contracts for the following acquisitions are fully exempt from the Act (see 41 CFR 50-201.603):

(1) Public utility services.

(2) Supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands.

(3) Purchases against the account of a defaulting contractor where the stipulations of the Act were not included in the defaulted contract.

(4) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(b) Contracts of the following type are partially exempt from the Act (see 41 CFR 50-201.604):

(1) Contracts with certain coal dealers.

(2) Certain commodity exchange contracts.

(3) Contracts with certain export merchants.

(4) Contracts with small business defense production pools, and small business research and development pools.

(5) Contracts with public utilities for the acquisition of certain uranium products.

(c)(1) Upon the request of the agency head, the Secretary of Labor may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act's stipulations; provided, that the request includes a finding by the agency head stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards shall be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. All other requests shall be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

22.605 Rulings and interpretations of the Act.

(a) As authorized by the Act, the Secretary of Labor has issued rulings and interpretations concerning the administration of the Act (see 41 CFR 50-206). The substance of certain rulings and interpretations is as follows:

(1) If a contract for $10,000 or less is subsequently modified to exceed $10,000, the contract becomes subject to the Act for work performed after the date of the modification.

(2) If a contract for more than $10,000 is subsequently modified by mutual agreement to $10,000 or less, the contract is not subject to the Act for work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the Act in contracts in excess of $10,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.

(4) If a contract subject to the Act is awarded to a contractor operating Government-owned facilities, the stipulations of the Act affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the Act unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed $10,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(b) Reserved.

22.606 Eligibility as a manufacturer or regular dealer.

22.606-1 Manufacturer.

(a) An offeror qualifies as a manufacturer under the criteria in 41 CFR 50-206.51 and 50-206.52 if it shows before the award that it is—

(1) An established manufacturer—

(i) Of the particular supplies of the general character sought by the Government; and

(ii) That has a plant, equipment, and personnel to manufacture on the premises the items called for under the contract; or

(2) Newly entering into a manufacturing activity and has made all necessary arrangements and commitments for—

(i) Manufacturing space;

(ii) Equipment; and

(iii) Personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract.

(b) An offeror that is newly entering into a manufacturing activity must show under the criteria in 41 CFR 50-206.51(b) that the offeror—

(1) Has made written, legally binding arrangements or commitments to enter a manufacturing business. (An offeror should not be barred from receiving the award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of a Government contract.);

(2) Has not been set up solely to produce on a Government contract and that its operations will not be terminated upon completion of that contract;

(3) Has established arrangements for production on a continuing basis of the particular materials, supplies, or equipment desired by the Government; and

(4) Has documentation to prove that necessary written, legally binding arrangements or commitments have been met before award.

(c) Every offeror must qualify as a manufacturer in its own rights under the criteria in 41 CFR 50-206.51(e) and (f), and must show the following:

(1) That it is currently capable of manufacturing on its premises the supplies called for under the contract or, if it is newly entering into manufacturing, that it has made written, legally binding commitments before award to enable it to produce such supplies on its premises. (The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement.)

(2) That all evidence documenting the making of necessary prior arrangements or definite commitments is in the name of the offeror.

(d) Generally, an offeror that performs assembly operations as described in 41 CFR 50-206.52 may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end item to be supplied to the Government, and it—

(1) Produces end items on its premises by assembling component parts using machines, tools, workers, and the assembly constitutes substantial or significant fabrication or production of the end item; or

(2) Has the facilities to produce on its premises a significant portion of the required component parts needed for the end item for which the Government contracted even if it only performs assembly operations under a particular acquisition.

(e) An offeror's eligibility status as a prime contractor or a subcontractor on other contracts subject to the Act is not determinative evidence of the offeror's present eligibility as a manufacturer (see 41 CFR 50-206.51(g)).

22.606-2 Regular dealer.

(a) An offeror qualifies as a regular dealer under the criteria in 41 CFR 50-206.53 if it shows before the award that it is a regular dealer dealing in the particular supplies of the general character offered to the Government. Included in the criteria in 41 CFR 50-206.53 which an offeror must meet are the following:

(1) It has an establishment, or a leased or assigned space, in which it regularly maintains a stock of supplies in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(2) The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by (i) a stock of sample or display items, (ii) a stock consisting of surplus items remaining from prior orders, (iii) stock unrelated to the supplies offered, or (iv) a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(3) The supplies stocked are of the same general character as those to be supplied under the contract. To be of the same general character, the items to be supplied must be either identical with those in stock or be supplies for which dealers in the same line of business would be an obvious source.

(4) Sales are made regularly from stock on a recurring basis, are not only occasional, or constitute an exception to the usual operations of the business. The proportion of sales from stock that will satisfy this requirement will depend upon the character of the business.

(5) Sales are made regularly in the usual course of business to the public; i.e., to purchasers other than Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(6) The business is an established and going concern. It is not sufficient to show that arrangements have been made to set up such a business.

(b) For certain specific products (lumber and timber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for regular dealers in which the dealer need not physically maintain a stock. The requirements under the alternative qualifications are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

(c) Coal dealers are exempted from the regular dealer requirements if they meet the terms and conditions prescribed by the Secretary of Labor in 41 CFR 50-201.604(a). If these terms and conditions are not met, coal dealers must meet the requirements in this subsection.

22.607 Agents.

A "manufacturer" or "regular dealer" may bid, negotiate, and contract through an authorized agent if the agency is disclosed and the agent acts and contracts in the name of the principal (see Subpart 3.4, Contingent Fees).

22.608 Procedures.

22.608-1 Offeror's representation.

For each solicitation that may result in a contract subject to the Act, the contracting officer shall obtain a representa-

22.810 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following provisions in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

(1) 52.222-21, Certification of Nonsegregated Facilities, if the amount of the contract is expected to exceed $10,000.

(2) 52.222-22, Previous Contracts and Compliance Reports.

(b) The contracting officer shall insert the provision at 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of $10,000.

(c) The contracting officer shall insert the provision at 52.222-24, Preaward On-Site Equal Opportunity Compliance Review, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be for $1 million or more.

(d) The contracting officer shall insert the provision at 52.222-25, Affirmative Action Compliance, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity.

(e) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless all the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)). If one or more, but not all, of the terms of the clause are exempt from the requirements of EO 11246, the contracting officer shall use the basic clause with its Alternate I.

(f) The contracting officer shall insert the clause at 52.222-27, Affirmative Action Compliance Requirements for Construction, in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of $10,000.

(g) The contracting officer shall insert the clause at 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts, in solicitations and contracts, except for construction, when the amount of the contract is expected to be for $1 million or more and includes the clause prescribed in paragraphs (a), (b), or (c) of 44.204.

(h) The contracting officer shall insert the clause at 52.222-29, Notification of Visa Denial, in contracts that will include the clause at 52.222-26, Equal Opportunity, if the contractor is required to perform in or on behalf of a foreign country.

SUBPART 22.9—NONDISCRIMINATION BECAUSE OF AGE

22.901 Policy.

Executive Order 11141, February 12, 1964 (29 FR 2477), states that the Government policy is as follows:

(a) Contractors and subcontractors shall not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(b) Contractors and subcontractors, or persons acting on their behalf, shall not specify in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(c) Agencies will bring this policy to the attention of contractors. The use of contract clauses is not required.

22.902 Handling complaints.

Agencies shall bring complaints regarding a contractor's compliance with this policy to that contractor's attention (in writing, if appropriate), stating the policy, indicating that the contractor's compliance has been questioned, and requesting that the contractor take any appropriate steps that may be necessary to comply.

SUBPART 22.10—SERVICE CONTRACT ACT OF 1965, AS AMENDED

22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925).

22.1001 Definitions.

"Act" or "Service Contract Act," as used in this subpart, means the Service Contract Act of 1965, as amended.

"Agency labor advisor" means an individual responsible for advising contracting agency officials on Federal contract labor matters.

"Contractor," as used in this subpart, includes a subcontractor at any tier whose subcontract is subject to the provisions of the Act.

"Multiple year contracts," as used in this subpart, means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multiyear contracts with a term of more than 1 year (see 17.101).

"Notice," as used in this subpart, means Standard Form (SF) 98, "Notice of Intention to Make a Service Contract and Response to Notice," and SF 98a, "Attachment A." The term "Notice" is always capitalized in this subpart when it means Standard Forms 98 and 98a.

"Service contract," as used in this subpart, means any Government contract, the principal purpose of which is to

furnish services in the United States through the use of service employees, except as exempted under section 7 of the Act (41 U.S.C. 356; see 22.1003-3 and 22.1003-4), or any subcontract at any tier thereunder. See 22.1003-5 and 29 CFR 4.130 for a partial list of services covered by the Act.

"Service employee" means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

"United States," as used in this subpart, includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under U.S. jurisdiction or any U.S. base or possession within a foreign country.

"Wage and Hour Division" means the unit in the Employment Standards Administration of the Department of Labor to which is assigned functions of the Secretary of Labor under the Act.

"Wage determination" means a determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of the Act (41 U.S.C. 351(a) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

22.1002 Statutory requirements.

22.1002-1 General.

Service contracts over $2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under 41 U.S.C. 353(d), service contracts may not exceed 5 years.

22.1002-2 Wage determinations based on prevailing rates.

Contractors performing on service contracts in excess of $2,500 to which no predecessor contractor's collective bargaining agreement applies shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act.

22.1002-3 Wage determinations based on collective bargaining agreements.

(a) Successor contractors performing on contracts in excess of $2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor's collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines (1) after a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality or (2) that the wages and fringe benefits are not the result of arm's length negotiations.

(b) Paragraphs in this Subpart 22.10 which deal with this statutory requirement and the Department of Labor's implementing regulations are 22.1008-3, concerning applicability of this requirement and the forwarding of a collective bargaining agreement with a Notice (SF 98, 98a); 22.1010, concerning notification to contractors and bargaining representatives of procurement dates; 22.1012-3, explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and 22.1013 and 22.1021, explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

22.1002-4 Application of the Fair Labor Standards Act minimum wage.

No contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206).

22.1003 Applicability.

22.1003-1 General.

This Subpart 22.10 applies to all Government contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted in 22.1003-3 and 22.1003-4 of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

22.1003-2 Geographical coverage of the Act.

The Act applies to service contracts performed in the

employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 and/or 5332 (see 22.1016).

(b)(1) The Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory) contains standard job titles and definitions (descriptions) for many commonly utilized service employee occupations. Contracting officers shall use this Directory to the maximum extent possible in listing service employee classes on the SF 98a. This usage will enhance the timely issuance of comprehensive wage determinations.

(2) If the job title contained in the Directory differs from that contained in the statement of work but the job definition (description) in the Directory and the statement of work match sufficiently, the contracting officer shall use the Directory job title.

(3) The latest edition of the Directory is available for sale by the Superintendent of Documents and may be ordered by calling (202) 783-3238 or writing to Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Contracting agencies, in accordance with agency procedures, are responsible for notifying their own personnel of a new edition of the Directory.

22.1008-3 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

(a) Early in the acquisition cycle, the contracting officer shall determine whether section 4(c) of the Act affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) Section 4(c) of the Act provides that a successor contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of section 4(c) of the Act is subject to the following limitations:

(1) Section 4(c) of the Act will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of section 4(c) of the Act under the following conditions:

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see 22.1012-3(a)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see 22.1012-3(b)); and

(ii) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see 22.1010).

(d) If section 4(c) of the Act applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at 52.222-41, Service Contract Act of 1965, as amended, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.) The contracting officer shall submit a copy of each collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under each agreement with the Notice.

(e) Section 4(c) of the Act will not apply if the Secretary of Labor determines (1) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (2) that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations (see 22.1013 and 22.1021). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall separately list on the SF 98a the ser-

vice employee classifications (1) subject to the collective bargaining agreement and (2) not subject to any collective bargaining agreement.

22.1008-4 Procedures when place of performance is unknown.

See 22.1009.

22.1008-5 Multiple-year contracts.

If the proposed contract is multiple year and is not subject to annual appropriations, the contracting officer shall furnish with the Notice a statement in writing describing the type of funding and giving the length of the performance period. Unless otherwise advised by the wage and hour division that a Notice must be filed on the annual anniversary date, the contracting officer shall submit a new Notice on each biennial anniversary date of the multiple year contract if its term is for a period in excess of 2 years.

22.1008-6 Contract modifications (options, extensions, changes in scope) and anniversary dates.

If the purpose of the Notice is to obtain a wage determination for an exercise of an option, an extension to the contract term, a change in scope (see 22.1007(b)(2)), or the anniversary date of a multiple year contract, the contracting officer shall fill in Box 2 of the SF 98 as follows:

(a) In the "Estimated solicitation date" subbox, indicate, as appropriate:

"Mod-Exercise of Option;" "Mod-Extension;" "Mod-Change in Scope;" "Annual Anniversary;" or "Biennial Anniversary;" and

(b) In the "month/day/year" subbox, indicate the date the wage determination is required.

22.1008-7 Required time of submission of Notice.

(a) If the contract action is for a recurring or known requirement, the contracting officer shall submit the Notice not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) before the earlier of (1) issuance of any invitation for bids, (2) issuance of any request for proposals, (3) commencement of negotiations, (4) issuance of modification for exercise of option, contract extension, or change in scope, (5) annual anniversary date of a contract for more than 1 year subject to annual appropriations, or (6) each biennial anniversary date of a contract for more than 2 years not subject to annual appropriations unless otherwise advised by the Wage and Hour Division (see 22.1008-5).

(b) If the contract action is for a nonrecurring or unknown requirement for which the advance planning described in paragraph (a) of this subsection is not feasible, the contracting officer shall submit the Notice as soon as possible, but not later than 30 days before the contracting actions in paragraph (a) of this subsection. The contracting officer should indicate on the Notice that the requirement is nonrecurring or unknown and advance planning was not feasible.

(c) If exceptional circumstances prevent timely submission, as required by paragraphs (a) and (b) of this subsection, the contracting officer shall submit the Notice and the required supplemental information with a written statement of the reason for delay as soon as practicable.

(d) In an emergency situation requiring an immediate wage determination response, the contracting officer shall, in accordance with contracting agency procedures, contact the Wage and Hour Division by telephone for guidance before submitting the Notice.

22.1009 Place of performance unknown.

22.1009-1 General.

If the place of performance is unknown, the contracting officer may use the procedures in this section. The contracting officer should first attempt to identify the specific places or geographical areas where the services might be performed (see 22.1009-2) and then may follow the procedures either in 22.1009-3 or in 22.1009-4.

22.1009-2 Attempt to identify possible places of performance.

The contracting officer should attempt to identify the specific places or geographical areas where the services might be performed. The following may indicate possible places of performance:

(a) Locations of previous contractors and their competitors.

(b) The solicitation mailing list.

(c) Responses to a presolicitation notice (see 5.204).

22.1009-3 All possible places of performance identified.

(a) If the contracting officer can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful offeror is chosen), the contracting officer, as required in 22.1008, shall submit the Notice to the Wage and Hour Division. If the number of places of performance exceeds the space available on the Notice, the contracting officer shall provide a listing by state-county-city/town in an attachment to the Notice.

(b) The Wage and Hour Division may issue a wage determination for each different geographical area of performance identified by the contracting officer, or in unusual situations it may issue a wage determination for one or more composite areas of performance. If there is a substantial number of places or areas of performance indicating the need for a wage determination for one or more composite areas of performance, the contracting officer should, before submitting the Notice, contact the Wage and Hour Division concerning the issuance of such a wage determination.

(c) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting

officer shall follow one of the following procedures:

(1) Continue to follow the procedures in this subsection and:

(i) Submit Notices for the additional places of performance to the Wage and Hour Division, and

(ii) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(2) Follow the procedures in 22.1009-4.

22.1009-4 All possible places of performance not identified.

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

(a) If the contracting officer has identified possible places or areas where services might be performed, the contracting officer shall submit the Notice to the Wage and Hour Division (see 22.1009-3(a) and (b)).

(b) Include the following information in the Commerce Business Daily Notice (see 5.207(f)(4)):

(1) That the place of performance is unknown.

(2) The possible places or areas of performance for which the contracting officer has requested wage determinations.

(3) That the contracting officer will request wage determinations for additional possible places of performance if asked to do so in writing.

(4) The time and date by which requests for wage determinations for additional places must be received by the contracting officer.

(c) Insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, in solicitations and contracts. Include the information required in the clause by subparagraphs (b)(2) and (b)(4) of this subsection. The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

(d) The procedures in 14.304-1 shall apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(e) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer shall—

(1) Submit Notices for the additional places of performance to the Wage and Hour Division; and

(2) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(f) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer shall—

(1) Award the contract;

(2) Request a wage determination; and

(3) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at 52.222-49, Service Contract—Place of Performance Unknown.

22.1010 Notification to interested parties under collective bargaining agreements.

(a) The contracting officer should determine whether the incumbent prime contractor's or its subcontractors' service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the contracting officer shall give both the incumbent contractor and its employees' collective bargaining agent written notification of—

(1) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(2) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(b) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in paragraphs 22.1012-3(a) and (b) to apply. The contracting officer shall retain a copy of the notification in the contract file.

22.1011 Response to Notice by Department of Labor.

22.1011-1 Department of Labor action.

The Wage and Hour Division will mark, date, and sign the section of the SF 98 titled "Response to Notice" and return the signed original together with appropriate additional material (wage determination, position/classification descriptions, etc.). The Wage and Hour Division will take one of the following four actions:

(a) Issue and attach applicable wage determination(s); or

(b) Indicate that no wage determination is in effect for the locality of contract performance; or

(c) Indicate that the Service Contract Act is not applicable based on information submitted; or

(d) Return the Notice for additional information (see 22.1008-1).

22.1011-2 Requests for status or expediting of response.

Checking the status or the expediting of wage determination responses shall be made in accordance with contracting agency procedures.

22.1012 Late receipt or nonreceipt of wage determination.

22.1012-1 General.

The Wage and Hour Administrator, generally, will issue a wage determination or revision to it in response to a Notice. The contracting officer shall incorporate the determination or revision in the particular solicitation and contract for which the wage determination was sought.

22.1012-2 Response to timely submission of Notice—no collective bargaining agreement.

(a) If the contracting officer has not received a response from the Department of Labor within 60 days (or 30 days if a nonrecurring or unknown requirement), the contracting agency shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected.

(b) In sealed bidding, a revision of a wage determination shall not be effective if a collective bargaining agreement does not exist, the revision is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(c) For contractual actions other than sealed bidding where a collective bargaining agreement does not exist, a revision of a wage determination received by the contracting agency after award of a new contract or a modification as specified in 22.1007(b) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, the Department of Labor shall be notified and any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(d) The limitations in paragraphs (b) and (c) of this subsection shall apply only if a timely Notice required in 22.1008-7(a) and (b) has been submitted.

22.1012-3 Response to timely submission of Notice—with collective bargaining agreement.

(a) In sealed bidding, a wage determination or revision based on a new or changed collective bargaining agreement shall not be effective if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation (see 52.222-47).

(b) For contractual actions other than sealed bidding, a wage determination or revision based on a new or changed collective bargaining agreement shall not be effective if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in 22.1007(b), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work shall be effective for purposes of the successor contract under section 4(c) of the Act.

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely Notices and notifications required in 22.1008-7 and 22.1010 have been given.

(d) If the contracting officer has not received a response from the Department of Labor within 60 days (or 30 days if a nonrecurring or unknown requirement), the contracting agency shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the solicitation/contract action should proceed according to the following instructions:

(1) If a successorship/same locality/incumbent collective bargaining agreement situation exists, the contracting officer shall incorporate in the solicitation the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, and the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits. The contracting officer may incorporate the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, in other contract actions such as the exercise of options in order to facilitate price adjustments in fixed-price type contracts (but see 22.1008-3(e) and 22.1013(a)).

(2) The terms of a new or changed collective bargaining agreement, negotiated by the predecessor contractor during the period of performance of the predecessor contract, will not apply to the successor contract under the conditions set forth in paragraphs (a), (b), and (c) of this subsection.

22.1012-4 Response to late submission of Notice—no collective bargaining agreement.

If the contracting officer has not filed the Notice within the time limits in 22.1008-7, and thus has not received a response from the Department of Labor, and a successorship/same locality/incumbent collective bargaining agreement situation does not exist, the contracting officer shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the contracting officer shall use the latest wage determination or revision, if any, incorporated in the existing contract. If any new or revised wage determination is received later in response to the Notice, the contracting officer shall include it in the solicitation or contract within 30 calendar days of receipt. If the contract has been awarded, the contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision. The Administrator, Wage and Hour Division, may require retroactive application of the wage determination for a contractual action over $2,500 using more than five service employees. These provisions are not intended to alter the contracting officer's responsibility to make timely submissions as required in 22.1008-7.

22.1012-5 Response to late submission of Notice—with collective bargaining agreement.

If the contracting officer has not filed the Notice within the time limits in 22.1008-7, has not received a response from the Department of Labor, and a successorship/same locality/incumbent collective bargaining agreement situation exists, the contracting officer shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the contracting officer shall incorporate in the solicitation the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, and the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits. If the contract has been awarded, an equitable adjustment following receipt of the wage determination or revision will not be required, since the wage determination or revision will be based on the economic terms of the collective bargaining agreement. The contracting officer may incorporate the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, in other contract actions such as the exercise of options in order to facilitate price adjustments for options in fixed-price type contracts (but see 22.1008-3(e) and 22.1013(a)).

22.1013 Review of wage determination.

(a) Based on incumbent collective bargaining agreement. (1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the contracting officer shall immediately contact the agency labor advisor to consider instituting the procedures in 22.1021.

(2) If the contracting officer believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the contracting officer shall contact the agency labor advisor to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall ascertain—

(1) If the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the wage determination contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the contracting officer shall contact the agency labor advisor to determine appropriate action.

22.1014 Delay of acquisition dates over 60 days.

If any invitation for bids, request for proposals, bid opening, or commencement of negotiation for a proposed contract for which a wage determination was provided in response to a Notice has been delayed, for whatever reason, more than 60 days from such date as indicated on the submitted Notice, the contracting officer shall, in accordance with agency procedures, contact the Wage and Hour Division for the purpose of determining whether the wage determination issued under the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of that communication, or upon discovery by the Department of Labor of a delay, shall supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in 22.1012-2(a) and (b).

22.1015 Discovery of errors by the Department of Labor.

If the Department of Labor discovers and determines, whether before or after a contract award, that a contracting officer made an erroneous determination that the Service Contract Act did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the contracting officer, within 30 days of notification by the Department of Labor, shall include in the contract the clause at 52.222-41 and any applicable wage determination issued by the Administrator. If the contract is subject to section 10 of the Act (41 U.S.C. 358), the Administrator may require retroactive application of that

wage determination. The contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

22.1016 Statement of equivalent rates for Federal hires.

(a) The statement required under the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, (see 22.1006(b)) shall set forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule—white collar) and/or 5 U.S.C. 5341 (Wage Board—blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

22.1017 Notice of award.

Whenever an agency awards a service contract subject to the Act which may be in excess of $25,000 and that agency does not report the award to the Federal Procurement Data System, it shall furnish an original and one copy of Standard Form 99, Notice of Award of Contract (see 53.301-99) to the Wage and Hour Division, Employment Standards Administration, Department of Labor, unless it makes other arrangements with the Wage and Hour Division for notifying it of contract awards.

22.1018 Notification to contractors and employees.

The contracting officer shall take the following steps to ensure that service employees are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the contractor of the labor standards requirements of the contract relating to the Act and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

(b) At the time of award, furnish the contractor Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Act and satisfies the notice requirements in paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended.

(c) Attach any applicable wage determination to Publication WH-1313.

22.1019 Additional classes of service employees.

(a) If the contracting officer is aware that contract performance involves classes of service employees not included in the wage determination, the contracting officer shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at 52.222-41, Service Contract Act of 1965, as amended). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work. The contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate. The contracting officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent information to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the Wage and Hour Division will require more than 30 days to take action, it will notify the contracting officer within 30 days of receipt of the request that additional time is necessary.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

(c) Subminimum rates for apprentices, student learners, and handicapped workers are permissible in accordance with paragraph (q) of the clause at 52.222-41, Service Contract Act of 1965, as amended.

22.1020 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at 52.222-41, Service Contract Act of 1965, as amended.) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

22.1021 Request for hearing.

(a) A contracting agency or other interested party may request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the contracting agency, the contracting officer shall submit a written request through appropriate channels (ordinarily the agency labor advisor) to: Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(b) A request for a substantial variance hearing shall include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include—

(1) The number of the wage determinations at issue;

(2) The name of the contracting agency whose contract is involved;

(3) A brief description of the services to be performed under the contract;

(4) The status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period;

(5) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;

(6) Names and addresses (to the extent known) of interested parties; and

(7) Any other data required by the Administrator.

(c) A request for an arm's length hearing shall include—

(1) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;

(2) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period; and

(3) Names and addresses (to the extent known) of interested parties.

(d) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as follows:

(1) For sealed bid contracts, more than 10 days before the award of the contract; or

(2) For negotiated contracts and for contracts with provisions exceeding the initial term by option, before the commencement date of the contract or the follow-up option period.

22.1022 Withholding of contract payments.

Any violations of the clause at 52.222-40, Service Contract Act of 1965, as amended—Contracts of $2,500 or Less, or the clause at 52.222-41, Service Contract Act of 1965, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of Assistant Regional Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Act or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), and Administrative Law Judge, or the Board of Service Contract Appeals. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

22.1023 Termination for default.

As provided by the Act, any contractor failure to comply with the requirements of the contract clauses related to the Act may be grounds for termination for default (see paragraph (k) of the clause at 52.222-41, Service Contract Act of 1965, as amended).

22.1024 Cooperation with the Department of Labor.

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature

of the contract services. The contracting officer shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

22.1025 Ineligibility of violators.

A list of persons or firms found to be in violation of the Act is contained in the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs (see 9.404). No Government contract may be awarded to any violator so listed because of a violation of the Act, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

22.1026 Disputes concerning labor standards.

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at 52.222-41, Service Contract Act of 1965, as amended, and not under the clause at 52.233-1, Disputes.

SUBPART 22.11—PROFESSIONAL EMPLOYEE COMPENSATION

22.1101 Applicability.

The Service Contract Act of 1965 was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees. The Office of Federal Procurement Policy issued Policy Letter No. 78-2, dated March 29, 1978, Preventing "Wage Busting" for Professionals. This subpart implements that policy letter. Its application is limited to professional employees. This Subpart 22.11 provides policies and procedures for use in negotiated service contracts exceeding $500,000 that involve meaningful numbers of professional employees.

22.1102 Definition.

"Professional employee" means any person meeting the definition of "employee employed in a bona fide . . . professional capacity" given in 29 CFR 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics, and teaching). To be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties.

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed $500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making an award.

SUBPART 22.12—[RESERVED]

SUBPART 22.13—SPECIAL DISABLED AND VIETNAM ERA VETERANS

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 2012) (the Act); Executive Order 11701, January 24, 1973 (38 FR 2675, January 29, 1973); and the regulations of the Secretary of Labor (41 CFR Part 60-250 and Part 61-250). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1301 Policy.

Government contractors, when entering into contracts subject to the Act, are required to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ, and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veteran's status.

22.1302 Applicability.

(a) The Act applies to all contracts for supplies and services (including construction) of $10,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) of that government that does not participate in work on or under the contract.

22.1303 Waivers.

(a) The agency head, with the concurrence of the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor (Director), may waive any

or all of the terms of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b)(1) The head of a civilian agency, with the concurrence of the Director of OFCCP, or (2) the Secretary of Defense may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of a civilian agency shall notify the Director in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of sealed bidding unless it is made more than 10 calendar days before the date set for bid opening.

22.1304 Department of Labor notices and reports.

(a) The contracting officer shall furnish to the contractor appropriate notices for posting when they are prescribed by the Director.

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, have been waived (see 22.1303). The contractor shall use Standard Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

22.1305 Collective bargaining agreements.

If performance under the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor (DOL) will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1306 Complaint procedures.

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to the Veteran's Employment Service of the DOL, through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of the Office of Federal Contract Compliance Programs of the DOL is primarily responsible for making investigations of complaints.

22.1307 Actions because of noncompliance.

The contracting officer shall take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans. These sanctions (see 41 CFR 60-250.28) may include—

(a) Withholding from payments otherwise due;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1308 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, in solicitations and contracts when the contract is for $10,000 or more or is expected to amount to $10,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, "United States" includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands); or

(ii) The agency head has waived, in accordance with 22.1303(a) or 22.1303(b) all of the terms of the clause.

(2) If the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1303(a) or 22.1303(b), use the basic clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans.

SUBPART 22.14—EMPLOYMENT OF THE HANDICAPPED

22.1400 Scope of subpart.

This subpart prescribes policies and procedures for implementing Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741). In this subpart,

the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1401 Policy.

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified handicapped individuals without discrimination based on their physical or mental handicap.

22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of $2,500 for supplies and services (including construction) except as waived by the Secretary of Labor. The clause at 52.222-36, Affirmative Action for Handicapped Workers, implements the Act.

(b) The requirements of the clause at 52.222-36, Affirmative Action for Handicapped Workers, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

22.1403 Waivers.

(a) The agency head, with the concurrence of the Director, Office of Federal Contract Compliance Programs (OFCCP), may waive any or all of the terms of the clause at 52.222-36, Affirmative Action for Handicapped Workers, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b)(1) The head of a civilian agency, with the concurrence of the Director of OFCCP, or (2) the Secretary of Defense, may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of a civilian agency shall notify the Director in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of sealed bidding unless it is made more than 10 calendar days before the date set for bid opening.

22.1404 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the handicapped individual's rights under the Employment of the Handicapped program. The contracting officer may obtain these notices from the Department of Labor Regional Office, Office of Federal Contract Compliance Programs.

22.1405 Collective bargaining agreements.

If performance under the clause at 52.222-36, Affirmative Action for Handicapped Workers, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1406 Complaint procedures.

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to the OFCCP, 200 Constitution Avenue, N.W., Washington, DC 20210, or to any OFCCP regional or area office. The OFCCP shall institute investigation of each complaint and shall be responsible for developing a complete case record.

22.1407 Actions because of noncompliance.

The contracting officer shall take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Affirmative Action for Handicapped Workers. These sanctions (see 41 CFR 60-741.28) may include—

(a) Withholding from payments otherwise due;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1408 Contract clause.

(a) The contracting officer shall insert the clause at 52.222-36, Affirmative Action for Handicapped Workers, in solicitations and contracts that exceed $2,500 or are expected to exceed $2,500, except when—

(1) Work is performed outside the United States by employees recruited outside the United States (for the purpose of this subpart, "United States," includes the States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands); or

(2) The agency head has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause.

(b) If the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), use the basic clause with its Alternate I.

The individual surety shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

28.203-6 Contract clause.

Insert the clause at 52.228-11 in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.

28.203-7 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in Subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of the value of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this subsection shall be included on the list entitled Parties Excluded from Procurement Programs. (See 9.404.)

(d) Contracting officers shall not accept the bonds of individual sureties whose names appear on the list entitled Parties Excluded from Procurement Programs (see 9.404) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this subsection will also preclude such party from acting as a contractor in accordance with Subpart 9.4.

28.204 Options in lieu of sureties.

The contractor may deposit any of the types of security listed in this section instead of furnishing corporate or individual sureties on performance and payment bonds. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security. The contractor shall execute the bond forms as the principal. Agencies shall establish safeguards to protect against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

28.204-1 United States bonds or notes.

Any person required to furnish a bond to the Government has the option, instead of furnishing a surety or sureties on the bond, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). In addition, a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default of the principal on the bond shall accompany the deposited bonds or notes. The contracting officer may (a) turn securities over to the finance or other authorized agency official, or (b) deposit them with the Treasurer of the United States, a Federal Reserve Bank (or branch with requisite facilities), or other depository designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154 (exception: The contracting officer shall deposit all bonds and notes received in the District of Columbia with the Treasurer of the United States).

28.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.

Any person required to furnish a bond has an option to furnish a certified or cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds. Those furnishing checks, drafts, or money orders shall draw them to the order of the appropriate Federal agency.

SUBPART 28.3—INSURANCE

28.301 Policy.

Contractors shall be required to carry insurance under the following circumstances:

(a)(1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9004.416 (Appendix B, FAR looseleaf edition)) to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when (i) the Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances or (ii) the contract specifically relieves the contractor of liability for loss of or damage to Government property.

(2) The Government reserves the right to disapprove the purchase of any insurance coverage not in the Government's interest.

(3) Allowability of the insurance program's cost shall be determined in accordance with the criteria in 31.205-19.

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law and this regulation to provide insurance for certain types of perils (e.g., workers'

compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of insurance required by this regulation (see 28.307-2) may be reduced when a contract is to be performed outside the United States, its possessions, and Puerto Rico. When more than one agency is involved, the agency responsible for review and approval of a contractor's insurance program shall coordinate with other interested agencies before acting on significant insurance matters.

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see 37.400).

28.302 Notice of cancellation or change.

When the Government requires the contractor to provide insurance coverage, the policies shall contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest shall not be effective unless the insurer or the contractor gives written notice of cancellation or change as required by the contracting officer. When the coverage is provided by self-insurance, the contractor shall not change or decrease the coverage without the administrative contracting officer's prior approval (see 28.308(c)).

28.303 Insurance against loss of or damage to Government property.

When the Government requires or approves insurance to cover loss of or damage to Government property (see 45.103, Responsibility and liability for Government property), it may be provided by specific insurance policies or by inclusion of the risks in the contractor's existing policies. The policies shall disclose the Government's interest in the property.

28.304 Risk-pooling arrangements.

Agencies may establish risk-pooling arrangements. These arrangements are designed to use the services of the insurance industry for safety engineering and the handling of claims at minimum cost to the Government. The agency responsible shall appoint a single manager or point of contact for each arrangement.

28.305 Overseas workers' compensation and war-hazard insurance.

(a) "Public-work contract," as used in this subpart, means any contract for a fixed improvement or for any other project, fixed or not, for the public use of the United States or its allies, involving construction, alteration, removal, or repair, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project.

(b) The Defense Base Act (42 U.S.C. 1651, et seq.) extends the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees working outside the United States, including those engaged in performing—

(1) Public-work contracts; or

(2) Contracts approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) other than (i) contracts approved or financed by the Development Loan Fund (unless the Secretary of Labor, acting upon the recommendation of a department or agency, determines that such contracts should be covered) or (ii) contracts exclusively for materials or supplies.

(c) When the Defense Base Act applies (see 42 U.S.C. 1651, et seq.) to these employees, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act (42 U.S.C. 1701, et seq.) to protect the employees against the risk of war hazards (injury, death, capture, or detention). When, by means of an insurance policy or a self-insurance program, the contractor provides the workers' compensation coverage required by the Defense Base Act, the contractor's employees automatically receive war-hazard risk protection.

(d) When the agency head recommends a waiver to the Secretary of Labor, the Secretary may waive the applicability of the Defense Base Act to any contract, subcontract, work location, or classification of employees.

(e) If the Defense Base Act is waived for some or all of the contractor's employees, the benefits of the War Hazards Compensation Act are automatically waived with respect to those employees for whom the Defense Base Act is waived. For those employees, the contractor shall provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention. The contract shall provide either that the costs of this liability or the reasonable costs of insurance against this liability shall be allowed as a cost under the contract.

28.306 Insurance under fixed-price contracts.

(a) *General.* Although the Government is not ordinarily concerned with the contractor's insurance coverage if the contract is a fixed-price contract, in special circumstances agencies may specify insurance requirements under fixed-price contracts. Examples of such circumstances include the following:

(1) The contractor is, or has a separate operation, engaged principally in Government work.

PART 30

COST ACCOUNTING STANDARDS ADMINISTRATION

30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition)) to negotiated contracts and subcontracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-1(b), for these and other exemptions).

SUBPART 30.1—GENERAL

30.101 Cost Accounting Standards.

(a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) Contracts that refer to this Part 30 for the purpose of applying the policies, procedures, standards and regulations promulgated by the CASB pursuant to Public Law 100-679, shall be deemed to refer to the CAS, and any other regulations promulgated by the CASB (see 48 CFR Chapter 99), all of which are hereby incorporated in this Part 30.

(c) Appendix B to the FAR loose-leaf edition contains: Part I, CAS and CASB Rules and Regulations; Part II, non-regulatory preambles to the CAS; Part III, preambles to CAS Rules and Regulations; Part IV, preambles published under the FAR system; and Part V, CASB Rules and Procedures (administrative).

(d) The preambles are not regulatory but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history.

30.102 Cost Accounting Standards Board Publication.

Copies of the CASB Standards and Regulations are printed in title 48 of the Code of Federal Regulations, Chapter 99, and may be obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Washington, DC, ordering desk at area code (202) 783-3238.

SUBPART 30.2—CAS PROGRAM REQUIREMENTS

30.201 Contract requirements.

Title 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-1, describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with Subpart 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-2.

30.201-1 CAS applicability.

See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-1.

30.201-2 Types of CAS coverage.

See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-2.

30.201-3 Solicitation provisions.

The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201.

30.201-4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-1), the contract is subject to modified coverage (see 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-2), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at 52.230-2 requires the contractor to disclose actual cost accounting practices and to follow these practices consistently.

(b) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the

clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000, but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-2, unless the clause prescribed in paragraph (c) of this subsection is used).

(2) The clause at 52.230-3 requires the contractor to comply with 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subparts 9904.401, 9904.402, 9904.405 and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

(c) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at 52.230-4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-1(b)(12)).

(d) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-5, Administration of Cost Accounting Standards, in contracts containing either the clause prescribed in paragraph (a) of this subsection, or the clause prescribed in paragraph (b) of this subsection.

(2) The clause at 52.230-5 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

30.201-5 Waiver.

In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (52.230-2, Cost Accounting Standards, and 52.230-3, Disclosure and Consistency of Cost Accounting Practices). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver in accordance with 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.201-5.

30.202 Disclosure requirements.

30.202-1 General requirements.

See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.202-1.

30.202-2 Impracticality of submission.

See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.202-2.

30.202-3 Amendments and revisions.

See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.202-3.

30.202-4 Privileged and confidential information.

See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.202-4.

30.202-5 Filing Disclosure Statements.

See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.202-5.

30.202-6 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are submitted. (Also see 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subparts 9903.201-3 and 9903.202.)

(b) The contracting officer shall not award a CAS-covered contract until the ACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, a determination of adequacy shall be required as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The cognizant ACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

30.202-7 Determinations.

(a) *Adequacy determination.* The contract auditor shall conduct an initial review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. If the ACO identifies any areas of inadequacy, the ACO shall request a revised Disclosure Statement. If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the auditor and contracting officer. The notice of adequacy shall state that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the ACO shall furnish the contractor notification of adequacy or inadequacy within 30 days after the Disclosure Statement has been received by the ACO.

(b) *Compliance determination.* After the notification of adequacy, the auditor shall conduct a detailed compliance review to determine whether or not the disclosed practices comply with Part 31 and the CAS and shall advise the ACO of the results. The ACO shall take action regarding noncompliance with CAS under FAR 30.602-2. The ACO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with Part 31 shall be processed separately, in accordance with normal administrative practices.

30.202-8 Subcontractor Disclosure Statements.

(a) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall provide such determination to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.202-2.

SUBPART 30.3—CAS RULES AND REGULATIONS [RESERVED]

Note: See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.3.

SUBPART 30.4—COST ACCOUNTING STANDARDS [RESERVED]

Note: See 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Part 9904.

SUBPART 30.5—[RESERVED]

SUBPART 30.6—CAS ADMINISTRATION

30.601 Responsibility.

(a) The cognizant ACO shall perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by the contracting officer.

(b) Within 30 days after the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award shall request the cognizant ACO to perform administration for CAS matters (see Subpart 42.2).

30.602 Changes to disclosed or established cost accounting practices.

Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subpart 9903.305. The ACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the ACO shall inform the contractor that

(a) The Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material and

(b) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

30.602-1 Equitable adjustments for new or modified standards.

(a) *New or modified standards.* (1) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the ACO.

(2) Contracts and subcontracts containing the clause at 52.230-2, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing the clause at 52.230-2 is awarded on or after the effective date of the new or modified standard.

(3) Contracting officers shall encourage contractors to submit to the ACO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the CASB.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate

the contract price adjustment on behalf of all Government agencies. The ACO shall invite contracting officers to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or more. At the conclusion of negotiations, the ACO shall—

(i) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(2) If the parties fail to agree on the cost or price adjustment, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

30.602-2 Noncompliance with CAS requirements.

(a) *Determination of noncompliance.* (1) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(2) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(3) If the contractor agrees with the initial finding of noncompliance, the ACO shall review the contractor submissions required by paragraph (a) of the clause at 52.230-5, Administration of Cost Accounting Standards.

(4) If the contractor disagrees with the initial noncompliance finding, the ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. If the ACO determines that the contractor's practices are in noncompliance, a written explanation shall be provided as to why the ACO disagrees with the contractor's rationale. The ACO shall notify the contractor and the auditor in writing of the determination. If the ACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, shall be followed.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall request that the contractor submit a cost impact proposal within the time specified in the clause at 52.230-5, Administration of Cost Accounting Standards.

(2) Upon receipt of the cost impact proposal, the ACO shall then follow the procedures in 30.602-1(c)(1). In accordance with the clause at 52.230-2, Cost Accounting Standards, the ACO shall include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest shall be computed from the date of overpayment to the time the adjustment is effected. If the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest under 52.230-2 should be computed pursuant to Public Law 100-679.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall notify the contractor and request agreement as to the cost or price adjustment together with any applicable interest as computed in accordance with 30.602-2(c)(2). The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal, as provided in the clause at 52.233-1, Disputes.

(3) If the ACO determines that there is no material increase in costs as a result of the noncompliance, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230-2, Cost Accounting Standards, and/or the clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

30.602-3 Voluntary changes.

(a) *General.* (1) The contractor may voluntarily change its disclosed or established cost accounting practices.

(2) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the interest of the Government.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to notify the ACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered.

(2) The ACO shall then follow the procedures in 30.602-1(c)(1).

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is appropriate (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment subject to contractor appeal, as provided in the clause at 52.233-1, Disputes.

30.603 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the ACO cognizant of the subcontractor shall make the determination and advise the ACO cognizant of the prime contractor or next higher tier subcontractor of his decision. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

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 of special or unusual costs. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7 of that cost.

(b) Advance agreements may be negotiated either before or during a contract but should be negotiated before 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 15.808, Price negotiation memorandum, 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;

(2) Use charges for fully depreciated assets;

(3) Deferred maintenance costs;

(4) Precontract costs;

(5) Independent research and development and bid and proposal costs;

(6) Royalties and other costs for use of patents;

(7) Selling and distribution costs;

(8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;

(9) Costs of idle facilities and idle capacity;

(10) Costs of automatic data processing equipment;

(11) Severance pay to employees on support service contracts;

(12) Plant reconversion;

(13) Professional services (e.g., legal, accounting, and engineering);

(14) General and administrative costs (e.g., corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see 31.203(f));

(15) Costs of construction plant and equipment (see 31.105(d));

(16) Costs of public relations and advertising; and

(17) Training and education costs (see 31.205-44(h)).

SUBPART 31.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS

31.201 General.

31.201-1 Composition of total cost.

(a) The total cost of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to 31.205-10. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances. See 31.201-2(b) and (c) for Cost Accounting Standards (CAS) requirements.

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to Part 31 and applicable agency supplements.

31.201-2 Determining allowability.

(a) The factors to be considered in determining whether a cost is allowable include the following:

(1) Reasonableness.

(2) Allocability.

(3) Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances.

(4) Terms of the contract.

(5) Any limitations set forth in this subpart.

(b) Certain cost principles in this subpart incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected standards. Only those CAS or portions of standards specifically made applicable by the cost principles in this subpart are mandatory unless the contract is CAS-covered (see Part 30). Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.

(c) When contractor accounting practices are inconsistent with this Subpart 31.2, costs resulting from such inconsistent practices shall not be allowed in excess of the amount that would have resulted from using practices consistent with this subpart.

31.201-3 Determining reasonableness.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including—

(1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;

(2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;

(3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and

(4) Any significant deviations from the contractor's established practices.

31.201-4 Determining allocability.

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

31.201-5 Credits.

The applicable portion of any income, rebate,

allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund. See 31.205-6(j)(4) for rules related to refund or credit to the Government upon termination of an overfunded defined benefit pension plan.

31.201-6 Accounting for unallowable costs.

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(b) Costs which specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) above.

(c) The practices for accounting for and presentation of unallowable costs will be those as described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(d) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(e)(1) In determining the materiality of a directly associated cost, consideration should be given to the significance of (i) the actual dollar amount, (ii) the cumulative effect of all directly associated costs in a cost pool, or (iii) the ultimate effect on the cost of Government contracts.

(2) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with subparagraph (e)(1) above (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided in subparagraphs (e)(1) and (e)(2) above, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

31.201-7 Construction and architect-engineer contracts.

Specific principles and procedures for evaluating and determining costs in connection with contracts and subcontracts for construction, and architect-engineer contracts 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 these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. When substantially the same results can be achieved through less 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 practice in the industry to use a shorter period. When a contract is performed over an extended period, as many base periods shall be used as are required to represent the period of contract performance.

(f) Special care should be exercised in applying the principles of paragraphs (b), (c), and (d) above when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division, or branch 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 15.805-3, 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

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.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either (A) an additional investment tax credit (see 1975 Tax Reduction Act—TRASOP's); or (B) a payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of subdivision (j)(3)(ii) above are applicable to Employee Stock Ownership Plans.

(k) *Deferred compensation.* (1) Deferred compensation is an award given 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 receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 31.205-6(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of 48 CFR 9904.415 are allowable to the extent they would have been allowable under prior acquisition regulations.

(l) *Compensation incidental to business acquisitions.* The following costs are unallowable:

(1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.

(m) *Fringe benefits.* (1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided otherwise in Subpart 31.2, the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).

(n) *Employee rebate and purchase discount plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must also be calculated in accordance with paragraphs (o)(2)(i), (ii), or (iii) of this subparagraph.

(i) *Cash basis.* Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.

(iii) *Accrual basis.* Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) Costs of postretirement benefits in subdivision (o)(2)(iii) of this subsection attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.

(6) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to Subpart 31.2.

31.205-7 Contingencies.

(a) "Contingency," as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.

(2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; e.g., results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage. (See, for example, 31.205-6(g), 31.205-19, and 31.205-24.)

31.205-8 Contributions or donations.

Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in 31.205-1(e)(3).

31.205-9 [Reserved]

31.205-10 Cost of money.

(a) *Facilities capital cost of money.*—(1) *General.* (i) Facilities capital cost of money (cost of capital committed to

facilities) is an imputed cost determined by applying a cost-of-money rate to facilities capital employed in contract performance. A cost-of-money rate is uniformly imputed to all contractors (see subdivision (a)(1)(ii) of this subsection). Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is not a form of interest on borrowings (see 31.205-20).

(ii) 48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, establishes criteria for measuring and allocating, as an element of contract cost, the cost of capital committed to facilities. Cost-of-money factors are developed on Form CASB-CMF, broken down by overhead pool at the business unit, using (A) business-unit facilities capital data, (B) overhead allocation base data, and (C) the cost-of-money rate, which is based on interest rates specified by the Secretary of the Treasury under Public Law 92-41.

(2) *Allowability.* Whether or not the contract is

ments and payments. They may also finance continuing performance of defense production contracts that are eligible for guaranteed loans.

(b) The procedure for such guarantees is substantially the same as that outlined in 32.304, except that certificates of eligibility are not required for (1) contracts that have been totally terminated or (2) the terminated portion of contracts that have been partially terminated. The agency shall take precautions necessary to avoid Government losses and to ensure the loans will be self-liquidating from the proceeds of defense production contracts.

(c) Loan guarantees for contract termination financing shall not be provided before specific contract terminations are certain.

32.306 Loan guarantees for subcontracts.

If the request for a loan guarantee concerns a subcontractor that is financially weak in comparison with its contractor, the Government's interests may be fostered by the contractor making progress payments to the subcontractor. If so, the agency shall try to arrange for the contractor to provide the progress payments. As a result, the need for the loan guarantee may be reduced or eliminated and the contractor would bear part or all of the risk of loss arising from the selection of the subcontractor.

SUBPART 32.4—ADVANCE PAYMENTS

32.400 Scope of subpart.

This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404.

32.401 Statutory authority.

The agency may authorize advance payments in negotiated and sealed bid contracts if the action is appropriate under (a) section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), (b) the Armed Services Procurement Act (10 U.S.C. 2307), or (c) Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, November 14, 1958 (3 CFR 1958 Supp. pp. 72-74) (see Part 50 of the Federal Acquisition Regulation (FAR) for other applications of this statute).

32.402 General.

(a) A limitation on authority to grant advance payments under Pub. L. 85-804 (50 U.S.C. 1431-1435) is described at FAR 50.203(b)(4).

(b) Advance payments may be provided on any type of contract; however, the agency shall authorize advance payments sparingly. Except for the contracts described in 32.403(a) and (b), advance payment is the least preferred method of contract financing (see 32.106) and generally they should not be authorized if other types of financing are reasonably available to the contractor in adequate amounts. Loans and credit at excessive interest rates or other exorbitant charges, or loans from other Government agencies, are not considered reasonably available financing.

(c) If statutory requirements and standards for advance payment determinations are met, the contracting officer shall generally recommend that the agency authorize advance payments.

(1) The statutory requirements are that—

(i) The contractor gives adequate security;

(ii) The advance payments will not exceed the unpaid contract price (see 32.410(b), subparagraph (a)(2)); and

(iii) The agency head or designee determines, based on written findings, that the advance payment—

(A) Is in the public interest (under 32.401(a) or (b)); or

(B) Facilitates the national defense (under 32.401(c)).

(2) The standards for advance payment determinations are that—

(i) The advance payments will not exceed the contractor's interim cash needs based on—

(A) Analysis of the cash flow required for contract performance;

(B) Consideration of the reimbursement or other payment cycle; and

(C) To the extent possible, employment of the contractor's own working capital;

(ii) The advance payments are necessary to supplement other funds or credit available to a contractor;

(iii) The recipient is otherwise qualified as a responsible contractor;

(iv) The Government will benefit from performance prospects or there are other practical advantages; and

(v) The case fits one or more of the categories described in 32.403.

(d) If necessary, the agency may authorize advance payments in addition to progress or partial payments on the same contract (see 32.501-1(c)).

(e) Each agency that provides advance payments shall—

(1) Place the responsibility for making findings and determinations, and for approval of contract terms concerning advance payments (see 32.410), at an organizational level high enough to ensure uniform application of this subpart (see the limitation at 50.201(b) which also applies to advance payments authorized under Pub. L. 85-804 (50 U.S.C. 1431-1435)); and

(2) Establish procedures for coordination, before advance payment authorization, with the activity that provides contract financing support.

(f) If the contract provides for advance payments under Pub. L. 85-804, the contracting officer shall ensure conformance with the requirements of FAR 50.307.

32.403 Applicability.

Advance payments may be considered useful and appropriate for the following:

(a) Contracts for experimental, research, or development work with nonprofit educational or research institutions.

(b) Contracts solely for the management and operation of Government-owned plants.

(c) Contracts for acquisition at cost of facilities for Government ownership.

(d) Contracts of such a highly classified nature that the agency considers it undesirable for national security to permit assignment of claims under the contract.

(e) Contracts entered into with financially weak contractors whose technical ability is considered essential to the agency. In these cases, the agency shall closely monitor the contractor's performance and financial controls to reduce the Government's financial risk.

(f) Contracts for which a loan by a private financial institution is not practicable, whether or not a loan guarantee under this part is issued; for example, if—

(1) Financing institutions will not assume a reasonable portion of the risk under a guaranteed loan;

(2) Loans with reasonable interest rates or finance charges are not available to the contractor; or

(3) Contracts involve operations so remote from a financial institution that the institution could not be expected to suitably administer a guaranteed loan.

(g) Contracts with small business concerns, under which circumstances that make advance payments appropriate often occur (but see 32.104(b)).

(h) Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

32.404 Exclusions.

(a) This subpart does not apply to advance payments authorized by law for—

(1) Rent;

(2) Tuition;

(3) Insurance premiums;

(4) Expenses of investigations in foreign countries;

(5) Extension or connection of public utilities for Government buildings or installations;

(6) Subscriptions to publications;

(7) Purchases of supplies or services in foreign countries, if—

(i) The purchase price does not exceed $10,000 (or equivalent amount of the applicable foreign currency); and

(ii) The advance payment is required by the laws or government regulations of the foreign country concerned;

(8) Enforcement of the customs or narcotics laws; or

(9) Other types of transactions excluded by agency procedures under statutory authority.

(b) Agencies may issue their own instructions to deal with advance payment items in paragraph (a) above authorized under statutes relevant to their agencies.

32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

(a) Actions that designated agencies may take to facilitate the national defense without regard to other provisions of law relating to contracts, as explained in 50.101(a), also include making advance payments. These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts.

(b) Bidders may request advance payments before or after award, even if the invitation for bids does not contain an advance payment provision. However, the contracting officer shall reject any bid requiring that advance payments be provided as a basis for acceptance.

(c) When advance payments are requested, the agency may—

(1) Enter into the contract and provide for advance payments conforming to this Part 32;

(2) Enter into the contract without providing for advance payments if the contractor does not actually need advance payments; or

(3) Deny award of the contract if the request for advance payments has been disapproved under 32.409-2 and funds adequate for performance are not otherwise available to the offeror.

32.406 Letters of credit.

(a) The Department of the Treasury (Treasury) prescribes regulations and instructions covering the use of letters of credit for advance payments under contracts. See Treasury Department Circular 1075 (31 CFR 205), and the implementing instructions in the Treasury Financial Manual, available in offices providing financial advice and assistance.

(b) If agencies provide advance payments to contractors, use of the following methods is required unless the agency has obtained a waiver from the Treasury Department:

(1) By letter of credit if the contracting agency expects to have a continuing relationship with the contractor for a year or more, with advances totaling at least $120,000 a year.

(2) By direct Treasury check if the circumstances do not meet the criteria in subparagraph (1) above.

(c) If the agency has entered into multiple contracts (or a combination of contract(s) and assistance agreement(s)) involving eligibility of a contractor for more than one letter

contract exceeds reasonable requirements (including a reasonable accumulation of inventory for continuity of operations), the contracting officer should, in addition to requiring the transfer of excessive inventory from the contract, take one or more of the following actions, as necessary, to avoid or correct overpayment:

(1) Eliminate the costs of the excessive inventory from the costs eligible for progress payments, with appropriate reduction in progress payments outstanding.

(2) Apply additional deductions to billings for deliveries (increase liquidation).

(e) *Delinquency in payment of costs of performance.* (1) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the contracting officer shall evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, shall apply the guidance in paragraph (c) above. If the contractor's financial condition is satisfactory, the contracting officer shall not deny progress payments if the contractor agrees to—

(i) Cure the payment delinquencies;

(ii) Avoid further delinquencies; and

(iii) Make additional arrangements adequate for completing the contract without loss to the Government.

(2) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the contracting officer shall not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration. However, the amounts shall be excluded from costs eligible for progress payments so long as they are disputed.

(3) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions from progress payment requests, shall be in accordance with paragraph (a)(2) of the clause at 52.232-6, Progress Payments, without regard to the provisions of 32.503-6.

(f) *Fair value of undelivered work.* (1) For the purposes of Subpart 32.5, the fair value of undelivered work is the lesser of (i) the contract price of the undelivered work, minus the estimated costs required for completing contract performance, or (ii) the incurred costs applicable to the undelivered items.

(2) The contracting officer shall monitor the relationship of unliquidated progress payments to the fair value of undelivered work under the contract. If the unliquidated progress payments exceed the fair value of undelivered work, the contracting officer shall, governed by the principles in paragraphs (c) and (e) above, take appropriate action to eliminate this excess using the loss ratio adjustment described in paragraph (g) below, and based on full consideration of—

(i) The degree of completion of contract performance;

(ii) The quality and amount of work performed on the undelivered portion of the contract;

(iii) The amount of work remaining to be done and the estimated costs of completion of performance; and

(iv) The amount remaining unpaid under the contract.

(g) *Loss contracts.* (1) If the sum of the total costs incurred under a contract plus the estimated costs to complete the performance are likely to exceed the contract price, the contracting officer shall compute a loss ratio factor and adjust future progress payments to exclude the element of loss. The loss ratio factor is computed as follows:

(i) Revise the current contract price used in progress payment computations (the current ceiling price under fixed-price incentive contracts) to include any pending change orders and unpriced orders to the extent funds for the orders have been obligated.

(ii) Divide the revised contract price by the sum of the total costs incurred to date plus the estimated additional costs of completing the contract performance.

(2) If the contracting officer believes a loss is probable, future progress payment requests shall be modified as follows:

(i) The contract price shall be the revised amount computed under subparagraph (1)(i) above.

(ii) The total costs eligible for progress payments shall be the product of (A) the sum of paid costs eligible for progress payments times (B) the loss ratio factor computed under subparagraph (1)(ii) above.

(iii) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(3) The contracting officer may use audit assistance, technical services, management reports, and other sources of pertinent data to evaluate progress payment requests. If the contracting officer concludes that the contractor's figures in the contractor's progress payment request are not correct, the contracting officer shall—

(i) In the manner prescribed in paragraph (g)(4) of this section, prepare a supplementary analysis to be attached to the contractor's request;

(ii) Advise the contractor in writing of the differences; and

(iii) Adjust all further progress payments in accordance with paragraph (g)(1) of this section, using the contracting officer's figures, until the difference is resolved.

(4) The following is an example of the supplementary analysis required in paragraph (g)(3) of this section:

Section I:	
Contract price	$950,000
Change orders and unpriced orders (to extent funds have been obligated)	50,000
Revised contract price	$1,000,000
Section II:	
Total costs incurred to date	$900,000
Estimated additional costs to complete	300,000
Total costs to complete	$1,200,000
Loss ratio factor $\frac{\$1,000,000}{\$1,200,000} = 83.3\%$	
Total costs eligible for progress payments	$900,000
Loss ratio factor	x 83.3%
Recognized costs for progress payments	$749,700
Progress payment rate	x 80.0%
Alternate amount to be used	$599,760
Section III:	
Factored costs of items delivered*	$250,000
Recognized costs applicable to undelivered items ($749,700—$250,000)	$499,700

* This amount shall be the same as the contract price of the items delivered.

32.503-7 Limitation on general and administrative expenses (G&A) for progress payments.

If the contractor established an inventory suspense account under Appendix A of Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (48 CFR 9904.410 (Appendix B, FAR loose-leaf edition)), and the account is $5 million or more, the following limitations shall apply to progress payments:

(a) G&A shall not be eligible for progress payments until the value of work in process inventories under new contracts exceeds that under the old. For this purpose, new contracts shall be considered to be those awarded after CAS 410 became applicable to the work of the contractor. Old contracts are those included in the suspense account prescribed in CAS 410.

(b) The amount of G&A eligible for progress payments under the contract shall be the contractor's pro rata share of G&A allocable to the excess under paragraph (a) of this section.

32.503-8 Liquidation rates—ordinary method.

Progress payments are recouped by the Government through the deduction of liquidations from payments that would otherwise be due to the contractor for completed contract items. To determine the amount of the liquidation, a liquidation rate is applied to the contract price of contract items delivered and accepted. The ordinary method is that the liquidation rate is the same as the progress payment rate; at the beginning of a contract, only this method may be used. If the contract is subject to the CAS limitation in 32.503-7 on G&A eligible for progress payments, the ordinary method includes the use of an adjusted liquidation rate to reflect the applicable G&A suspense account. The adjusted liquidation rate shall be established by (a) dividing the unbilled G&A by the contract price, (b) multiplying the quotient by the progress payment rate stated in the contract, and (c) subtracting the resulting rate from the progress payment rate. For example, if the price is $1,100,000 and the unbilled G&A is $47,600, the adjusted liquidation rate would be 76.5 percent, computed as follows:

Unbilled G&A divided by contract price (47,600/1,100,000)	4.33%
Result x progress payment rate (4.33% x 80%)	3.46%
Result subtracted from progress payment rate (80% - 3.46%)	76.54%

32.503-9 Liquidation rates—alternate method.

(a) The liquidation rate determined under 32.503-8 shall apply throughout the period of contract performance unless the contracting officer adjusts the liquidation rate under the alternate method in this 32.503-9. The objective of the alternate liquidation rate method is to permit the contractor to retain the earned profit element of the contract prices for completed items in the liquidation process. The contracting officer may reduce the liquidation rate if—

(1) The contractor requests a reduction in the rate;

(2) The rate has not been reduced in the preceding 12 months;

(3) The contract delivery schedule extends at least 18 months from the contract award date;

(4) Data on actual costs are available (i) for the products delivered, or (ii) if no deliveries have been made, for a performance period of at least 12 months;

(5) The reduced liquidation rate would result in the Government recouping under each invoice the full extent of the progress payments applicable to the costs allocable to that invoice;

(6) The contractor would not be paid for more than the costs of items delivered and accepted (less allocable progress payments) and the earned profit on those items;

(7) The unliquidated progress payments would not exceed the limit prescribed in paragraph (a)(4) of the Progress Payments clause;

(8) The parties agree on an appropriate rate; and

(9) The contractor agrees to certify annually, or more often if requested by the contracting officer, that the alternate rate continues to meet the conditions of subsections 5, 6, and 7 above. The certificate must be accompanied by adequate supporting information.

(b) The contracting officer shall change the liquidation rate in the following circumstances:

(1) The rate shall be increased for both previous and subsequent transactions, if the contractor experiences a lower profit rate than the rate anticipated at the time the

PART 34

MAJOR SYSTEM ACQUISITION

SUBPART 34.0—GENERAL

34.000 Scope of part.
34.001 Definitions.
34.002 Policy.
34.003 Responsibilities.
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.
34.005-6 Full production.

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.

PART 34

MAJOR SYSTEM ACQUISITION

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.

"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 $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for the acquisition exceeds $300,000,000 (based on fiscal year 1980 constant dollars);

(b) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget Circular A-109, entitled "Major System Acquisitions," whichever is greater; or

(c) The system is designated a "major system" by the head of the agency responsible for the system.

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) Sustain effective competition between alternative system concepts and sources for as long as it is beneficial.

34.003 Responsibilities.

(a) As required by A-109, the agency head or designee shall establish written procedures for its implementation.

(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 officer should take the actions outlined in subparagraphs (1) and (2):

(1) Advance notification of the acquisition should be given the widest practicable dissemination, including publication in the Commerce Business Daily (see Subpart 5.2) and should be sent to as wide a selection of potential sources as practicable, including smaller and newer firms, Government laboratories, federally funded research and 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 15.404) 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 officer should provide contractors with operational test conditions, performance criteria, life cycle cost factors, and any other selection criteria necessary for the contractors to prepare their proposals.

34.005-5 Full-scale development contracts.

Whenever practicable, the full-scale development contracts should provide for the contractors to submit priced 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 102-588, 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 industrial resource shall refer such requests to the contracting officer. The contracting officer shall evaluate the request in accordance with agency procedures to determine whether: (1) the Title III industrial resource is being or potentially may be used in the development or manufacture of a major system or item of supply; and (2) for major systems in production, remaining quantities to be acquired are sufficient to justify incurring the cost of testing and qualification. In evaluating this request, the contracting officer shall consult with the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(b) If the determination at 34.103(a) is affirmative, the contracting officer shall modify the contract to require the contractor to test the Title III industrial resource for qualification.

(c) The Defense Production Act Office, Title III Program, shall provide to the contractor the industrial resource produced by the Title III project contractor in sufficient amounts to meet testing needs.

34.104 Contract clause.

Insert the clause at 52.234-1, Industrial Resources Developed under Title III, Defense Production Act, in all contracts for major systems and items of supply.

(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 recommend potential sources that appear qualified, as a result of—

(1) Present and past performance of similar work;

(2) Professional stature and reputation;

(3) Relative position in a particular field of endeavor;

(4) Ability to acquire and retain the professional and technical capability, including facilities, required to perform the work; and

(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 15.406-5(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 15.605(e)), 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 best satisfies the Government's requirement at a fair and reasonable cost.

(g) The contracting officer should ensure that each prospective offeror fully understands the details of the work, especially the Government interpretation of the work statement. If the effort is complex, the contracting officer should provide prospective offerors an opportunity to comment on the details of the requirements as contained in the work statement, the contract Schedule, and any related specifications. This may be done through the use of preproposal conferences (see 15.409).

(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 15.5 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 15.10 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. Cost or price analysis, as appropriate (see 15.805), is a useful tool.

35.009 Subcontracting research and development effort.

Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the contractor not subcontract technical or scientific work without the contracting officer's advance 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 competition in production contracts. In some situations, the developmental contractor may be in the best position to produce such a technical package.

35.012 Patent rights.

For a discussion of patent rights, see agency regulations and Part 27.

35.013 Insurance.

Nonprofit, educational, or State institutions performing cost-reimbursement contracts often do not carry insurance. They may claim immunity from liability for torts, or, as State institutions, they may be prohibited by State law from expending funds for insurance. When this is the case, see 28.311 for appropriate clause coverage.

35.014 Government property and title.

(a) The requirements in Part 45 for establishing and maintaining control over Government property apply to all R&D contracts.

(b) In implementing 31 U.S.C. 6306, and unless an agency head provides otherwise, the policies in subparagraphs (1) through (4) following, regarding title to equipment (and other tangible personal property) purchased by

PART 36

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

TABLE OF CONTENTS

36.000 Scope of part.

SUBPART 36.1—GENERAL
36.101 Applicability.
36.102 Definitions.
36.103 Methods of contracting.

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.
36.206 Liquidated damages.
36.207 Pricing fixed-price construction contracts.
36.208 Concurrent performance of firm-fixed-price and other types of construction contracts.
36.209 Construction contracts with architect-engineer firms.
36.210 Inspection of site and examination of data.
36.211 Distribution of advance notices and solicitations.
36.212 Preconstruction orientation.

SUBPART 36.3—SPECIAL ASPECTS OF SEALED BIDDING IN CONSTRUCTION CONTRACTING
36.301 General.
36.302 Presolicitation notices.
36.303 Invitations for bids.
36.304 Notice of award.

SUBPART 36.4—SPECIAL PROCEDURES FOR NEGOTIATION OF CONSTRUCTION CONTRACTS
36.401 [Reserved]
36.402 Price negotiation.
36.403 Cost-reimbursement contracts.

SUBPART 36.5—CONTRACT CLAUSES
36.500 Scope of subpart.
36.501 Performance of work by the contractor.
36.502 Differing site conditions.
36.503 Site investigation and conditions affecting the work.
36.504 Physical data.
36.505 Material and workmanship.
36.506 Superintendence by the contractor.
36.507 Permits and responsibilities.
36.508 Other contracts.
36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.
36.510 Operations and storage areas.
36.511 Use and possession prior to completion.
36.512 Cleaning up.
36.513 Accident prevention.
36.514 Availability and use of utility services.
36.515 Schedules for construction contracts.
36.516 Quantity surveys.
36.517 Layout of work.
36.518 Work oversight in cost-reimbursement construction contracts.
36.519 Organization and direction of the work.
36.520 [Reserved]
36.521 Specifications and drawings for construction.
36.522 Preconstruction conference.
36.523 Site visit.

SUBPART 36.6—ARCHITECT-ENGINEER SERVICES
36.600 Scope of subpart.
36.601 Policy.
36.601-1 Public announcement.
36.601-2 Competition.
36.601-3 Applicable contracting procedures.
36.601-4 Implementation.
36.602 Selection of firms for architect-engineer contracts.
36.602-1 Selection criteria.
36.602-2 Evaluation boards.
36.602-3 Evaluation board functions.
36.602-4 Selection authority.
36.602-5 Short selection processes for contracts not to exceed the small purchase limitation.
36.603 Collecting data on and appraising firms'qualifications.
36.604 Performance evaluation.
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.

(2) Which, with allowances for Government-imposed contingencies and overhead, exceeds the statutory authorization.

(b) Solicitations containing one or more items subject to statutory cost limitations shall state (1) the applicable cost limitation for each affected item in a separate schedule; (2) that an offer which does not contain separately-priced schedules will not be considered; and (3) that offers must contain a certification that the price on each schedule includes an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

(c) The Government shall reject an offer if its prices exceed applicable statutory limitations, unless laws or agency procedures provide pertinent exemptions. However, if it is in the Government's interest, the contracting officer may include a provision in the solicitation which permits the award of separate contracts for individual items whose prices are within or subject to applicable statutory limitations.

(d) The Government shall also reject an offer if its prices are within statutory limitations only because it is materially unbalanced. An offer is unbalanced if its prices are significantly less than cost for some work, and overstated for other work.

36.206 Liquidated damages.

The contracting officer shall evaluate the need for liquidated damages in a construction contract in accordance with 12.202 and agency regulations.

36.207 Pricing fixed-price construction contracts.

(a) Generally, firm-fixed-price contracts shall be used to acquire construction. They may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), (2) on a unit-price basis (when a unit price is paid for a specified quantity of work units), or (3) using a combination of the two methods.

(b) Lump-sum pricing shall be used in preference to unit pricing except when—

(1) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(2) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(3) Estimated quantities of work required may change significantly during construction; or

(4) Offerors would have to expend unusual effort to develop adequate estimates.

(c) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

36.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the head of the contracting activity.

36.209 Construction contracts with architect-engineer firms.

No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the head of the agency or authorized representative.

36.210 Inspection of site and examination of data.

The contracting officer should make appropriate arrangements for prospective offerors to inspect the work site and to have the opportunity to examine data available to the Government which may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous construction. The data should be assembled in one place and made available for examination. The solicitation should notify offerors of the time and place for the site inspection and data examination. If it is not feasible for offerors to inspect the site or examine the data on their own, the solicitation should also designate an individual who will show the site or data to the offerors. Significant site information and the data should be made available to all offerors in the same manner, including information regarding any utilities to be furnished during construction. A record should be kept of the identity and affiliation of all offerors' representatives who inspect the site or examine the data.

36.211 Distribution of advance notices and solicitations.

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.

SUBPART 36.3—SPECIAL ASPECTS OF SEALED BIDDING IN CONSTRUCTION CONTRACTING

36.301 General.

Contracting officers shall follow the procedures for sealed bidding in Part 14, as modified and supplemented by the requirements in this subpart.

36.302 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 any construction requirement when the proposed contract is expected to equal or exceed $100,000. Presolicitation notices may also be used when the proposed contract is expected to be less than $100,000. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices shall—

(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.

36.303 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).

(3) The magnitude of the proposed construction project (see 36.204).

(4) The period of performance (see Subpart 12.1).

(5) Arrangements made for bidders to inspect the site and examine the data concerning performance of the work (see 36.210).

(6) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished 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)).

36.304 Notice of award.

When a notice of award is issued, it shall contain information required by 14.407 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.

SUBPART 36.4—SPECIAL PROCEDURES FOR NEGOTIATION OF CONSTRUCTION CONTRACTS

36.401 [Reserved]

36.402 Price negotiation.

(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 and shall compare them to the Government estimate.

(1) When the submission of certified cost or pricing data is not required (see 15.804-2 and 15.804-3), and any element of a proposal differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost data concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

(2) When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate shall be corrected and the changes shall be documented in the contract file.

(c) When appropriate, additional pricing tools may be 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.

36.403 Cost-reimbursement contracts.

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 15.903(d)(1)(iii) for fee limitation on cost-reimbursement contracts).

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 small purchase limitation. 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 within the small purchase limitation.

36.503 Site investigation and conditions affecting the work.

The contracting officer shall insert the clause at 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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitation. 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 within the small purchase limitation.

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.

36.508 Other contracts.

The contracting officer shall insert the clause at 52.236-8, Other Contracts, 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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitations. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitations.

36.512 Cleaning up.

The contracting officer shall insert the clause at 52.236-12, Cleaning Up, 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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitation. 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 within the small purchase limitation. 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 FAR 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.

36.515 Schedules for construction contracts.

The contracting officer may insert the clause at 52.236-15, Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the small purchase limitation, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts 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.

32.520 [Reserved]

36.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, 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 small purchase limitation. 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 within the small purchase limitation. 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.)

36.601-2 Competition.

Acquisition of architect-engineer services in accordance with the procedures in this subpart will constitute a competitive procedure. (See 6.102(d)(1).)

36.601-3 Applicable contracting procedures.

(a) 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.

(b) 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.

(c) 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 engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services such as those typically performed by the Defense Mapping Agency that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15.

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

36.602 Selection of firms for architect-engineer contracts.

36.602-1 Selection criteria.

(a) Agencies shall evaluate each potential contractor in terms of its—

(1) Professional qualifications necessary for satisfactory performance of required services;

(2) Specialized experience and technical competence in the type of work required;

(3) Capacity to accomplish the work in the required time;

(4) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(5) Location in the general geographical area of the project and knowledge of the locality of the project; *provided,* that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(6) Acceptability under other appropriate evaluation criteria.

(b) When the use of design competition is approved by the agency head or a designee, agencies may evaluate firms

on the basis of their conceptual design of the project. Design competition may be used when—

(1) Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual national significance;

(2) Sufficient time is available for the production and evaluation of conceptual designs; and

(3) The design competition, with its costs, will substantially benefit the project.

36.602-2 Evaluation boards.

(a) When acquiring architect-engineer services, an agency shall provide for one or more permanent or ad hoc architect-engineer evaluation boards (which may include preselection boards when authorized by agency regulations) to be composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters. Members shall be appointed from among highly qualified professional employees of the agency or other agencies, and if authorized by agency procedure, private practitioners of architecture, engineering, or related professions. One Government member of each board shall be designated as the chairperson.

(b) No firm shall be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding agency's evaluation board.

36.602-3 Evaluation board functions.

Under the general direction of the head of the contracting activity, an evaluation board shall perform the following functions:

(a) Review the current data files on eligible firms and responses to a public notice concerning the particular project (see 36.604).

PART 37

SERVICE CONTRACTING

37.000 Scope of part.

This part prescribes general policy and procedures for acquiring services by contract, and includes but does not limit coverage to only those services to which the Service Contract Act of 1965 applies (see 37.107). It distinguishes between contracts for personal services and those for nonpersonal services and includes special conditions to be observed in acquiring advisory and assistance services. Dismantling, demolition, or removal of improvements is covered in Subpart 37.3. This part does not regulate the obtaining of services by direct appointment, under normal civil service employment procedures, or by cooperative agreement.

SUBPART 37.1—SERVICE CONTRACTS—GENERAL

37.101 Definitions.

"Child care services" means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

"Nonpersonal services contract" means a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

"Personal services contract" means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see 37.104).

"Service contract" means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

(a) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.

(b) Routine recurring maintenance of real property.

(c) Housekeeping and base services.

(d) Advisory and assistance services.

(e) Operation of Government-owned equipment facilities, and systems.

(f) Communications services.

(g) Architect-Engineering (see Subpart 36.6).

(h) Transportation and related services (see Part 47).

(i) Research and development (see Part 35).

37.102 Policy.

(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government).

(b) In no event may a contract be awarded for the performance of an inherently governmental function.

(c) The relative costs of Government and contract performance require appropriate consideration where Government performance is practicable (see Subpart 7.3).

(d) Nonpersonal service contracts are proper under general contracting authority.

37.103 Contracting officer responsibility.

(a) The contracting officer is responsible for ensuring that a proposed contract for services is proper. For this purpose the contracting officer shall—

(1) Determine whether the proposed service is for a personal or nonpersonal services contract using the definitions in 37.101 and the guidelines in 37.104;

(2) In doubtful cases, obtain the review of legal counsel; and

(3) Document the file (except as provided in paragraph (b) of this section) with (i) the opinion of legal counsel, if any, (ii) a memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in 37.104(b), and (iii) any further documentation that the contracting agency may require.

(b) Nonpersonal services contracts are exempt from the requirements of subparagraph (a)(3) of this section.

(c) Verify that the contract file contains the certifications required of contractor employees serving as Government procurement officials (see 3.104-9).

(d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 42 U.S.C. 13041, as amended, and agency procedures.

37.104 Personal services contracts.

(a) As indicated in 37.101, a personal services contract is characterized by the employer-employee relationship it cre-

ates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C. 3109) to do so.

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) below).

(d) The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.

(2) Principal tools and equipment furnished by the Government.

(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(5) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(i) Adequately protect the Government's interest;

(ii) Retain control of the function involved; or

(iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(e) When specific statutory authority for a personal service contract is cited, obtain the review and opinion of legal counsel.

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (e.g., benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

37.105 Competition in service contracting.

(a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met, (except see 6.401(b)).

(b) The provisions of statute and Part 6 is this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

37.106 Funding and term of service contracts.

When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see 32.703-2 for contracts conditioned upon availability of funds and 32.703-3 for contracts crossing fiscal years).

37.107 Service Contract Act of 1965.

The Service Contract Act of 1965 (41 U.S.C. 351-357) (the Act) provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts. Whether or not the Act applies to a specific service contract will be determined by the definitions and exceptions given in the Act, or implementing regulations.

37.108 Small business Certificate of Competency.

In those service contracts for which the Government requires the highest competence obtainable, as evidenced in a solicitation by a request for a technical/management proposal and a resultant technical evaluation and source selection, the small business Certificate of Competency procedures may not apply (see Subpart 19.6).

37.109 Services of quasi-military armed forces.

Contracts with "Pinkerton Detective Agencies or similar organizations" are prohibited by 5 U.S.C. 3108. This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract's character. An organization providing guard or protective services does not thereby become a "quasi-military armed force," even though the guards are armed or the organization provides general investigative or detective services. (See 57 Comp. Gen. 524.)

37.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at

52.237-1, Site Visit, in solicitations for services to be performed on Government installations, unless the solicitation is for construction.

(b) The contracting officer shall insert the clause at 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated.

(c) The contracting officer may insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) See 9.508 regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(f)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, 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 once, but the total extension of performance thereunder shall not exceed 6 months.

37.112 Government use of private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR Part 300, Subpart E, Use of Private Sector Temporaries, and agency procedures.

SUBPART 37.2—ADVISORY AND ASSISTANCE SERVICES

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.201 Definition.

"Advisory and assistance services" means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems.

37.202 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation;

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

37.203 Types of advisory and assistance services.

Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance. These services consist of—

(a) *Individual experts and consultants.* Individual experts and consultants are persons possessing special, current knowledge or skill that may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decision-making.

(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decision-making. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

(1) *Objective.* To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.

(2) *Areas of application.* All subjects, issues, or problems involving policy development of decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.

(3) *Outputs.* Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

(c) *Management and professional support services.* Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

(2) *Areas of application.* Management support or related systems such as program management, project monitoring and reporting, data collection, logistics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.

(d) *Engineering and technical service.* Engineering and technical services (technical representatives) take the form of advice, training, or, under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

37.204 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Activities that are reviewed in accordance with the OMB Circular A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

(b) Architectural and engineering services as defined in Part 36.

(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.

(d) Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

(e) Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).

(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.

(h) Clinical medicine.

(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational support activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

PART 41

ACQUISITION OF UTILITY SERVICES

TABLE OF CONTENTS

SUBPART 41.1—GENERAL
41.100 Scope of part.
41.101 Definitions.
41.102 Applicability.
41.103 Statutory and delegated authority.

SUBPART 41.2—ACQUIRING UTILITY SERVICES
41.201 Policy.
41.202 Procedures.
41.203 GSA assistance.
41.204 GSA areawide contracts.
41.205 Separate contracts.
41.206 Interagency agreements.

SUBPART 41.3—REQUESTS FOR ASSISTANCE
41.301 Requirements.

SUBPART 41.4—ADMINISTRATION
41.401 Monthly and annual review.
41.402 Rate changes and regulatory intervention.

SUBPART 41.5—SOLICITATION PROVISION AND CONTRACT CLAUSES
41.501 Solicitation provision and contract clauses.

SUBPART 41.6—FORMS
41.601 Utility services contract form.

SUBPART 41.7—FORMATS
41.701 Formats for utility service specifications.
41.702 Formats for annual utility service review.

PART 41

ACQUISITION OF UTILITY SERVICES

SUBPART 41.1—GENERAL

41.100 Scope of part.

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See 41.102(b) for services that are excluded from this part.)

41.101 Definitions.

As used in this part,

"Areawide contract" means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an "Authorization" form for requesting service, connection, disconnection, or change in service.

"Authorization" means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

"Connection charge" means all nonrecurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

"Delegated agency" means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see 41.103(b)).

"Federal Power and Water Marketing Agency" means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

"Franchise territory" means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

"Intervention" means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal executive agencies.

"Multiple service locations" means the various locations or delivery points in the utility supplier's service area to which it provides service under a single contract.

Rates may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, e.g., facilities use charges.

"Separate contract" means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement), to cover the acquisition of utility services.

"Termination liability" means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Government terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see "Connection charge").

"Utility service" means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of Part 41 to other services (e.g., rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the Service Contract Act of 1965 (see 37.107).

41.102 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to—

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see 41.206);

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency's marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned facilities; or

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize Part 41 for any energy savings or purchased utili-

ty service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

41.103 Statutory and delegated authority.

(a) *Statutory authority.* (1) The General Services Administration (GSA) is authorized by section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481), to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by section 201 of the Act to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DOD) is authorized by 10 U.S.C. 2301, 2304, and 40 U.S.C. 474(3) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act (42 U.S.C. 2751, et seq.) to acquire utility services. DOE is authorized by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204), to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DOD and DOE, and for connection charges only to the Department of Veteran Affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may request a delegation of authority from GSA at the address specified in 41.301(a). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has—

(1) An established acquisition program;

(2) Personnel technically qualified to deal with specialized utilities problems; and

(3) The ability to accomplish its own pre-award contract review.

SUBPART 41.2—ACQUIRING UTILITY SERVICES

41.201 Policy.

(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions below the small purchase limitation (see 13.000 of this title), agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing

agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, e.g., consultation with the state agency) responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100-202 (see 41.201(d)). The representation must be supported with appropriate legal and factual rationale.

41.202 Procedures.

(a) Prior to executing a utility service contract, the contracting officer shall comply with Parts 6 and 7 and subsections 41.201(d) and (e) of this part. In accordance with Parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law governing the provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.

(b) In performing a market survey (see 7.101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following:

(1) GSA areawide contracts (see 41.204).

(2) Separate contracts (see 41.205).

(3) Interagency agreements (see 41.206).

(c) When a utility supplier refuses to execute a tendered contract as outlined in 41.201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal) and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSA at the address specified at 41.301(a). Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C. 1501(a)(8)—

(1) By issuing a purchase order in accordance with Subpart 13.5; or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service without a bilateral written contract, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:

(1) The unsigned, tendered contract and any related letter of transmittal.

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer or other responsible official of the supplier (or if unobtainable, documentation of unwritten refusal).

(3) Services to be furnished and the estimated annual cost.

(4) Historical record of any applicable connection charges.

(5) Historical record of any applicable ongoing capital credits.

(6) A copy of the applicable rate schedule.

(e) If the Government obtains utility service pursuant to paragraph (c) of this section, the contracting officer shall, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer shall document the utility history file with the efforts made and the agency shall notify GSA, in writing, if the utility continues to refuse to execute a bilateral contract.

41.203 GSA assistance.

(a) GSA will, upon request, provide technical and acquisition assistance, or will delegate its contracting authority for the furnishing of the services described in this part for any Federal agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under the Architect's direction.

(b) Agencies, seeking assistance shall provide upon request by GSA the information listed in 41.301.

41.204 GSA areawide contracts.

(a) *Purpose.* GSA enters into areawide contracts (see

41.101) for use by Federal agencies. Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.

(b) *Features.* (1) Areawide contracts generally provide for ordering utility service at rates approved and/or established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body.

(2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.

(3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity (see 41.201(d)), competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of subparagraph (c)(1) of this section apply.

(c) *Procedures for obtaining service.* (1) Any Federal agency having a requirement for utility services within an area covered by an areawide contract shall acquire services under that areawide contract unless—

(i) Service is available from more than one supplier, or

(ii) The head of the contracting activity or designee otherwise determines that use of the areawide contract is not advantageous to the Government.

If service is available from more than one supplier, service shall be acquired using competitive acquisition procedures (see 41.202(a)). The determination required by subparagraph (c)(1)(ii) of this section shall be documented in the contract file with an information copy furnished to GSA at the address in 41.301(a).

(2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer and utility supplies, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated by the Federal agency with the supplier.

(3) The contracting officer shall execute the Authorization, and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

(d) *List of areawide contracts.* A list of current GSA areawide contracts is available from the GSA office specified at 41.301(a). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.

(e) *Notification.* Agencies shall provide GSA at the address specified at 41.301(a) a copy of each SF 26 and executed Authorization issued under an areawide contract within 30 days after execution.

41.205 Separate contracts.

(a) In the absence of an areawide contract or interagency agreement (see 41.206), agencies shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority.

(b) If an agency enters into a separate contract, the contracting officer shall document the contract file with the following information:

(1) The number of available suppliers.

(2) Any special equipment, service reliability, or facility requirements and related costs.

(3) The utility supplier's rates, connection charges, and termination liability.

(4) Total estimated contract value (including costs in subparagraphs (b)(2) and (3) of this subsection).

(5) Any technical or special contract terms required.

(6) Any unusual characteristics of services required.

(7) The utility's wheeling or transportation policy for utility service.

(c) If requesting GSA assistance with a separate contract, the requesting agency shall furnish the technical and acquisition data specified in 41.205(b), 41.301, and such other data as GSA may deem necessary.

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to 41.103), may be justified, and is usually required, where any of the following circumstances exist:

(1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service.

(2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Federal Government will be reduced or eliminated;

(3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

41.206 Interagency agreements.

Agencies shall use interagency agreements (e.g., consolidated purchase, joint use, or cross-service agreements)

when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at Subpart 17.5, Interagency Acquisitions under the Economy Act.

SUBPART 41.3—REQUESTS FOR ASSISTANCE

41.301 Requirements.

(a) Requests for delegations of GSA contracting authority assistance with a proposed contract as provided in 41.203, and the submission of other information required by this part, shall be sent or submitted to the General Services Administration (GSA) region in which service is required. The names and locations of GSA regional offices are available from the Public Utilities Division (PPU), Public Buildings Service, Washington, DC 20405.

(b) Requests for contracting assistance for utility services shall be sent not later than 120 days prior to the date new services are required to commence or an existing contract will expire. Requests for assistance shall contain the following information:

(1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule.

(2) A copy of any service proposal or proposed contract.

(3) Copies of all current published or unpublished rates of the utility supplier.

(4) Identification of any unusual factors affecting the acquisition.

(5) Identification of all available sources or methods of supply, an analysis of the cost-effectiveness of each, and a statement of the ability of each source to provide the required service, including the location and a description of each available supplier's facilities at the nearest point of service, and the cost of providing or obtaining necessary backup and other ancillary services.

(c) For new utility service requirements, the agency shall furnish the information in paragraph (a) of this section and the following as applicable:

(1) The date initial service is required.

(2) For the first 12 months of full service, estimated maximum demand, monthly consumption, other pertinent information (e.g., demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(3) Known or estimated time schedule for growth to ultimate requirements.

(4) Estimated ultimate maximum demand and ultimate monthly consumption.

(5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Federal property by the Federal agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services.

(6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services.

(7) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed facilities and estimated construction costs, and its rationale for the charge, e.g., tariff provisions or policies.

(ii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract. When feasible, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility service, the agency shall furnish GSA the information in paragraph (b) of this section and the following, as applicable:

(1) A copy of the most recent 12-months' service invoices.

(2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption, connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption.

(3) An estimate, by month, for the next 12 months, showing the estimated maximum demands, monthly consumption, other pertinent information (e.g., demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A statement noting whether the transformer, or other system components, on either side of the delivery point are owned by the Federal agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

SUBPART 41.4—ADMINISTRATION

41.401 Monthly and annual review.

Agencies shall review utility service invoices on a monthly basis and all utility accounts with annual values exceeding the small purchase threshold on an annual basis. Annual reviews of accounts with annual values beneath the small purchase dollar threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility ser-

vice invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.

41.402 Rate changes and regulatory intervention.

(a) When a change is proposed to rates or terms and conditions of service to the Government, the agency shall promptly determine whether the proposed change is reasonable, justified, and not discriminatory.

(b) If a change is proposed to rates or terms and conditions of service that may be of interest to other Federal agencies, and intervention before a regulatory body is considered justified, the matter shall be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the Federal executive agencies (see 41.301).

(c) Pursuant to 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, if a regulatory body approves a rate change, any rate change shall be made a part of the contract by unilateral contract modification or otherwise documented in accordance with agency procedures. The approved applicable rate shall be effective on the date determined by the regulatory body and resulting rates and charges shall be paid promptly to avoid late payment provisions. Copies of the modification containing the approved rate change shall be sent to the agency's paying office or office responsible for verifying billed amounts (see 41.401).

(d) If the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, any rate change shall be made a part of the contract by contract modification, with copies sent to the agency's paying office or office responsible for verifying billed amounts.

SUBPART 41.5—SOLICITATION PROVISION AND CONTRACT CLAUSES

41.501 Solicitation provision and contract clauses.

(a) Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes provisions and clauses on a "substantially the same as" basis (see 52.101) which permits the contracting officer to prepare and utilize variations of the prescribed provision and clauses in accordance with agency procedures.

(b) The contracting officer shall insert in solicitations for utility services a provision substantially the same as the provision at 52.241-1, Electric Service Territory Compliance Representation, when proposals from alternative electric suppliers are sought.

(c) The contracting officer shall insert in solicitations and contracts for utility services clauses substantially the same as the clauses at—

(1) 52.241-2, Order of Precedence-Utilities;
(2) 52.241-3, Scope and Duration of Contract;
(3) 52.241-4, Change in Class of Service;
(4) 52.241-5, Contractor's Facilities; and
(5) 52.241-6, Service Provisions.

(d) The contracting officer shall insert clauses substantially the same as the clauses listed below in solicitations and contracts under the prescribed conditions—

(1) 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services are subject to a regulatory body. (Except for GSA areawide contracts, the contracting officer shall insert in the blank space provided in the clause the name of the contracting 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 (f) and (i) 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.

SUBPART 41.6—FORMS

41.601 Utility services forms.

(a) If acquiring utility services under other than an areawide contract, a purchase order or an interagency agreement, the Standard Form (SF) 33, Solicitation, Offer and Award; SF 26, Award/Contract; or SF 1447, Solicitation/Contract, shall be used.

(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.

PART 42

CONTRACT ADMINISTRATION

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 arrangements with existing contract administration and contract audit components to preclude duplicate demands being made upon contractors (see 42.102(a) for the directories of cognizant offices). The customer agency and the servicing agency shall enter into a formal cross-servicing arrangement when the volume of work or other circumstances warrants a formal understanding.

(b) Multiple reviews, inspections, and examinations of a 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 Defense Logistics Agency, Attn: DLA-AO, Cameron Station, Alexandria, Virginia, 22304-6100. Questions regarding audit offices may be referred to the Defense Contract Audit Agency, Attn: OTD, Cameron Station, Alexandria, Virginia, 22304-6178. Agencies having a field contract administration or audit cross-servicing capability shall arrange for identification of this capability (including changes as they occur) in the appropriate directory by contacting one of these offices.

(b) Services may be obtained by direct request to the cognizant contract administration or audit component indicated in the applicable directory or as specified in a formal cross-servicing arrangement (see 42.101(a)).

(c) Except for requests submitted under formal cross-servicing arrangements, requests for services from Government agencies may be declined on a case-by-case basis if resources are inadequate to accomplish delegated tasks, provided the decision is made by an official above the level of the contract administration office, or as otherwise provided in agency regulations.

(d) Contract administration and audit services will be performed using the procedures of the servicing agency unless formal agreements between agencies provide otherwise.

(e) Both the requesting and servicing activities are responsible for prudent use of the services provided under either formal or informal interagency cross-servicing arrangements. When it is appropriate, servicing activities shall counsel requesting agencies or contracting offices concerning the desirability and practicality of relaxing or waiving controls and surveillance that may not be necessary to ensure satisfactory contract performance.

SUBPART 42.2—ASSIGNMENT OF CONTRACT ADMINISTRATION

42.200 Scope of subpart.

This subpart prescribes policies and procedures for (a) assigning, retaining, or reassigning contract administration responsibility, (b) withholding normal functions or delegating additional functions when assigning contracts for administration, and (c) requesting and performing supporting contract administration. Subpart 42.3 lists both the normal contract administration functions and those requiring specific authorization by the contracting office.

42.201 Definition.

"Supporting contract administration" means performance of specific contract administration functions by another contract administration office (CAO) as required by (a) the CAO to which a contract is assigned for administration or (b) the contracting office retaining a contract for administration.

42.202 Assignment of contract administration.

(a) *Authority.* Except as provided in paragraph (b) below, assignment of a contract to a CAO for administration automatically carries with it the authority to perform all of the normal functions listed in 42.302(a) to the extent that those functions apply to the contract. The CAO has authority to perform the functions requiring specific authorizations, listed in 42.302(b), only to the extent specified by the contracting office. No other function shall be performed by the CAO unless delegated as provided under 42.202(c).

(b) *Withholding normal functions.* In assigning a contract for administration by a CAO, the contracting office may withhold individual functions among those listed in 42.302(a) if—

(1) Their retention by the contracting office is required by (i) the contracting agency's agency-level acquisition regulations or (ii) a formal interagency cross-servicing arrangement (see 42.101(a) and 42.102(b)); or

(2) It is clear, after consultation with the CAO when appropriate, that they can best be performed by the contracting office and the decision to withhold them is approved above the contracting officer's level.

(c) *Delegating additional functions.* For individual contracts or groups of contracts, the contracting office may delegate to the CAO functions not listed in 42.302; *provided,* that—

(1) Prior coordination with the CAO ensures the availability of required resources;

(2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and

(3) The delegation does not require the CAO to undertake new or follow-on acquisitions.

(d) *Transmittal and documentation.* When assigning a contract for administration by a CAO, the contracting officer shall—

(1) Enter on the contract the name and address of the CAO designated to administer it;

(2) Provide any special instructions, including any specific authorization to perform functions listed in 42.302(b), in an accompanying letter to the CAO;

(3) Include, along with the contract furnished to the CAO, copies of all contracting agency regulations or directives that are (i) incorporated into the contract by reference or (ii) otherwise necessary to administer the contract, unless copies have been previously provided; and

(4) Advise the contractor (and other activities as appropriate) of any functions withheld or additional functions delegated in the special instructions under subparagraph (2) above.

(e) *Contract administration office responsibilities.* For each contract assigned for administration, the CAO shall—

(1) Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for any functions specifically withheld under paragraph (b) above;

(2) Perform the functions listed in 42.302(b) to the extent that they apply and are specifically authorized by the contracting office;

(3) Serve as a focal point for inquiries and keep the contracting office and other interested activities advised concerning all pertinent matters related to administration of the contract;

(4) Request supporting contract administration under 42.204 when it is required; and

(5) Reassign contract administration under 42.206(a) if reassignment is required.

42.203 Retention of contract administration.

(a) Contracting offices shall retain for administration any contract (1) not requiring the performance of contract administration functions (see 42.302) at or near contractor facilities, or (2) for which retention by the contracting office is prescribed by agency acquisition regulations. However, 30.601(a) and (b) require that retained contracts to which Cost Accounting Standards (CAS) apply be assigned for

CAS administration only. Instructions for marking and distributing these contracts are provided in 4.201(c).

(b) Contracting offices or CAO's may request supporting contract administration under 42.204 for contracts for which they have contract administration responsibility. However, if a substantial proportion of the normal contract administration functions listed in 42.302(a) are to be requested, an official above the contracting officer's level shall review the validity of retaining administration while requesting extensive supporting contract administration.

42.204 Supporting contract administration.

(a) A CAO assigned a contract for administration under 42.202 or a contracting office retaining administration under 42.203 may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall (1) be in writing, (2) clearly state the specific functions to be performed, and (3) be accompanied by a copy of pertinent contractual and other necessary documents.

(b) The prime contractor is responsible for managing its subcontracts. The CAO's concern with subcontracts is normally limited to evaluating the prime contractor's management of them (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless (1) the Government would otherwise incur undue cost, (2) successful completion of the prime contract is threatened, or (3) it is authorized under paragraph (c) below or elsewhere in this regulation.

(c) For major system acquisitions (see Part 34), the contracting officer may designate certain high-risk or critical subsystems or components for special surveillance (see 44.205) in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner fully consistent with the policy of calling upon the cognizant CAO to perform contract administration functions at a contractor's facility (see Subpart 42.1).

42.205 Designation of the paying office.

If the information is available, the contracting officer shall enter on the contract the name and address of the office designated under agency procedures to make payments on the contract. Unless agency acquisition regulations otherwise provide, the assignment of contract administration to a CAO does not affect the designation of the paying office.

42.206 Reassignment of contract administration.

(a) The administrative contracting officer at the CAO of initial assignment shall reassign a contract for administration when the need for reassignment results from (1) an incorrect initial assignment, (2) organizational transfer of the cognizant CAO, (3) establishment or disestablishment of a CAO, or (4) a change in a CAO's geographical responsibility.

(b) The contracting officer at the contracting office shall reassign a contract for administration when reasons other than those in paragraph (a) above make reassignment appropriate.

(c) To reassign a contract, the responsible contracting officer shall use a unilateral contract modification. The CAO of initial assignment shall transfer the contract file and necessary supporting documents to the successor CAO.

(d) When warranted by a change in circumstances and approved at a higher level, a contracting officer may recall a contract or function previously assigned for administration.

SUBPART 42.3—CONTRACT ADMINISTRATION OFFICE FUNCTIONS

42.301 General.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration functions in accordance with this regulation, the contract terms, and, unless otherwise 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 15.8 and, when negotiation will be accomplished by the contracting officer, furnish comments and recommendations to that officer.

(5) Negotiate forward pricing rate agreements (see 15.809).

(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)—

(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

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 52.230-2, 52.230-3, and 52.230-5.

(12) Review and approve or disapprove the contractor's requests for payments under the progress payments clause.

(13) Make payments on assigned contracts when prescribed in agency acquisition regulations (see 42.205).

(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 certificates.

(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;

(ii) Ensure required screening of facility items before acquisition by the contractor;

(iii) Approve use of facilities on a noninterference basis in accordance with the clause at 52.245-9, Use and Charges;

(iv) Ensure payment by the contractor of any rental due; and

(v) 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,

business and small disadvantaged business concerns (see Part 19).

(c) While cognizant Government or contractor personnel may request the contracting officer to arrange for orientation, it is up to the contracting officer to decide whether a postaward orientation in any form is necessary.

(d) Maximum benefits will be realized when orientation is conducted promptly after award.

42.502 Selecting contracts for postaward orientation.

When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, as a minimum, the—

(a) Nature and extent of the preaward survey and any other prior discussions with the contractor;

(b) Type, value, and complexity of the contract;

(c) Complexity and acquisition history of the product or service;

(d) Requirements for spare parts and related equipment;

(e) Urgency of the delivery schedule and relationship of the product or service to critical programs;

(f) Length of the planned production cycle;

(g) Extent of subcontracting;

(h) Contractor's performance history and experience with the product or service;

(i) Contractor's status, if any, as a small business or small disadvantaged business concern;

(j) Contractor's performance history with small business and small disadvantaged business subcontracting programs;

(k) Safety precautions required for hazardous materials or operations; and

(l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.

42.503 Postaward conferences.

42.503-1 Postaward conference arrangements.

(a) The contracting officer who decides that a conference is needed is responsible for—

(1) Establishing the time and place of the conference;

(2) Preparing the agenda, when necessary;

(3) Notifying appropriate Government representatives (e.g., contracting/contract administration office) and the contractor;

(4) Designating or acting as the chairperson;

(5) Conducting a preliminary meeting of Government personnel; and

(6) Preparing a summary report of the conference.

(b) When the contracting office initiates a conference, the arrangements may be made by that office or, at its request, by the contract administration office.

42.503-2 Postaward conference procedure.

The chairperson of the conference shall conduct the meeting. Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract. The contracting officer may make commitments or give directions within the scope of the contracting officer's authority and shall put in writing and sign any commitment or direction, whether or not it changes the contract. Any change to the contract that results from the postaward conference shall be made only by a contract modification (see 43.101) referencing the applicable terms of the contract. Participants without authority to bind the Government shall not take action that in any way alters the contract. The chairperson shall include in the summary report (see 42.503-3 below) all information and guidance provided to the contractor.

42.503-3 Postaward conference report.

The chairperson shall prepare and sign a report of the postaward conference. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions. The chairperson shall furnish copies of the report to the contracting office, the contract administration office, the contractor, and others who require the information.

42.504 Postaward letters.

In some circumstances, a letter or other written form of communication to the contractor may be adequate postaward orientation (in lieu of a conference). The letter should identify the Government representative responsible for administering the contract and cite any unusual or significant contract requirements. The rules on changes to the contract in 42.503-2 also apply here.

42.505 Postaward subcontractor conferences.

(a) The prime contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite Government representatives to a conference with subcontractors, or the Government may request that the prime contractor initiate a conference with subcontractors. The prime contractor should ensure that representatives from involved contract administration offices are invited.

(b) Government representatives (1) must recognize the lack of privity of contract between the Government and subcontractors, (2) shall not take action that is inconsistent with or alters subcontracts, and (3) shall ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor in the same manner as described in 42.503-2.

SUBPART 42.6—CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

42.601 General.

Contractors with more than one operational location (e.g., division, plant, or subsidiary) often have corporate-wide policies, procedures, and activities requiring Government review and approval and affecting the work of more than one administrative contracting officer (ACO). In these circumstances, effective and consistent contract administration may require the assignment of a corporate administrative contracting officer (CACO) to deal with corporate management and to perform selected contract administration functions on a corporate-wide basis.

42.602 Assignment and location.

(a) A CACO may be assigned only when (1) the contractor has at least two locations with resident ACO's or (2) the need for a CACO is approved by the agency head or designee (for this purpose, a nonresident ACO will be considered as resident if at least 75 percent of the ACO's effort is devoted to a single contractor). One of the resident ACO's may be designated to perform the CACO functions, or a full-time CACO may be assigned. In determining the location of the CACO, the responsible agency shall take into account such factors as the location(s) of the corporate records, corporate office, major plant, cognizant government auditor, and overall cost effectiveness.

(b) A decision to initiate or discontinue a CACO assignment should be based on such factors as (1) the benefits of coordination and liaison at the corporate level, (2) the volume of Government sales, (3) the degree of control exercised by the contractor's corporate office over Government-oriented lower-tier operating elements, and (4) the impact of corporate policies and procedures on those elements.

(c) Responsibility for assigning a CACO shall be determined as follows:

(1) When all locations of a corporate entity are under the contract administration cognizance of a single agency, that agency is responsible.

(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest unliquidated dollar balance of affected contracts). In such cases, agencies may sometimes also consider geographic location.

(d) The directory of contract administration components referenced in 42.102(a) includes a listing of CACO's and the contractors for which they are assigned responsibility. When the directory indicates that the services of a CACO are available, the provisions of Subpart 42.1 apply to the CACO functions.

42.603 Responsibilities.

(a) The CACO shall perform, on a corporate-wide basis, the contract administration functions (see Subpart 42.3) as designated by the responsible agency. Typical CACO functions include (1) the determination of final indirect cost rates for cost-reimbursement contracts, (2) establishment of advance agreements or recommendations on corporate/home office expense allocations, and (3) administration of Cost Accounting Standards (CAS) applicable to corporate-level and corporate-directed accounting practices.

(b) The CACO shall—

(1) Fully utilize the cognizant contract audit agency financial and advisory accounting services, including (i) advice regarding the acceptability of corporate-wide policies and (ii) advisory audit reports;

(2) Keep cognizant ACO's and auditors informed of important matters under consideration and determinations made; and

(3) Solicit their advice and participation as appropriate.

SUBPART 42.7—INDIRECT COST RATES

42.700 Scope of subpart.

This subpart prescribes policies and procedures for establishing (a) billing rates and (b) final indirect cost rates.

42.701 Definitions.

"Billing rate" means an indirect cost rate (a) established temporarily for interim reimbursement of incurred indirect costs and (b) adjusted as necessary pending establishment of final indirect cost rates.

"Business unit" (see 31.001).

"Final indirect cost rate" means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor's fiscal year (unless the parties decide upon a different period) to which it applies. In the case of cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

"Indirect cost" (see 31.001 and 31.203).

"Indirect cost rate" means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period.

42.702 Purpose.

(a) Establishing final indirect cost rates under this subpart provides—

(1) Uniformity of approach with a contractor when more than one contract or agency is involved;

(2) Economy of administration; and

(3) Timely settlement under cost-reimbursement contracts.

(b) Establishing billing rates provides a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established.

42.703 Policy.

(a) A single agency (see 42.705-1(a)) shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute.

(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) Take into consideration 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 (see 31.103(b)).

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.

42.705 Final indirect cost rates.

Final indirect cost rates shall be established on the basis of (a) contracting officer determination procedure (see 42.705-1) or (b) auditor determination procedure (see 42.705-2).

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 (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).

(6) Nonprofit organizations other than educational and state and local governments (see 42.705-5).

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer and, if required by agency procedures, to the cognizant 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 submit to the contracting officer an advisory audit report (i) identifying any relevant advance agreements or restrictive terms of specific con-

tracts and (ii) including the information required by 15.805-5(e).

(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.

(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.

42.705-2 Auditor determination procedure.

(a) *Applicability and responsibility.* (1) The cognizant Government auditor shall establish final indirect cost rates for business units not covered in 42.705-1(a).

(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) Prepare an audit report including the information required by 15.805-5(e);

(iv) 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

(v) 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) provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.102(a)).

(3) The cognizant agency shall establish the billing rates and final indirect cost rates at the educational institution, consistent with the requirements of this subpart, Subpart 31.3, and the OMB Circular. The agency shall follow 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

PART 44

SUBCONTRACTING POLICIES AND PROCEDURES

TABLE OF CONTENTS

44.000 Scope of part.

SUBPART 44.1—GENERAL
44.101 Definitions.
44.102 Policy.

SUBPART 44.2—CONSENT TO SUBCONTRACTS
44.201 Consent requirements.
44.201-1 Fixed-price prime contracts.
44.201-2 Cost-reimbursement and letter prime contracts.
44.201-3 Other prime contracts.
44.201-4 Contractor use of Government sources.
44.202 Contracting officer's evaluation.
44.202-1 Responsibilities.
44.202-2 Considerations.
44.203 Consent limitations.
44.204 Contract clauses.

SUBPART 44.3—CONTRACTORS' PURCHASING SYSTEMS REVIEWS
44.301 Objective.
44.302 Requirements.
44.303 Extent of review.
44.304 Surveillance.
44.305 Granting, withholding, or withdrawing approval.
44.305-1 Responsibilities.
44.305-2 Notification.
44.305-3 Withholding or withdrawing approval.
44.306 Disclosure of approval status.
44.307 Reports.

PART 44

SUBCONTRACTING POLICIES AND PROCEDURES

44.000 Scope of part.

This part prescribes policies and procedures for consent to subcontracts and for review, evaluation, and approval of contractors' purchasing systems.

SUBPART 44.1—GENERAL

44.101 Definitions.

"Approved purchasing system" means a contractor's purchasing system that has been reviewed and approved in accordance with this part.

"Consent to subcontract" means the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

"Contractor," as used in this part, means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.

"Contractor purchasing system review (CPSR)" means the complete evaluation of a contractor's purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance.

"Facilities" (see 45.301).

"Subcontract," as used in this part, means any contract as defined in Subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor," as used in this part, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

44.102 Policy.

(a) Consent to subcontracts is required under 44.201 when the subcontract work is complex, the dollar value is substantial, or the Government's interest is not adequately protected by competition and the type of prime contract or subcontract.

(b) Consent requirements may be waived when the contractor's purchasing system has been reviewed and approved in accordance with Subpart 44.3.

SUBPART 44.2—CONSENT TO SUBCONTRACTS

44.201 Consent requirements.

44.201-1 Fixed-price prime contracts.

(a) Consent to subcontracts is not required under prime contracts that are firm-fixed-price or fixed-price with economic price adjustment provisions. (See paragraph (c) below for unpriced modifications.)

(b) If the contractor has an approved purchasing system—

(1) Consent to subcontracts is not required under other fixed-price prime contracts (but see subparagraph (b)(2) of this subsection); and

(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime contract for airframes).

(c) If the contractor does not have an approved purchasing system, consent to the subcontracts specified in paragraph (d) below is required—

(1) Under fixed-price incentive and fixed-price redeterminable prime contracts; and

(2) Under prime contracts that are firm-fixed-price or fixed-price with economic price adjustment provisions, only when a new subcontract results from an unpriced modification to the prime contract.

(d) Under prime contracts required to include the clause at 52.244-1, Subcontracts (Fixed-Price Contracts), consent is required under paragraph (c) of this subsection for any subcontract that is—

(1) Estimated to be over $100,000 (or less if the contract clause has been modified as permitted by its preface); or

(2) One of a number of subcontracts, under the prime contract, with a single subcontractor for the same or related supplies or services, which in the aggregate are estimated to be over $100,000 (or less, if the contract clause has been modified as permitted by its preface).

44.201-2 Cost-reimbursement and letter prime contracts.

(a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for sub-

contracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than $10,000 or of any items of facilities, or (2) that have experimental, developmental, or research work as one of their purposes

(b) If the contractor does not have an approved purchasing system, consent is also required, under cost-reimbursement and letter prime contracts for (1) cost-reimbursement, time-and-materials, or labor-hour subcontracts and (2) fixed-price subcontracts that exceed either $25,000 or 5 percent of the total estimated cost of the prime contract; except that for DoD, Coast Guard, and NASA, the amount shall be the greater of the small purchase limitation in Part 13 or 5 percent of the total estimated cost of the prime contract.

(c) If the contractor has an approved purchasing system—

(1) Consent is not required for the subcontracts identified in paragraph (b) of this subsection (but see subparagraph (c)(2) of this subsection). However, advance notification is still required by 10 U.S.C. 2306(e) or 41 U.S.C. 254(b); and

(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime contract for airframes).

44.201-3 Other prime contracts.

Except for purchase of raw material or commercial stock items, consent is required for all subcontracts under time-and-material contracts. Consent is required for subcontracts under prime contracts for—

(a) Architect-engineer services; and

(b) Mortuary services, refuse service, or shipment and storage of personal property, when an agency requires prior approval of subcontractors' facilities.

44.201-4 Contractor use of Government sources.

The contracting officer's written authorization for the contractor to purchase from Government sources (see Part 51) constitutes consent.

44.202 Contracting officer's evaluation.

44.202-1 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) is responsible for consent to subcontracts, except when the contracting officer retains the contract for administration or withholds the consent responsibility from delegation to the ACO. In such cases, the contract administration office should assist the contracting office in its evaluation as requested.

(b) The responsible contracting officer shall—

(1) Promptly evaluate the contractor's requests for consent to subcontract;

(2) Obtain assistance in the evaluation from subcontracting, audit, pricing, technical, or other specialists as necessary; and

(3) Notify the contractor in writing of consent or the withholding of consent, including any changes or corrections required.

(c) Designation of a specific subcontractor by the Government or evaluation of subcontracts during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clauses at 52.244-1, 52.244-2, and 52.244-3. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall include a statement in the contract that those requirements have been satisfied. The statement shall identify the specific subcontracts and contain appropriate information concerning the extent to which such requirements are satisfied and/or limited with respect to future changes or revisions in work statement, specifications, or other applicable aspects of the contract that may be subject to change. For fixed-price contracts see 44.204(a)(3).

44.202-2 Considerations.

(a) The contracting officer responsible for consent shall review the request and supporting data and consider the following:

(1) Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any (see Subpart 15.7)?

(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 labor surplus area or small business subcontracting, including, if applicable, its plan for subcontracting with small business concerns and small disadvantaged 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 Consolidated List of Debarred, Suspended, and Ineligible Contractors (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 prices higher than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

44.203 Consent limitations.

(a) The contracting officer's consent to a subcontract or approval of the contractor's purchasing system does not 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) below, 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 contracting officer determines that its use will be in the Government's interest.

(2) The clause shall not be used (i) in solicitations and contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency prescribed clause on approval of subcontractors' facilities is required, or (ii) in architect-engineer contracts.

(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 small purchase limitation in Part 13, 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.

44.302 Requirements.

(a) Except as provided in paragraph (b) below, a CPSR shall be conducted for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $10 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulation). Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the $10 million review level if such action is considered to be in the Government's best interest.

(b) A CPSR shall be conducted by the cognizant contract administration agency (see Subpart 42.3) at least every 3 years for contractors that continue to meet the requirements of paragraph (a) of this section. This review may be accomplished at one time or on a continuing basis. A more frequent review cycle may be established if warranted and special reviews may be conducted when information reveals a deficiency or major change in the contractor's purchasing system, policy, procedures or key personnel.

44.303 Extent of review.

A CPSR requires a complete evaluation of the contractor's purchasing system. The considerations listed in 44.202-2 for consent evaluations of particular subcontracts shall also 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 Procurement 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 labor surplus area concerns and small business concerns, including small disadvantaged business concerns;

(f) Planning, award, and postaward management of major subcontract programs;

(g) Compliance with Cost Accounting Standards in awarding subcontracts;

(h) Appropriateness of types of contracts used (see 16.103); and

(i) Management control systems, including internal audit procedures, to administer progress payments to subcontractors.

44.304 Surveillance.

(a) In the period between complete CPSR's, the ACO shall maintain a sufficient level of surveillance to assure 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.

(a) The cognizant ACO is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system. The ACO shall—

(1) Approve a purchasing system only after a CPSR discloses that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests;

(2) Between CPSR's, determine annually whether there are any significant deviations from approved policies and practices that would indicate a need for a spe-

cial review or new CPSR to decide whether or not to withdraw approval; and

(3) Promptly notify the contractor in writing of the granting, withholding, or withdrawing of approval.

(b) If, upon expiration of approval of the contractor's purchasing system, the ACO has not specifically withheld, continued, or withdrawn approval, the approval shall continue for another 90 days. Any further extension requires written approval at least one level higher than the ACO.

44.305-2 Notification.

(a) The notification granting initial system approval or continuation of system approval shall include—

(1) Identification of the plant or plants where the review was conducted;

(2) The effective date of approval and period for which approval is valid;

(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 not for those subcontracts, if any, selected for special surveillance and identified in the contract Schedule;

(iv) Shall automatically terminate at the end of the approval period (or approval period as extended);

(v) Shall automatically terminate when any significant change occurs in the system unless approved by the ACO; and

(vi) May be withdrawn at any time at the ACO's discretion.

(b) In exceptional circumstances, consent to certain subcontracts or classes of subcontracts may be required even though the contractor's purchasing system has been approved. The system approval notification shall identify 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 15.804);

(2) Implementation of cost accounting standards (see 48 CFR Chapter 99 (appendix B, FAR loose-leaf edition));

(3) Advance notification as required by the clauses prescribed in 44.204; or

(4) Small business subcontracting (see Subpart 19.7).

(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, but shall caution that the Government will not keep the contractor advised of any changes in the approval status. If the proposed subcontractor's purchasing system has not been examined or approved, the contractor shall be so advised.

44.307 Reports.

The ACO shall distribute copies of CPSR reports; notifications granting, continuing, withholding, or withdrawing system approval; and Government recommendations for improvement 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).

PART 45

GOVERNMENT PROPERTY

TABLE OF CONTENTS

45.000 Scope of part.

SUBPART 45.1—GENERAL
45.101 Definitions.
45.102 Policy.
45.103 Responsibility and liability for Government property.
45.104 Review and correction of contractors' property control systems.
45.105 Records of Government property.
45.106 Government property clauses.

SUBPART 45.2—COMPETITIVE ADVANTAGE
45.201 General.
45.202 Evaluation procedures.
45.202-1 Rental equivalents.
45.202-2 Rent.
45.202-3 Other costs and savings.
45.203 Postaward utilization requests.
45.204 Residual value of special tooling and special test equipment.
45.205 Solicitation requirements.

SUBPART 45.3—PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS
45.300 Scope of subpart.
45.301 Definitions.
45.302 Providing facilities.
45.302-1 Policy.
45.302-2 Facilities contracts.
45.302-3 Other contracts.
45.302-4 Contractor use of Government-owned and -operated test facilities.
45.302-5 Standby or layaway requirements.
45.302-6 Required Government property clauses for facilities contracts.
45.302-7 Optional property-related clauses for facilities contracts.
45.303 Providing material.
45.303-1 Policy.
45.303-2 Procedures.
45.304 Providing motor vehicles.
45.305 [Reserved]
45.306 Providing special tooling.
45.306-1 Providing existing special tooling.
45.306-2 Special tooling under cost-reimbursement contracts.
45.306-3 Special tooling under fixed-price contracts.
45.306-4 [Reserved]
45-306-5 Contract clause.
45.307 Providing special test equipment.
45.307-1 General.
45.307-2 Acquiring special test equipment.
45.307-3 Contract clause.
45.308 Providing Government production and research property "as is."
45.308-1 General.
45.308-2 Contract clause.
45.309 Providing Government production and research property under special restrictions.
45.310 Providing agency-peculiar property.
45.311 Providing Government property by transfer.

SUBPART 45.4—CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY
45.400 Scope of subpart.
45.401 Policy.
45.402 Authorizing use of Government production and research property.
45.403 Rental—Use and Charges clause.
45.404 Rent-free use.
45.405 Contracts with foreign governments or international organizations.
45.406 Use of Government production and research property on independent research and development programs.
45.407 Non-Government use of plant equipment.

SUBPART 45.5—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS
45.500 Scope of subpart.
45.501 Definitions.
45.502 Contractor responsibility.
45.502-1 Receipts for Government property.
45.502-2 Discrepancies incident to shipment.
45.503 Relief from responsibility.
45.504 Contractor's liability.
45.505 Records and reports of Government property.
45.505-1 Basic information.

45.505-2 Records of pricing information.
45.505-3 Records of material.
45.505-4 Records of special tooling and special test equipment.
45.505-5 Records of plant equipment.
45.505-6 Special reports of plant equipment.
45.505-7 Records of real property.
45.505-8 Records of scrap or salvage.
45.505-9 Records of related data and information.
45.505-10 Records of completed products.
45.505-11 Records of transportation and installation costs of plant equipment.
45.505-12 Records of misdirected shipments.
45.505-13 Records of property returned for rework.
45.505-14 Reports of Government property.
45.506 Identification.
45.507 Segregation of Government property.
45.508 Physical inventories.
45.508-1 Inventories upon termination or completion.
45.508-2 Reporting results of inventories.
45.508-3 Quantitative and monetary control.
45.509 Care, maintenance, and use.
45.509-1 Contractor's maintenance program.
45.509-2 Use of Government property.
45.510 Property in possession of subcontractors.
45.511 Audit of property control system.

SUBPART 45.6—REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

45.600 Scope of subpart.
45.601 Definitions.
45.602 [Reserved]
45.603 Disposal methods.
45.604 Restrictions on purchase or retention of contractor inventory.
45.605 Contractor-acquired property.
45.605-1 Purchase or retention at cost.
45.605-2 Return to suppliers.
45.605-3 Cost-reimbursement contracts.
45.606 Inventory schedules.
45.606-1 Submission.
45.606-2 Common items.
45.606-3 Acceptance.
45.606-4 Withdrawals.
45.606-5 Instructions for preparing and submitting schedules of contractor inventory.
45.607 Scrap.
45.607-1 General.
45.607-2 Recovering precious metals.
45.608 Screening of contractor inventory.
45.608-1 General.
45.608-2 Standard screening.
45.608-3 Agency screening.
45.608-4 Limited screening.
45.608-5 Special items screening.
45.608-6 Waiver of screening requirements.
45.608-7 Reimbursement of costs for transfer of contractor inventory.
45.608-8 Report of excess personal property (SF 120).
45.609 Donations.
45.610 Sale of surplus contractor inventory.
45.610-1 Responsibility.
45.610-2 Exemptions from sale by GSA.
45.610-3 Proceeds of sale.
45.610-4 Contractor inventory in foreign countries.
45.611 Destruction or abandonment.
45.612 Removal and storage.
45.612-1 General.
45.612-2 Special storage at the contractor's risk.
45.612-3 Special storage at the Government's expense.
45.613 Property disposal determinations.
45.614 Subcontractor inventory.
45.615 Accounting for contractor inventory.

f.o.b. present location (provide specific locations);

(3) Offerors must satisfy themselves that the property is suitable for their use;

(4) The successful offeror shall bear the cost of transporting, installing, modifying, repairing, or otherwise making the property suitable for use; and

(5) Evaluations will be made in accordance with Subpart 45.2 to eliminate any competitive advantage resulting from using the property.

45.308-2 Contract clause.

The contracting officer shall insert the clause at 52.245-19, Government Property Furnished "As Is," in solicitations and contracts when a contract other than a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated and Government production and research property is to be furnished "as is" (see 45.106 for additional clauses that may be required).

45.309 Providing Government production and research property under special restrictions.

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

(1) A requirement for the contractor to reimburse the Government for the fair value of the property at contract completion or termination or within a reasonable time thereafter (for example, the provision may require the contractor to purchase the property at a value determined by appraisal or at a price equal to its acquisition cost less depreciation at a specified rate);

(2) An option for the Government to acquire the underlying land; or

(3) An alternative provision that the agency head considers adequate to protect the Government's interests.

(b) If patent or other proprietary rights of a contractor may restrict the disposal of Government production and research property, the condition in either subparagraph (a)(1) or (a)(3) above shall be satisfied before the property is provided.

(c) If Government production and research property is not available to all offerors, the solicitation shall identify the offerors to whom the property is available.

45.310 Providing agency-peculiar property.

(a) Agency-peculiar property may be furnished to contractors when necessary for use as a standard or model, for testing the contractor's end item where suitable commercial equipment is not available, to establish equipment compatibility, or for other reasons that the contracting officer determines to be in the Government's interest.

(b) Agency-peculiar property may be furnished under a facilities contract, a supply or service contract containing the appropriate Government Property clause, or a special bailment agreement.

(c) Contracting officers shall provide special instructions for security, liability, maintenance, and/or property control, when agency-peculiar property requires special handling or safeguards.

45.311 Providing Government property by transfer.

Government property shall be transferred only if there is a requirement under the gaining contract. Transfers of Government property, as Government-furnished property, shall be documented by a modification to the gaining contract. A modification or other documentation listing all items of property transferred is required for the losing contract.

SUBPART 45.4—CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

45.400 Scope of subpart.

This subpart prescribes policies and procedures for contractor use and rental of Government production and research property.

45.401 Policy.

In performing Government contracts or subcontracts, Government production and research property in the possession of contractors or subcontractors shall be used to the greatest possible extent, provided that a competitive advantage is not conferred on the contractor or its subcontractors (see Subpart 45.2). Prior approval of the contracting officer having cognizance of Government production and research property is required for any use, whether Government or non-Government, to ensure that the Government receives adequate consideration. Government use is defined as use in support of U.S. Government contracts and non-Government use is all other use (including direct commercial sales to domestic and foreign customers). As a general rule, Government use is on a rent-free basis. Non-Government use is on a rental basis. When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor for non-Government use.

45.402 Authorizing use of Government production and research property.

(a) Contracting officers who believe it to be in the Government's interest for a prospective contractor or subcontractor to use existing Government production and research property shall authorize such use in the contract. The contracting officer shall confirm the availability of the property before authorizing its use on either a rental or rent-free basis.

(b) Unless the solicitation provides for the successful offeror to use Government production and research property in the offeror's possession, the solicitation shall require

any offeror desiring to use such property to request the written concurrence of the contracting officer cognizant of the property. To preclude a competitive advantage, the contracting officer's concurrence should include any information required by Subpart 45.2.

(c) The contracting officer shall review the contractor's request for non-Government use of Government production and research property when the property is no longer required for performing Government contracts but is retained for spares or for mobilization and readiness requirements. (Also see 45.302-1(b)(3).)

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges. If the agency head or designee determines it to be in the Government's interest, rent for classes of production and research property other than plant equipment identified in item (ii) of Table I of the clause at 52.245-9, Use and Charges, may be charged on the basis of use rather than the rental period, or on some other equitable basis. In such cases, the clause at 52.245-9, Use and Charges, shall be appropriately modified.

(b) The contracting officer cognizant of the Government production and research property shall ensure the collection of any rent due the Government from the contractor.

45.404 Rent-free use.

(a) The rental required by 45.403 above does not apply to the following Government production and research property:

(1) That which is located in Government-owned, contractor-operated plants operated on a cost-plus-fee basis (but see 45.405).

(2) That which is left in place or installed on contractor-owned property for mobilization or future Government production purposes. However, rent computed in accordance with 45.403(a) shall apply to that portion of property or its capacity used or authorized for use.

(3) Items of equipment that are part of a general program approved by the Federal Emergency Management Agency (FEMA) and present unusual problems in relation to the time required for their preparation for shipment, installation, and operation because of size, complexity, or performance characteristics.

(4) Any other Government production and research property that may be excepted by FEMA.

(b) The contracting officer cognizant of the Government production and research property may grant written authorization for rent-free use of production and research property in the possession of nonprofit organizations when used for research, development, or educational work and—

(1) The use of the property is directly or indirectly in the national interest;

(2) The property will not be used for the direct benefit of a profitmaking organization; and

(3) The Government receives some direct benefit (such as rights to use the results of the work without charge) from its use. As a minimum, the contractor shall furnish a report on the work for which the property was provided.

(c) If the contracting officer has obtained adequate price or other consideration, Government production and research property may also be used rent-free under—

(1) Prime contracts that specifically authorize such use without charge; and

(2) Subcontracts of any tier, if the contracting officer awarding the prime contract has specifically authorized rent-free use by the subcontractor.

(d) After award, a contract may be modified to eliminate rent for using Government production and research property. In this case, the contract shall be equitably adjusted to reflect the elimination of rent and any other amount attributable thereto.

45.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use Government production and research property shall be processed and costs shall be recovered or rental charged in accordance with agency procedures.

45.406 Use of Government production and research property on independent research and development programs.

The contracting officer cognizant of Government production and research property in the possession of a contractor may authorize a contractor to use the property on an independent research and development (IR&D) program, if—

(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(b) The contractor agrees not to include as a charge against any Government contract the rental value of the property used on its IR&D program; and

(c) A rental charge for the portion of the contractor's IR&D program cost allocated to commercial work, computed in accordance with 45.403, is deducted from any agreed-upon Government share of the contractor's IR&D costs.

45.407 Non-Government use of plant equipment.

Requirements for authorization and dollar thresholds for non-Government use of specific types of plant equipment shall be set at the agency level. The following general policies and requirements shall be used by agencies in supplementing this section:

(a) The contracting officer's advance written approval

or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

"Work-in-process" (see 45.501).

45.602 [Reserved]

45.603 Disposal methods.

An agency may exercise its rights to require delivery of any contractor inventory. This includes transfers of Government property to another Government contract. If the agency does not exercise these rights, the contractor inventory shall be disposed of by one of the following methods in the priority indicated:

(a) Purchase or retention at cost by prime contractor or subcontractor of contractor-acquired property (see 45.605-1).

(b) Return of contractor-acquired property to suppliers (see 45.605-2).

(c) Use within the Government through the use of prescribed screening procedures (see 45.608).

(d) Donation to eligible donees (see 45.609).

(e) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor)(see 45.610).

(f) Donation to public bodies in lieu of abandonment (see 45.611).

(g) Abandonment or destruction (see 45.611).

45.604 Restrictions on purchase or retention of contractor inventory.

A contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory is subject to any contract provisions and to applicable Government restrictions on the disposition of property that is classified for security reasons, possesses military offensive or defensive characteristics, or is dangerous to public health, safety, or welfare.

45.605 Contractor-acquired property.

45.605-1 Purchase or retention at cost.

(a) The plant clearance officer shall encourage contractors to purchase or retain contractor-acquired property at cost. However, the contractor shall not include any part of the cost of property purchased or retained in any claim for reimbursement against the Government. Under cost-reimbursement contracts, appropriate adjustments shall be made for previously reimbursed costs. When the property is for use on a continuing Government contract or commercial operation, handling and transportation charges may be considered an allowable cost (included in the contractor's settlement proposal as "other costs" in the case of a termination), provided that the charges are reasonable.

(b) If a contractor purchases or retains contractor inventory for use on a continuing Government contract that is subsequently terminated, the property shall be allocated to the continuing contract, even though its purchase would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on other Government contracts, the contractor terminates subcontracts under the other Government contracts, reasonable termination charges of the subcontracts may be included as an allocable cost under the contract that generated the excess property.

45.605-2 Return to suppliers.

The plant clearance officer shall encourage contractors to return allocable quantities of contractor-acquired property to suppliers for full credit less either the supplier's normal restocking charge or 25 percent of the cost, whichever is less. Contractors may be reimbursed for reasonable transportation, handling, and restocking charges, but not for the cost of the returned property. Under cost-reimbursement contracts, appropriate adjustments shall be made for costs previously reimbursed. A contractor's property control system shall include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible.

45.605-3 Cost-reimbursement contracts.

Under cost-reimbursement contracts, property purchased or retained by the contractor or returned to suppliers shall not be reported on inventory schedules. The cognizant contract administration office, in coordination with the cognizant auditor, shall periodically review such transactions to protect the Government's interests.

45.606 Inventory schedules.

45.606-1 Submission.

(a) When property is no longer needed to perform the contract, the contractor shall prepare inventory schedules in accordance with the contract and instructions from the plant clearance officer and shall promptly submit the schedules to the cognizant contract administration office. Detailed instructions and requirements governing preparing and submitting inventory schedules are contained in 45.606-5. Agencies may use special inventory schedules for intra-agency screening of particular categories of contractor inventory (e.g., plant equipment of $5,000 or more). Such schedules may also be used for screening with other Federal agencies after coordination with GSA.

(b) The certificate on the inventory schedule must be executed when contractor inventory is reported. The prime contractor shall execute this certificate, except that for subcontractor termination inventory the subcontractor shall execute the certificate.

45.606-2 Common items.

The contractor's inventory schedules shall not include any items that the contractor can reasonably use on other work without financial loss. However, the schedules shall include common items specified by the contracting officer for delivery to the Government or which are Government-furnished property.

45.606-3 Acceptance.

(a) Within 15 days after receipt of inventory schedules, the plant clearance officer shall review them, determine their acceptability, and request the contractor to correct any inadequate listings. Inventory schedules should not be rejected if the information is adequate for disposal purposes, even if complete cost data on work-in-process are not available. Rejection shall be limited, when possible, to specific items and shall not necessarily render the entire schedule unacceptable. If substantial errors are discovered that were not apparent on termination inventory schedules previously found acceptable, the final phase of a plant clearance period shall not begin until corrected schedules have been submitted, unless the plant clearance officer determines otherwise.

(b) The plant clearance officer, with the assistance of other Government personnel as necessary, shall verify that (1) the inventory is present at the location indicated, (2) the inventory is allocable to the contract, (3) the quantity and condition are correctly stated, and (4) the contractor has endeavored to divert items to other work. The verification may be recorded on SF 1423, Inventory Verification Survey. The plant clearance officer shall require the contractor to promptly correct any discrepancies on the inventory schedule or resubmit the schedule as necessary.

45.606-4 Withdrawals.

If, before final disposition, the contractor becomes aware that any items of contractor-acquired property listed in the inventory schedules are usable on other work without financial loss, the contractor shall purchase the items or retain them at cost and amend the inventory schedules and claim accordingly. Upon notifying the plant clearance officer, the contractor may purchase or retain at cost any other items of property included in the inventory schedules. Withdrawal of any Government-furnished property is subject to the written approval of the plant clearance officer. If withdrawal is requested after screening has started, the plant clearance officer shall notify immediately the appropriate screening activity.

45.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(a) *Use of forms.* The contractor shall report contractor inventory on the following forms, as appropriate.

(1) *Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form) and SF 1427, Inventory Schedule A—Continuation Sheet.* These forms are to be used to list metals in raw or primary form as furnished by the mill and on which there has been no subsequent fabricating operations. They are also to be used for listing nonmetallic materials, such as plastics, rubber, or lumber, in mill product form. They are not to be used for listing castings or forgings, which shall be reported on SF 1428.

(2) *Standard Form 1428, Inventory Schedule B and SF 1429, Inventory Schedule B—Continuation Sheet.* These forms are to be used to list all contractor inventory (including plant equipment) for which Standard Forms 1426, 1430, 1432, or 1434 are not appropriate. However, agencies may direct listing of particular categories of plant equipment on agency forms when standard forms are not appropriate. (See 45.505-6 and 45.606-1(a).)

(3) *Standard Form 1430, Inventory Schedule C (Work in Process) and SF 1431, Inventory Schedule C—Continuation Sheet.* These forms are to be used to list all work in process.

(4) *Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment) and SF 1433, Inventory Schedule D—Continuation Sheet.* These forms are to be used to list such contractor inventory as dies, jigs, gauges, fixtures, special tools, and special test equipment.

(5) *Standard Form 1434, Termination Inventory Schedule E.* This is a short form to be used with SF 1438, Settlement Proposal (Short Form). Applicability is limited to termination settlement proposals under $10,000.

(b) *Submission.* (1) Contractors shall report contractor inventory promptly after determining it to be excess, unless a later date is authorized by the contract or the plant clearance officer.

(2) Unless contract provisions or agency regulations prescribe otherwise, 12 copies of inventory schedules listing serviceable or salvable items and 6 copies of inventory schedules listing scrap items shall be presented to the plant clearance officer at the cognizant contract administration office.

(3) The standard inventory schedule forms may be reproduced by contractors, provided no change is made in size or format. Machine listings may be submitted if all essential elements of data are included and the appropriate signed standard form is submitted as a cover sheet.

(4) The appropriate continuation sheet shall be used when more than one page is needed.

(5) Partial schedules may be submitted when they cover substantial portions of a particular property classification of contractor inventory. The first page of each schedule submitted shall be identified as partial or final in the title block of the schedule.

PART 47

TRANSPORTATION

TABLE OF CONTENTS

47.000 Scope of part.
47.001 Definitions.
47.002 Applicability.

SUBPART 47.1—GENERAL
47.101 Policies.
47.102 Transportation insurance.
47.103 Transportation Documentation and Audit Regulation (TDA).
47.104 Government rate tenders under section 10721 of the Interstate Commerce Act.
47.104-1 Government freight.
47.104-2 Fixed-price contracts.
47.104-3 Cost-reimbursement contracts.
47.104-4 Contract clauses.
47.104-5 Citation of Government rate tenders.
47.105 Transportation assistance.

SUBPART 47.2—CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES
47.200 Scope of subpart.
47.201 Definitions.
47.202 Presolicitation planning.
47.203 Transportation term contracts.
47.204 Single-movement contracts.
47.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.
47.206 Preparation of solicitations and contracts.
47.207 Solicitation provisions, contract clauses, and special requirements.
47.207-1 Qualifications of offerors.
47.207-2 Duration of contract and time of performance.
47.207-3 Description of shipment, origin, and destination.
47.207-4 Determination of weights.
47.207-5 Contractor responsibilities.
47.207-6 Rates and charges.
47.207-7 Liability and insurance.
47.207-8 Government responsibilities.
47.207-9 Annotation and distribution of shipping and billing documents.

SUBPART 47.3—TRANSPORTATION IN SUPPLY CONTRACTS
47.300 Scope of subpart.
47.301 General.
47.301-1 Responsibilities of contracting officers.
47.301-2 Participation of transportation officers.
47.301-3 Using the Defense Transportation System (DTS).
47.302 Place of delivery—f.o.b. point.
47.303 Standard delivery terms and contract clauses.
47.303-1 F.o.b. origin.
47.303-2 F.o.b. origin, contractor's facility.
47.303-3 F.o.b. origin, freight allowed.
47.303-4 F.o.b. origin, freight prepaid.
47.303-5 F.o.b. origin, with differentials.
47.303-6 F.o.b. destination.
47.303-7 F.o.b. destination, within consignee's premises.
47.303-8 F.a.s. vessel, port of shipment.
47.303-9 F.o.b. vessel, port of shipment.
47.303-10 F.o.b. inland carrier, point of exportation.
47.303-11 F.o.b. inland point, country of importation.
47.303-12 Ex dock, pier, or warehouse, port of importation.
47.303-13 C. & f. destination.
47.303-14 C.i.f. destination.
47.303-15 F.o.b. designated air carrier's terminal, point of exportation.
47.303-16 F.o.b. designated air carrier's terminal, point of importation.
47.303-17 Contractor-prepaid commercial bills of lading, small package shipments.
47.304 Determination of delivery terms.
47.304-1 General.
47.304-2 Shipments within CONUS.
47.304-3 Shipments from CONUS for overseas delivery.
47.304-4 Shipments originating outside CONUS.
47.304-5 Exceptions.
47.305 Solicitation provisions, contract clauses, and transportation factors.
47.305-1 Solicitation requirements.

47.305-2 Solicitations f.o.b. origin and f.o.b. destination—lowest overall cost.
47.305-3 F.o.b. origin solicitations.
47.305-4 F.o.b. destination solicitations.
47.305-5 Destination unknown.
47.305-6 Shipments to ports and air terminals.
47.305-7 Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.
47.305-8 Consolidation of small shipments and the use of stopoff privileges.
47.305-9 Commodity description and freight classification.
47.305-10 Packing, marking, and consignment instructions.
47.305-11 Options in shipment and delivery.
47.305-12 Delivery of Government-furnished property.
47.305-13 Transit arrangements.
47.305-14 Mode of transportation.
47.305-15 Loading responsibilities of contractors.
47.305-16 Shipping characteristics.
47.305-17 Returnable cylinders.
47.306 Transportation factors in the evaluation of offers.
47.306-1 Transportation cost determinations.
47.306-2 Lowest overall transportation costs.
47.306-3 Adequacy of loading and unloading facilities.

SUBPART 47.4—AIR TRANSPORTATION BY U.S.-FLAG CARRIERS

47.401 Definitions.
47.402 Policy.
47.403 Guidelines for implementation of the Fly America Act.
47.403-1 Availability and unavailability of U.S.-flag air carrier service.
47.403-2 Air transport agreements between the United States and foreign governments.
47.403-3 Disallowance of expenditures.
47.404 Air freight forwarders.
47.405 Contract clause.

SUBPART 47.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

47.500 Scope of subpart.
47.501 Definitions.
47.502 Policy.
47.503 Applicability.
47.504 Exceptions.
47.505 Construction contracts.
47.506 Procedures.
47.507 Contract clauses.

tracts, shipments normally shall be made on GBL's. However, if it is advantageous to the Government, the contracting officer may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor shall use a commercial bill of lading and be reimbursed for the direct and actual transportation cost as a separate item in the invoice. The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government in this type of arrangement obtains the benefit of section 10721 rates.

47.104-3 Cost-reimbursement contracts.

(a) The Interstate Commerce Commission has ruled that section 10721 rates may be applied to shipments other than those made by the Government if the total benefit accrues to the Government; i.e., the Government must pay the charges or directly and completely reimburse the party that initially bears the freight charges. Therefore, section 10721 rates may be used for shipments moving on commercial bills of lading in cost-reimbursement contracts under which the transportation costs are direct and allowable costs under the cost principles of Part 31.

(b) Section 10721 rates may be applied to the movement of household goods and personal effects of contractor employees who are relocated for the convenience and at the direction of the Government and whose total transportation costs are reimbursed by the Government.

(c) The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government receives the benefit of lower section 10721 rates in cost-reimbursement contracts as described in paragraphs (a) and (b) above.

(d) Contracting officers shall—

(1) Include in contracts a statement requiring the contractor to use carriers that offer acceptable service at reduced rates if available; and

(2) Ensure that contractors receive the name and location of the transportation officer designated to furnish support and guidance when using Government rate tenders under 47.104-5(b).

(e) Transportation officers shall—

(1) Advise and assist contracting officers and contractors; and

(2) Make available to contractors the names of carriers that provide service under section 10721 quotations, cite applicable rate tenders, and advise contractors of the statement that must be shown on the carrier's commercial bill of lading (see the clause at 52.247-1, Commercial Bill of Lading Notations).

47.104-4 Contract clauses.

(a) The contracting officer, in order to ensure the application of section 10721 rates, shall insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—

(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or

(2) Fixed-price f.o.b. origin contracts (other than small purchases under Part 13) (see 47.104-2(b) and 47.104-3).

(b) The contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts awarded within the small purchase limitations in 13.000 when it is contemplated that the delivery terms will be f.o.b. origin.

(c) The contracting officer shall insert the clause at 52.247-67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract.

47.104-5 Citation of Government rate tenders.

When section 10721 rates apply, transportation officers or contractors, as appropriate, shall identify the applicable Government rate tender by endorsement on bills of lading, including—

(a) GBL's or commercial bills of lading to be converted to GBL's (see 41 CFR 101-41.303, Conversion of commercial bills of lading to GBL's); and

(b) Properly endorsed commercial bills of lading when transportation charges are reimbursable (see 47.104-2(b) and 47.104-3).

47.105 Transportation assistance.

(a) Civilian Government activities that do not have transportation officers, or otherwise need assistance on transportation matters, shall obtain assistance from (1) the GSA Regional Federal Supply Service Bureau that provides support to the activity or (2) the transportation element of the contract administration office designated in the contract.

(b) Military installations shall obtain transportation assistance from the transportation office of the contracting activity, unless another military activity has been designated as responsible for furnishing assistance, guidance, or data. Military transportation offices shall request needed additional aid from the appropriate area headquarters of the Military Traffic Management Command (MTMC).

SUBPART 47.2—CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES

47.200 Scope of subpart.

(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—

(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and

(2) Transportation-related services including but not

limited to stevedoring, storage, packing, marking, and ocean freight forwarding.

(b) Except as provided in paragraph (c) below, this subpart does not apply to—

(1) The acquisition of freight transportation from (i) domestic or international air carriers and (ii) international ocean carriers (see Subparts 47.4 and 47.5);

(2) Freight transportation acquired by bills of lading;

(3) Freight transportation for which rates are negotiated under 49 U.S.C. 10721(b)(1); or

(4) Small purchases under Part 13.

(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in subparagraph (b)(1) above and passenger transportation from any carrier or mode.

(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7);

(2) By U.S. Government bill of lading (GBL); or

(3) By DOD under the Personal Property Management Regulation (DOD 4500.34R).

(e) Additional guidance for DOD acquisition of freight and passenger transportation is in the Defense Traffic Management Regulation.

47.201 Definitions.

"General freight," as used in this subpart, means supplies, goods, and transportable property not encompassed in the definitions of "household goods" or "office furniture."

"Household goods," as used in this subpart, means personal property that belongs to a person and that person's immediate family and includes, but is not limited to household furnishings, equipment and appliances, furniture, clothing, books, and similar property (see 41 CFR 101-7).

"Office furniture," as used in this subpart, means furniture, equipment, fixtures, records, and other equipment and materials used in Government offices, hospitals, and similar establishments.

47.202 Presolicitation planning.

Contracting officers shall inform activities that plan to acquire transportation or transportation-related services of the applicable lead-time requirements, that is—

(a) The Service Contract Act of 1965 (SCA) requirement for submission of Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice, to the Department of Labor not less than the number of days prescribed by the Department of Labor before the issuance of an invitation for bid, request for proposal, or commencement of negotiations for any contract exceeding $2,500 that may be subject to the SCA (see Subpart 22.10);

(b) The possible requirement to provide, during the solicitation period, time for prospective offerors or contractors to inspect origin and destination locations; or

(c) The possible requirement for inspection by agency personnel of prospective contractor facilities and equipment.

47.203 Transportation term contracts.

(a) Transportation term contracts are indefinite delivery requirements contracts for transportation or for transportation-related services. They are particularly useful for local drayage and office relocations within a metropolitan area.

(b) Transportation term contracts shall contain descriptions of the services to be performed; rates and charges for these services; the geographical area of coverage; the term of the contract; and minimum or maximum order limitations by dollar amount, shipment size, or other criteria.

(c) If appropriate, the transportation term contract shall require the contractor to provide the services covered to any Government agency that issues an order for these services under the contract. If so—

(1) Agencies may place orders for transportation or for transportation-related services under existing term contracts without further consideration of competition, as these term contracts are awarded on a price-competitive basis; and

(2) Agency personnel shall ensure that the orders they place conform to the contract, including any minimum or maximum order limitations.

(d) Policies and procedures regarding the use of GSA term contracts for transportation or for transportation-related services by civilian executive agencies are prescribed in 41 CFR 101-40.109.

47.204 Single-movement contracts.

Single-movement contracts may be awarded for unique transportation services that are not otherwise available under carrier tariffs or covered by DOD or GSA contracts; e.g., special requirements at origin and/or destination.

47.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA's) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see 47.105 for assistance).

PART 52

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

TABLE OF CONTENTS

52.000 Scope of part.

SUBPART 52.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.100 Scope of subpart.
52.101 Using Part 52.
52.102 Incorporating provisions and clauses.
52.102-1 Incorporation by reference.
52.102-2 Incorporation in full text.
52.103 Identification of provisions and clauses.
52.104 Procedures for modifying and completing provisions and clauses.
52.105 Procedures for using alternates.
52.106 Derivations of FAR provisions and clauses.
52.107 Provisions and clauses prescribed in Subpart 52.1.

SUBPART 52.2—TEXTS OF PROVISIONS AND CLAUSES

52.200 Scope of subpart.
52.201 [Reserved]
52.202-1 Definitions.
52.203-1 Officials Not to Benefit.
52.203-2 Certificate of Independent Price Determination.
52.203-3 Gratuities.
52.203-4 Contingent Fee Representation and Agreement.
52.203-5 Covenant Against Contingent Fees.
52.203-6 Restrictions on Subcontractor Sales to the Government.
52.203-7 Anti-Kickback Procedures.
52.203-8 Requirement for Certificate of Procurement Integrity.
52.203-9 Requirement for Certificate of Procurement Integrity—Modification.
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
52.203-12 Limitation on Payments to Influence Certain Federal Transactions.
52.203-13 Procurement Integrity—Service Contracting.
52.204-1 Approval of Contract.
52.204-2 Security Requirements.
52.204-3 Taxpayer Identification.
52.205 — 52.206 [Reserved]
52.207-1 Notice of Cost Comparison (Sealed-Bid).
52.207-2 Notice of Cost Comparison (Negotiated).
52.207-3 Right of First Refusal of Employment.
52.207-4 Economic Purchase Quantity—Supplies.
52.207-5 Option to Purchase Equipment.
52.208-1 Required Sources for Jewel Bearings and Related Items.
52.208-2 Jewel Bearings and Related Items Certificate.
52.208-3 [Reserved]
52.208-4 Vehicle Lease Payments.
52.208-5 Condition of Leased Vehicles.
52.208-6 Marking of Leased Vehicles.
52.208-7 Tagging of Leased Vehicles.
52.208-8 Helium Requirement Forecast and Required Sources for Helium.
52.209-1 Qualification Requirements.
52.209-2 [Reserved]
52.209-3 First Article Approval—Contractor Testing.
52.209-4 First Article Approval—Government Testing.
52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
52.209-7 Organizational Conflicts of Interest Certificate—Marketing Consultants.
52.209-8 Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.
52.210-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.210-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).
52.210-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

52.210-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.210-5 New Material.
52.210-6 Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.
52.210-7 Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.
52.211 [Reserved]
52.212-1 Time of Delivery.
52.212-2 Desired and Required Time of Delivery.
52.212-3 Commencement, Prosecution, and Completion of Work.
52.212-4 Liquidated Damages—Supplies, Services, or Research and Development.
52.212-5 Liquidated Damages—Construction.
52.212-6 Time Extensions.
52.212-7 Notice of Priority Rating for National Defense Use.
52.212-8 Defense Priority and Allocation Requirements.
52.212-9 Variation in Quantity.
52.212-10 Delivery of Excess Quantities.
52.212-11 Variation in Estimated Quantity.
52.212-12 Suspension of Work.
52.212-13 Stop-Work Order.
52.212-14 Stop-Work Order—Facilities.
52.212-15 Government Delay of Work.
52.213-1 Fast Payment Procedure.
52.213-2 Invoices.
52.213-3 Notice To Supplier.
52.214-1 Solicitation Definitions—Sealed Bidding.
52.214-2 Type of Business Organization—Sealed Bidding.
52.214-3 Amendments to Invitations for Bids.
52.214-4 False Statements in Bids.
52.214-5 Submission of Bids.
52.214-6 Explanation to Prospective Bidders.
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.
52.214-8 [Reserved]
52.214-9 Failure to Submit Bid.
52.214-10 Contract Award—Sealed Bidding.
52.214-11 [Reserved]
52.214-12 Preparation of Bids.
52.214-13 Telegraphic Bids.
52.214-14 Place of Performance—Sealed Bidding.
52.214-15 Period for Acceptance of Bids.
52.214-16 Minimum Bid Acceptance Period.
52.214-17 Affiliated Bidders.
52.214-18 Preparation of Bids—Construction.
52.214-19 Contract Award—Sealed Bidding—Construction.
52.214-20 Bid Samples.
52.214-21 Descriptive Literature.
52.214-22 Evaluation of Bids for Multiple Awards.
52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.
52.214-24 Multiple Technical Proposals.
52.214-25 Step Two of Two-Step Sealed Bidding.
52.214-26 Audit—Sealed Bidding.
52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.
52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.
52.214-29 Order of Precedence—Sealed Bidding.
52.214-30 Annual Representations and Certifications—Sealed Bidding.
52.214-31 Facsimile Bids.
52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).
52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas).
52.214-34 Submission of Offers in the English Language
52.214-35 Submission of Offers in U.S. Currency.
52.215-1 Examination of Records by Comptroller General.
52.215-2 Audit—Negotiation.
52.215-3 Solicitation for Information or Planning Purposes.
52.215-4 Notice of Possible Standardization.
52.215-5 Solicitation Definitions.
52.215-6 Type of Business Organization.
52.215-7 Unnecessarily Elaborate Proposals or Quotations.
52.215-8 Amendments to Solicitations.
52.215-9 Submission of Offers.
52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.
52.215-11 Authorized Negotiators.
52.215-12 Restriction on Disclosure and Use of Data.
52.215-13 Preparation of Offers.
52.215-14 Explanation to Prospective Offerors.
52.215-15 Failure to Submit Offer.
52.215-16 Contract Award.
52.215-17 Telegraphic Proposals.
52.215-18 Facsimile Proposals.
52.215-19 Period for Acceptance of Offer.
52.215-20 Place of Performance.
52.215-21 Changes or Additions to Make-or-Buy Program.
52.215-22 Price Reduction for Defective Cost or Pricing Data.
52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.
52.215-24 Subcontractor Cost or Pricing Data.

52.215-25 Subcontractor Cost or Pricing Data—Modifications.
52.215-26 Integrity of Unit Prices.
52.215-27 Termination of Defined Benefit Pension Plans.
52.215-28 — 52.215-29 [Reserved]
52.215-30 Facilities Capital Cost of Money.
52.215-31 Waiver of Facilities Capital Cost of Money.
52.215-32 [Reserved]
52.215-33 Order of Precedence.
52.215-34 Evaluation of Offers for Multiple Awards.
52.215-35 Annual Representations and Certifications—Negotiation.
52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).
52.215-37 [Reserved]
52.215-38 Preparation of Offers—Construction.
52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
52.215-40 Notification of Ownership Changes.
52.216-1 Type of Contract.
52.216-2 Economic Price Adjustment—Standard Supplies.
52.216-3 Economic Price Adjustment—Semistandard Supplies.
52.216-4 Economic Price Adjustment—Labor and Material.
52.216-5 Price Redetermination—Prospective.
52.216-6 Price Redetermination—Retroactive.
52.216-7 Allowable Cost and Payment.
52.216-8 Fixed Fee.
52.216-9 Fixed Fee—Construction.
52.216-10 Incentive Fee.
52.216-11 Cost Contract—No Fee.
52.216-12 Cost-Sharing Contract—No Fee.
52.216-13 Allowable Cost and Payment—Facilities.
52.216-14 Allowable Cost and Payment—Facilities Use.
52.216-15 Predetermined Indirect Cost Rates.
52.216-16 Incentive Price Revision—Firm Target.
52.216-17 Incentive Price Revision—Successive Targets.
52.216-18 Ordering.
52.216-19 Delivery-Order Limitations.
52.216-20 Definite Quantity.
52.216-21 Requirements.
52.216-22 Indefinite Quantity.
52.216-23 Execution and Commencement of Work.
52.216-24 Limitation of Government Liability.
52.216-25 Contract Definitization.
52.216-26 Payments of Allowable Costs Before Definitization.
52.217-1 Limitation of Price and Contractor Obligations.
52.217-2 Cancellation of Items.
52.217-3 Evaluation Exclusive of Options.
52.217-4 Evaluation of Options Exercised at Time of Contract Award.
52.217-5 Evaluation of Options.
52.217-6 Option for Increased Quantity.
52.217-7 Option for Increased Quantity—Separately Priced Line Item.
52.217-8 Option to Extend Services.
52.217-9 Option to Extend the Term of the Contract.
52.218 [Reserved]
52.219-1 Small Business Concern Representation.
52.219-2 Small Disadvantaged Business Concern Representation.
52.219-3 Women-Owned Small Business Representation.
52.219-4 Notice of Small Business-Small Purchase Set-Aside.
52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.
52.219-6 Notice of Total Small Business Set-Aside.
52.219-7 Notice of Partial Small Business Set-Aside.
52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.
52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.
52.219-11 Special 8(a) Contract Conditions.
52.219-12 Special 8(a) Subcontract Conditions.
52.219-13 Utilization of Women-Owned Small Businesses.
52.219-14 Limitations on Subcontracting.
52.219-15 Notice of Participation by Organizations for the Handicapped.
52.219-16 Liquidated Damages—Small Business Subcontracting Plan.
52.219-17 Section 8(a) Award.
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
52.219-20 Notice of Emerging Small Business Set-Aside.
52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.
52.219-22 SIC Code and Small Business Size Standard.
52.220-1 Preference for Labor Surplus Area Concerns.
52.220-2 Notice of Total Labor Surplus Area Set-Aside.
52.220-3 Utilization of Labor Surplus Area Concerns.
52.220-4 Labor Surplus Area Subcontracting Program.
52.221 [Reserved]

52.222-1 Notice to the Government of Labor Disputes.
52.222-2 Payment for Overtime Premiums.
52.222-3 Convict Labor.
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
52.222-5 [Reserved]
52.222-6 Davis-Bacon Act.
52.222-7 Withholding of Funds.
52.222-8 Payrolls and Basic Records.
52.222-9 Apprentices and Trainees.
52.222-10 Compliance with Copeland Act Requirements.
52.222-11 Subcontracts (Labor Standards).
52.222-12 Contract Termination—Debarment.
52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
52.222-14 Disputes Concerning Labor Standards.
52.222-15 Certification of Eligibility.
52.222-16 Approval of Wage Rates.
52.222-17 Labor Standards for Construction Work—Facilities Contracts.
52.222-18 [Reserved]
52.222-19 Walsh-Healey Public Contracts Act Representation.
52.222-20 Walsh-Healey Public Contracts Act.
52.222-21 Certification of Nonsegregated Facilities.
52.222-22 Previous Contracts and Compliance Reports.
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.
52.222-24 Preaward On-Site Equal Opportunity Compliance Review.
52.222-25 Affirmative Action Compliance.
52.222-26 Equal Opportunity.
52.222-27 Affirmative Action Compliance Requirements for Construction.
52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.
52.222-29 Notification of Visa Denial.
52.222-30—
52.222-34 [Reserved]
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222-36 Affirmative Action for Handicapped Workers.
52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
52.222-38—
52.222-39 [Reserved]
52.222-40 Service Contract Act of 1965, as Amended—Contracts of $2,500 or Less.
52.222-41 Service Contract Act of 1965, as Amended.
52.222-42 Statement of Equivalent Rates for Federal Hires.
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
52.222-45 [Reserved]
52.222-46 Evaluation of Compensation for Professional Employees.
52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).
52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.
52.222-49 Service Contract Act—Place of Performance Unknown.
52.223-1 Clean Air and Water Certification.
52.223-2 Clean Air and Water.
52.223-3 Hazardous Material Identification and Material Safety Data.
52.223-4 Recovered Material Certification.
52.223-5 Certification Regarding A Drug-Free Workplace.
52.223-6 Drug-Free Workplace.
52.223-7 Notice of Radioactive Materials.
52.224-1 Privacy Act Notification.
52.224-2 Privacy Act.
52.225-1 Buy American Certificate.
52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.
52.225-3 Buy American Act—Supplies.
52.225-4 [Reserved]
52.225-5 Buy American Act—Construction Materials.
52.225-6 Balance of Payments Program Certificate.
52.225-7 Balance of Payments Program.
52.225-8 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.
52.225-9 Buy American Act—Trade Agreements—Balance of Payments Program.
52.225-10 Duty-Free Entry.
52.225-11 Restrictions on Certain Foreign Purchases.
52.225-12—
52.225-13 [Reserved]
52.225-14 Inconsistency Between English Version and Translation of Contract.
52.225-15 Buy American Act — Construction Materials under European Community and North American Free Trade Agreements.
52.225-16 Buy American Act — Supplies under European Community Agreement Certificate.
52.225-17 Buy American Act — Supplies under European Community Agreement.
52.225-18 European Community Sanction for End Products.

52.225-19 European Community Sanction for Services.
52.225-20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.
52.225-21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.
52.226 [Reserved]
52.227-1 Authorization and Consent.
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.227-3 Patent Indemnity.
52.227-4 Patent Indemnity—Construction Contracts.
52.227-5 Waiver of Indemnity.
52.227-6 Royalty Information.
52.227-7 Patents—Notice of Government Licensee.
52.227-8 [Reserved]
52.227-9 Refund of Royalties.
52.227-10 Filing of Patent Applications—Classified Subject Matter.
52.227-11 Patent Rights—Retention by the Contractor (Short Form).
52.227-12 Patent Rights—Retention by the Contractor (Long Form).
52.227-13 Patent Rights—Acquisition by the Government.
52.227-14 Rights in Data—General.
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.
52.227-16 Additional Data Requirements.
52.227-17 Rights in Data—Special Works.
52.227-18 Rights in Data—Existing Works.
52.227-19 Commercial Computer Software—Restricted Rights.
52.227-20 Rights in Data—SBIR Program.
52.227-21 Technical Data Certification, Revision, and Withholding of Payment—Major Systems.
52.227-22 Major System—Minimum Rights.
52.227-23 Rights to Proposal Data (Technical).
52.228-1 Bid Guarantee.
52.228-2 Additional Bond Security.
52.228-3 Workers' Compensation Insurance (Defense Base Act).
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.
52.228-5 Insurance—Work on a Government Installation.
52.228-6 Insurance—Immunity From Tort Liability.
52.228-7 Insurance—Liability to Third Persons.
52.228-8 Liability and Insurance—Leased Motor Vehicles.
52.228-9 Cargo Insurance.
52.228-10 Vehicular and General Public Liability Insurance.
52.228-11 Pledges of Assets.
52.229-1 State and Local Taxes.
52.229-2 North Carolina State and Local Sales and Use Tax.
52.229-3 Federal, State, and Local Taxes.
52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract).
52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
52.229-6 Taxes—Foreign Fixed-Price Contracts.
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.
52.230-1 Cost Accounting Standards Notices and Certification.
52.230-2 Cost Accounting Standards.
52.230-3 Disclosure and Consistency of Cost Accounting Practices.
52.230-4 Consistency in Cost Accounting Practices.
52.230-5 Administration of Cost Accounting Standards.
52.231 [Reserved]
52.232-1 Payments.
52.232-2 Payments under Fixed-Price Research and Development Contracts.
52.232-3 Payments under Personal Services Contracts.
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.
52.232-5 Payments under Fixed-Price Construction Contracts.
52.232-6 Payment under Communication Service Contracts with Common Carriers.
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.
52.232-8 Discounts for Prompt Payment.
52.232-9 Limitation on Withholding of Payments.
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.
52.232-11 Extras.
52.232-12 Advance Payments.
52.232-13 Notice of Progress Payments.
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.
52.232-15 Progress Payments Not Included.
52.232-16 Progress Payments.
52.232-17 Interest.
52.232-18 Availability of Funds.
52.232-19 Availability of Funds for the Next Fiscal Year.
52.232-20 Limitation of Cost.
52.232-21 Limitation of Cost (Facilities).
52.232-22 Limitation of Funds.
52.232-23 Assignment of Claims.

52.232-24 Prohibition of Assignment of Claims.
52.232-25 Prompt Payment.
52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.
52.232-27 Prompt Payment for Construction Contracts.
52.232-28 Electronic Funds Transfer Payment Methods.
52.233-1 Disputes.
52.233-2 Service of Protest.
52.233-3 Protest after Award.
52.234-1 Industrial Resources Developed Under Defense Production Act Title III.
52.235 [Reserved]
52.236-1 Performance of Work by the Contractor.
52.236-2 Differing Site Conditions.
52.236-3 Site Investigation and Conditions Affecting the Work.
52.236-4 Physical Data.
52.236-5 Material and Workmanship.
52.236-6 Superintendence by the Contractor.
52.236-7 Permits and Responsibilities.
52.236-8 Other Contracts.
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.
52.236-10 Operations and Storage Areas.
52.236-11 Use and Possession Prior to Completion.
52.236-12 Cleaning Up.
52.236-13 Accident Prevention.
52.236-14 Availability and Use of Utility Services.
52.236-15 Schedules for Construction Contracts.
52.236-16 Quantity Surveys.
52.236-17 Layout of Work.
52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.
52.236-19 Organization and Direction of the Work.
52.236-20 [Reserved]
52.236-21 Specifications and Drawings for Construction.
52.236-22 Design Within Funding Limitations.
52.236-23 Responsibility of the Architect-Engineer Contractor.
52.236-24 Work Oversight in Architect-Engineer Contracts.
52.236-25 Requirements for Registration of Designers.
52.236-26 Preconstruction Conference.
52.236-27 Site Visit (Construction).
52.237-1 Site Visit.
52.237-2 Protection of Government Buildings, Equipment, and Vegetation.
52.237-3 Continuity of Services.
52.237-4 Payment by Government to Contractor.
52.237-5 Payment by Contractor to Government.
52.237-6 Incremental Payment by Contractor to Government.
52.237-7 Indemnification and Medical Liability Insurance.
52.237-8—52.237-9 [Reserved]
52.238—52.240 [Reserved]
52.241 Utility Services Provisions and Clauses.
52.241-1 Electric Service Territory Compliance Representation.
52.241-2 Order of Precedence-Utilities.
52.241-3 Scope and Duration of Contract.
52.241-4 Change in Class of Service.
52.241-5 Contractor's Facilities.
52.241-6 Service Provisions.
52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.
52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.
52.241-9 Connection Charge.
52.241-10 Termination Liability.
52.241-11 Multiple Service Locations.
52.241-12 Nonrefundable, Nonrecurring Service Charge.
52.241-13 Capital Credits.
52.242-1 Notice of Intent to Disallow Costs.
52.242-2 Production Progress Reports.
52.242-3—52.242-9 [Reserved]
52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.
52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.
52.242-12 Report of Shipment (REPSHIP).
52.242-13 Bankruptcy.
52.243-1 Changes—Fixed-Price.
52.243-2 Changes—Cost-Reimbursement.
52.243-3 Changes—Time-and-Materials or Labor-Hours.
52.243-4 Changes.
52.243-5 Changes and Changed Conditions.
52.243-6 Change Order Accounting.
52.243-7 Notification of Changes.
52.244-1 Subcontracts (Fixed-Price Contracts).
52.244-2 Subcontracts (Cost-Reimbursement and Letter Contracts).
52.244-3 Subcontracts (Time-and-Materials and Labor-Hour Contracts).
52.244-4 Subcontractors and Outside Associates and Consultants.
52.244-5 Competition in Subcontracting.
52.245-1 Property Records.
52.245-2 Government Property (Fixed-Price Contracts).
52.245-3 Identification of Government-Furnished Property.
52.245-4 Government-Furnished Property (Short Form).
52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).
52.245-6 Liability for Government Property (Demolition Services Contracts).
52.245-7 Government Property (Consolidated Facilities).

52.245-7 Government Property (Consolidated Facilities).
52.245-8 Liability for the Facilities.
52.245-9 Use and Charges.
52.245-10 Government Property (Facilities Acquisition).
52.245-11 Government Property (Facilities Use).
52.245-12 Contract Purpose (Nonprofit Educational Institutions).
52.245-13 Accountable Facilities (Nonprofit Educational Institutions).
52.245-14 Use of Government Facilities.
52.245-15 Transfer of Title to the Facilities.
52.245-16 Facilities Equipment Modernization.
52.245-17 Special Tooling.
52.245-18 Special Test Equipment.
52.245-19 Government Property Furnished "As Is."
52.246-1 Contractor Inspection Requirements.
52.246-2 Inspection of Supplies—Fixed-Price.
52.246-3 Inspection of Supplies—Cost-Reimbursement.
52.246-4 Inspection of Services—Fixed-Price.
52.246-5 Inspection of Services—Cost-Reimbursement.
52.246-6 Inspection—Time-and-Material and Labor-Hour.
52.246-7 Inspection of Research and Development—Fixed Price.
52.246-8 Inspection of Research and Development—Cost Reimbursement.
52.246-9 Inspection of Research and Development (Short Form).
52.246-10 Inspection of Facilities.
52.246-11 Higher-Level Contract Quality Requirement (Government Specification).
52.246-12 Inspection of Construction.
52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.
52.246-14 Inspection of Transportation.
52.246-15 Certificate of Conformance.
52.246-16 Responsibility for Supplies.
52.246-17 Warranty of Supplies of a Noncomplex Nature.
52.246-18 Warranty of Supplies of a Complex Nature.
52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.
52.246-20 Warranty of Services.
52.246-21 Warranty of Construction.
52.246-22 [Reserved]
52.246-23 Limitation of Liability.
52.246-24 Limitation of Liability—High-Value Items.
52.246-25 Limitation of Liability—Services.
52.247-1 Commercial Bill of Lading Notations.
52.247-2 Permits, Authorities, or Franchises.
52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.
52.247-4 Inspection of Shipping and Receiving Facilities.
52.247-5 Familiarization with Conditions.
52.247-6 Financial Statement.
52.247-7 Freight Excluded.
52.247-8 Estimated Weights or Quantities Not Guaranteed.
52.247-9 Agreed Weight—General Freight.
52.247-10 Net Weight—General Freight.
52.247-11 Net Weight—Household Goods or Office Furniture.
52.247-12 Supervision, Labor, or Materials.
52.247-13 Accessorial Services—Moving Contracts.
52.247-14 Contractor Responsibility for Receipt of Shipment.
52.247-15 Contractor Responsibility for Loading and Unloading.
52.247-16 Contractor Responsibility for Returning Undelivered Freight.
52.247-17 Charges.
52.247-18 Multiple Shipments.
52.247-19 Stopping in Transit for Partial Unloading.
52.247-20 Estimated Quantities or Weights for Evaluation of Offers.
52.247-21 Contractor Liability for Personal Injury and/or Property Damage.
52.247-22 Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.
52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.
52.247-24 Advance Notification by the Government.
52.247-25 Government-Furnished Equipment with or without Operators.
52.247-26 Government Direction and Marking.
52.247-27 Contract not Affected by Oral Agreement.
52.247-28 Contractor's Invoices.
52.247-29 F.o.b. Origin.
52.247-30 F.o.b. Origin, Contractor's Facility.
52.247-31 F.o.b. Origin, Freight Allowed.
52.247-32 F.o.b. Origin, Freight Prepaid.
52.247-33 F.o.b. Origin, with Differentials.
52.247-34 F.o.b. Destination.
52.247-35 F.o.b. Destination, within Consignee's Premises.
52.247-36 F.a.s. Vessel, Port of Shipment.
52.247-37 F.o.b. Vessel, Port of Shipment.
52.247-38 F.o.b. Inland Carrier, Point of Exportation.
52.247-39 F.o.b. Inland Point, Country of Importation.
52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.
52.247-41 C. & f. Destination.
52.247-42 C.i.f. Destination.
52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.
52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.
52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.

52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.
52.247-47 Evaluation—F.o.b. Origin.
52.247-48 F.o.b. Destination—Evidence of Shipment.
52.247-49 Destination Unknown.
52.247-50 No Evaluation of Transportation Costs.
52.247-51 Evaluation of Export Offers.
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 Diversion of Shipment under F.o.b. Destination Contracts.
52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.
52.247-56 Transit Arrangements.
52.247-57 Transportation Transit Privilege Credits.
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.
52.247-59 F.o.b. Origin—Carload and Truckload Shipments.
52.247-60 Guaranteed Shipping Characteristics.
52.247-61 F.o.b. Origin—Minimum Size of Shipments.
52.247-62 Specific Quantities Unknown.
52.247-63 Preference for U.S.-Flag Air Carriers.
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.
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.
52.248-2 Value Engineering—Architect-Engineer.
52.248-3 Value Engineering—Construction.
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).
52.249-7 Termination (Fixed-Price Architect-Engineer).
52.249-8 Default (Fixed-Price Supply and Service).
52.249-9 Default (Fixed-Price Research and Development).
52.249-10 Default (Fixed-Price Construction).
52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).
52.249-12 Termination (Personal Services).
52.249-13 Failure to Perform.
52.249-14 Excusable Delays.
52.250-1 Indemnification Under Public Law 85-804.
52.251-1 Government Supply Sources.
52.251-2 Interagency Fleet Management System (IFMS) 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).

parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's Late Submissions, Modifications, and Withdrawal of Proposals or Quotations provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT (NOV 1991)

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.

(End of clause)

52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:

ECONOMIC PURCHASE QUANTITY—SUPPLIES (AUG 1987)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.

_____

_____

_____

_____

_____

(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

OFFEROR RECOMMENDATIONS

ITEM	QUANTITY	PRICE QUOTATION	TOTAL

(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in developing a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired.

(End of provision)

52.207-5 Option to Purchase Equipment.

As prescribed in 7.404, insert a clause substantially the same as the following:

OPTION TO PURCHASE EQUIPMENT (FEB 1995)

(a) The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

(b) Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.

(c) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

(d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

(End of clause)

(The next page is 52-17.)

52.208-1 Required Sources for Jewel Bearings and Related Items.

As prescribed in 8.203-1(a), insert the following clause in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in 8.203-1(b), except as provided in 8.203-1(a)(1) through (3):

REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS (APR 1984)

(a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.

(b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify the contract administration office cognizant of this contract promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

(End of clause)
(R 7-104.37 1977 NOV)
(R 1-1.319(e))

52.208-2 Jewel Bearings and Related Items Certificate.

As prescribed in 8.203-1(c), insert the following provision in solicitations that contain the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, except those for research and development:

JEWEL BEARINGS AND RELATED ITEMS CERTIFICATE (APR 1984)

(a) This is to certify that—

(1) Jewel bearings and/or related items, as defined in the Required Sources for Jewel Bearings and Related Items clause, will be incorporated into one or more items/will not be incorporated into any item [*delete one*] covered by this offer;

(2) Any jewel bearings required (or an equal quantity of the same type, size, and tolerances) will be ordered from the William Langer Plant, Rolla, North Dakota 58367, as provided in the Required Sources for Jewel Bearings and Related Items clause; and

(3) Any related items required (or an equal quantity of the same type, size, and tolerances) will be acquired from domestic manufacturers, including the Plant, if the items can be obtained from those sources.

(b) Attached to this certificate are estimates of the quantity, type, and size (including tolerances) of the jewel bearings and related items required, and identification of the components, subassemblies, or parts that require jewel bearings or related items.

Date of Execution .....
Solicitation No. .....
Name.....

Title.....
Firm.....
Address.....

(End of provision)
(R 1-2207.2 DPC 76-13 1977 NOV)
(R 1-2207.2(c)(3))

52.208-3 Reserved.

52.208-4 Vehicle Lease Payments.

As prescribed in 8.1104(a), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

VEHICLE LEASE PAYMENTS (APR 1984)

(a) Upon the submission of proper invoices or vouchers, the Government shall pay rent for each vehicle at the rate(s) specified in this contract.

(b) Rent shall accrue from the beginning of this contract, or from the date each vehicle is delivered to the Government, whichever is later, and shall continue until the expiration of the contract term or the termination of this contract. However, rent shall accrue only for the period that each vehicle is in the possession of the Government.

(c) Rent shall not accrue for any vehicle that the Contracting Officer determines does not comply with the Condition of Leased Vehicles clause of this contract or otherwise does not comply with the requirements of this contract, until the vehicle is replaced or the defects are corrected.

(d) Rent shall not accrue for any vehicle during any period when the vehicle is unavailable or unusable as a result of the Contractor's failure to render services for the operation and maintenance of the vehicle as prescribed by this contract.

(e) Rent stated in monthly terms shall be prorated on the basis of 1/30th of the monthly rate for each day the vehicle is in the Government's possession. If this contract contains a mileage provision, the Government shall pay rent as provided in the Schedule.

(End of clause)
(R 7-1501.1 1967 APR)

52.208-5 Condition of Leased Vehicles.

As prescribed in 8.1104(b), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

CONDITION OF LEASED VEHICLES (APR 1984)

Each vehicle furnished under this contract shall be of good quality and in safe operating condition, and shall comply with the Federal Motor Vehicle Safety Standards (49 CFR 571) and State safety regulations applicable to the vehicle. The Government shall accept or reject the vehicles promptly after receipt. If the Contracting Officer determines that any vehicle furnished is not in compliance with this contract, the Contracting Officer shall promptly inform the Contractor in writing. If the Contractor fails to replace the vehicle or correct the defects as required by the Contracting Officer, the Government may (a) by contract or otherwise, correct the defect or arrange for the lease of a similar vehicle and shall charge or set off against the Contractor any excess costs occasioned thereby, or (b) terminate the contract under the Default clause of this contract.

(End of clause)
(R 7-1501.2 1967 APR)

52.208-6 Marking of Leased Vehicles.

As prescribed in 8.1104(c), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

MARKING OF LEASED VEHICLES (APR 1984)

(a) The Government may place nonpermanent markings or decals, identifying the using agency, on each side, and on the front and rear bumpers, of any motor vehicle leased under this contract. The Government shall use markings or decals that are removable without damage to the vehicle.

(b) The Contractor may use placards for temporary identification of vehicles except that the placards may not contain any references to the Contractor that may be construed as advertising or endorsement by the Government of the Contractor.

(End of clause)
(R 7-1501.5 1967 APR)

52.208-7 Tagging of Leased Vehicles.

As prescribed in 8.1104(d), insert a clause substantially as follows:

TAGGING OF LEASED VEHICLES (MAY 1986)

While it is the intent that vehicles leased under this contract will operate on Federal tags, the Government reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the Government documentation necessary to allow acquisition of such tags. Federal tags are the responsibility of the Government.

(End of clause)

52.208-8 Helium Requirement Forecast and Required Sources for Helium.

As prescribed in 8.505, insert the following clause:

HELIUM REQUIREMENT FORECAST AND REQUIRED SOURCES FOR HELIUM (FEB 1995)

(a) *Definitions.*

"Bureau helium distributor" means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Mines, as specified in 30 CFR 602.

"Bureau of Mines," as used in this clause, means the Department of the Interior, Bureau of Mines, Helium Field Operations, located at 801 South Fillmore Street, Amarillo, TX 79101-3545.

"Helium requirement forecast" means an estimate by the Contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

"Major helium requirement" means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature), including liquid helium gaseous equivalent. In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement.

(b) *Requirements*—(1) *Helium Requirement Forecast.* The Contractor shall provide to the Contracting Officer a helium requirement forecast, point of contact, and telephone number within ten days of award.

(2) *Sources of Helium.* Except for helium acquired by the Contractor before the award of this contract, and to the extent that supplies are readily available, the Contractor shall purchase all major requirements of helium from—

(i) The Department of the Interior's Bureau of Mines;

(ii) A Bureau helium distributor (a copy of the "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies," may be obtained from the Bureau of Mines); or

(iii) A General Services Administration Federal Supply Schedule contract, if use is authorized by the Contracting Officer (see Subpart 51.1);

(3) Promptly upon award of any subcontract or order that involves a major helium requirement, the Contractor shall provide to the Bureau of Mines, and to the Contracting Officer, written notification that includes—

(i) The prime contract number;

(ii) The name, address and telephone number of the subcontractor, including a point of contact; and

(iii) A copy of the subcontractor's helium requirement forecast.

(c) *Subcontracts*—(1) The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves furnishing of a major helium requirement.

(2) When a subcontract involves a major helium requirement, the following statement shall be included: Helium furnished under this contract or order shall be helium that has been purchased from the Bureau of Mines, or a listed Bureau helium distributor.

(End of clause)

52.209-1 Qualification Requirements.

As prescribed in 9.206-2, insert the following clause:

QUALIFICATION REQUIREMENTS (FEB 1995)

(a) Definition: "Qualification requirement," as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) _____

(Address) _____

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name _____

Manufacturer's Name _____

Source's Name _____

Item Name _____

Service Identification _____

Test Number _____ (to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

52.209-2 [Reserved]

52.209-3 First Article Approval—Contractor Testing.

As prescribed in 9.308-1(a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—
CONTRACTOR TESTING (SEP 1989)
[*Contracting Officer shall insert details*]

(a) The Contractor shall test _____ unit(s) of Lot/Item _____as specified in this contract. At least _____ calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within _____ calendar days from the date of this contract to _____ [*insert address of the Government activity to receive the report*] marked "FIRST ARTICLE TEST REPORT: Contract No. _____, Lot/Item No. _____" Within _____ calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

(End of clause)

Alternate I (SEP 1989). As prescribed in 9.308-1(a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (SEP 1989). As prescribed in 9.308-1(a)(3) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52.209-4 First Article Approval—Government Testing.

As prescribed in 9.308-2(a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—GOVERNMENT
TESTING (SEP 1989)
[Contracting Officer shall insert details]

(a) The Contractor shall deliver ___unit(s) of Lot/Item ___ within ____ calendar days from the date of this contract to the Government at _____*[insert name and address of the testing facility]* for first article tests. The shipping docu-

follows (*insert changes that affect only this solicitation; if "none," so state*):

☐ (b) Are enclosed.

(End of provision)

52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

As prescribed in 15.407(c)(9), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) (DEC 1989)

(a) Any proposal 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, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification 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.

(f) 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 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.

(End of provision)

52.215-37 [Reserved]

52.215-38 Preparation of Offers—Construction.

As prescribed in 15.407(k), insert the following provision:

PREPARATION OF OFFERS—CONSTRUCTION (JAN 1991)

(a) Offers must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require Offerors to submit offer prices for one or more items on various bases, including—

(1) Lump sum offer;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, Offerors should insert the words "no offer" in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of provision)

52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).

As prescribed in 15.804-8(f), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (FEB 1995)

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 which meet the applicability requirements of FAR 15.804-8(f). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205-6(o).

(End of clause)

52.215-40 Notification of Ownership Changes.

As prescribed in 15.804-8(g), insert the following clause:

NOTIFICATION OF OWNERSHIP CHANGES (FEB 1995)

(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, which 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; (3) ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804-8(g).

(End of clause)

52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision in requests for proposals (RFP's) and requests for quotations (RFQ's), unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

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)

(R 3-501(b) Sec L (iv))

52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(a)(1)(i) through (iii) apply (but see 16.203-4(a)(2)). 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 (APR 1984)

(a) The Contractor warrants that the unit price stated in the Schedule for _____ [*offeror insert Schedule line tem 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 (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.804-3 of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor.

(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 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. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) on the final invoice that all required price decreases have been applied as required by this clause.

(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 price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)
(AV 7-106.3 1978 AUG)

52.216-3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203-4(b), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(b)(1)(i) through (iii) apply (but see 16.203-4(b)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(1) of this section, upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—
SEMISTANDARD SUPPLIES (APR 1984)

(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, (2) meets the criteria of subsection 15.804-3 of the Federal Acquisition Regulation (FAR), and (3) is the net price 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. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) in the final invoice that all required price decreases have been applied as required by this clause.

(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, 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 price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)
(AV 7-106.4 1978 AUG)

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 (APR 1984)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay

for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form 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 theincreases 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 at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contractor shall include with the final invoice a certification that the Contractor either (1) has not experienced a decrease in rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule or (2) has given notice of all such decreases in compliance with paragraph (a) of this clause.

(e) 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)

(AV 7-107 1974 MAR)

52.216-5 Price Redetermination—Prospective.

As prescribed in 16.205-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply:

PRICE REDETERMINATION—PROSPECTIVE

(APR 1984)

(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

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of—

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)
(R 7-203.4(b) 1979 MAR)
(R 7-203.4(c)(6) and (9))

52.216-11 Cost Contract—No Fee.

As prescribed in 16.307(e), insert the clause 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. This clause may be modified by substituting "$10,000" in lieu of "$100,000" as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

COST CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)
(R 7-203.4(a) 1978 SEP)
(R 7-203.4(c)(4) and (9))
(R 7-402.3(c)(5)(ii), (iii), and (7))
(R 7-1909.4)
(R 1-7.402-3(b))

Alternate I (APR 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the Contracting Officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

(R 7-203.4(a) 1978 SEP)
(R 7-402.3(c)(8))

52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated. This clause may be modified by substituting "$10,000" in lieu of "$100,000" as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

COST-SHARING CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government's share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the Government's share of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)
(R 7-203.4(a) 1978 SEP)
(R 7-203.4(c)(4) and (9))
(R 7-402.3(c)(5),(6) and (7))
(R 1-7.402-3)

Alternate I (APR 1984). In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

(R 7-402.3(c)(8))

52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause in solicitations and contracts when a consolidated facilities contract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated:

ALLOWABLE COST AND PAYMENT—FACILITIES
(FEB 1995)

(a) *General.* (1) For the performance of any work, duty, or obligation specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.

(2) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not under it.

(b) *Invoicing.* The Government shall make payments to the Contractor when requested once each month. The 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 for the performance of this contract.

(c) *Negotiated indirect costs.* Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (f) below, allowable indirect costs under this contract shall be obtained by applying final indirect cost rates established as follows:

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

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the Contracting Officer and to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost and data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(d) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(f) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) *Assignments and releases.* The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee shall execute and deliver—

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

if, by the date of within the time period specified in the schedule or such further time as may be agreed to, the Contracting Officer (1) notifies the Contractor that funds will not be available for contract performance for any subsequent program year or (2) fails to notify the Contractor that funds will be available for performance of a requirement for the succeeding program year. "Cancellation" shall also be deemed to have occurred if, upon expiration of the final program year, the Government has failed to order the specified items in quantities up to the aggregate Best Estimated Quantity set forth in the Schedule. Following cancellation under this clause of any program year(s), the Government shall not be obligated to issue nor the Contractor to accept any further orders under this contract.

(R 1-322.8)

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)
(R 1-1504(a))

52.217-4 Evaluation of Options Exercised at Time of Contract Award.

As prescribed in 17.208(b), insert a provision substantially the same 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 total price for 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 once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

As prescribed in 17.208(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 1989)

(a) The Government may extend the term of this contract 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*]; *provided*, that the

Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed ..... (months)(years).

(End of clause)

52.218 [Reserved]

52.219-1 Small Business Concern Representation.

As prescribed in 19.304(a), insert the following provision:

SMALL BUSINESS CONCERN REPRESENTATION (FEB 1995)

(a) *Representation.* The offeror represents and certifies as part of its offer that it is: ☐ a small business concern, ☐ not a small business concern.

(b) *Definition.*

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in this solicitation.

(c) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

52.219-2 Small Disadvantaged Business Concern Representation.

As prescribed in 19.304(b), insert the following provision:

SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (FEB 1990)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.

(b) *Definitions.*

"Asian Pacific Americans," as used in this provision, means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

"Indian tribe," as used in this provision, means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.

"Native Americans," as used in this provision, means American Indians, Eskimos, Aleuts, and Native Hawaiians.

"Native Hawaiian Organization," as used in this provision, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

"Subcontinent Asian Americans," as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals

tion. This process will continue, first with concerns in Group 1 and then with concerns in Group 2, until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(2) The offeror agrees that, if awarded a contract that exceeds the small purchase limitation, it will submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(i) The dollar amount of the contract.

(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place.

(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors.

(iv) The total dollar amount attributable to performance in labor surplus areas.

(3) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:

(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

As prescribed in 19.708(a), insert the following clause:

UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that

socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)

52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.

As prescribed in 19.708(b), insert the following clause:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (FEB 1995)

(a) This clause does not apply to small business concerns.

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged 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 negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns; and

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns and (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who 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 and small disadvantaged 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 and small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged 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, and (C) 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 (C) conferences and trade fairs to locate small and small disadvantaged business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(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 business and small disadvantaged 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 business and small disadvantaged 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 business and small disadvantaged business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small business or small disadvantaged 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 (d) above, 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 provides copies of the approved master plan and 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.

(g)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by 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 Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (AUG 1989). 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 and with small disadvantaged business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged 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 submit-

ted 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.

52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

As prescribed in 19.708(c)(1), the contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially as follows when a subcontracting plan is required (see 19.702(a)(2)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economi cal performance of the contract; unless the condition in 19.708(c)(3) is applicable. The contracting officer may vary the terms of the clause as specified in 19.708(c)(2).

INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1984)

(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 and a certain percentage to small disadvantaged 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 Subpart 15.9 of the Federal Acquisition Regulation.

(End of clause)

(R 7-104.14(d) 1979 JUL)

(R FPR Temp. Reg. 50 1979 JUN)

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)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements and advance payments, delegate to the _____ [*insert name of contracting agency*] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; *provided, however,* that the _____ [*insert name of contracting agency*] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the_____ [*insert name of contracting agency*].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.

(f) To notify the _____ [*insert name of contracting agency*] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of clause)

Alternate I (FEB 1990). In accordance with the prescription in 19.811-3(a), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) That payments to be made under the contract will be deposited directly by the _____ [*insert name of contracting activity*] to a special bank account established by the subcontractor and that all disbursements will require approval and counter signature by the SBA or a third party approved by SBA.

52.219-12 Special 8(a) Subcontract Conditions.

As prescribed in 19.811-3(b), insert the following clause:

SPECIAL 8(a) SUBCONTRACT CONDITIONS (FEB 1990)

(a) The Small Business Administration (SBA) has entered into Contract No._____ [*insert number of contract*] with the _____ [*insert name of contracting agency*] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The _____ [*insert name of subcontractor*], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

quire the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

(End of clause)

52.222-5 [Reserved]

52.222-6 Davis-Bacon Act.

As prescribed in 22.407(a), insert the following clause:

DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled *Apprentices and Trainees*. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all work-

ers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

52.222-7 Withholding of Funds.

As prescribed in 22.407(a), insert the following clause:

WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

52.222-8 Payrolls and Basic Records.

As prescribed in 22.407(a), insert the following clause:

PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The (*_____) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (*_____), may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (*_____) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

(*Insert appropriate agency name in blanks)

(End of clause)

52.230-1 Cost Accounting Standards Notices and Certification.

As prescribed in 30.201-3, insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NOV 1993)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of 48 CFR, Parts 9903 and 9904, except for those contracts which are exempt as specified in 48 CFR, Subpart 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR, Parts 9903 and 9904 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR, Subpart 9903.202. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) One copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS-1. Forms may be obtained from the cognizant ACO or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO where filed:

_____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $25 million (of which at least one award exceeded $1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR, Subpart 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR Subpart 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR Subpart 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding $1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $25 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ YES ☐ NO

(End of provision)

52.230-2 Cost Accounting Standards.

As prescribed in 30.201-4(a), insert the following clause:

COST ACCOUNTING STANDARDS (AUG 1992)

(a) Unless the contract is exempt under 48 CFR, Subparts 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR, Subpart 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904 (Appendix B, FAR loose-leaf edition), in effect on the date of award of this contract or, if

the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR, Part 9904 or a CAS rule or regulation in 48 CFR, Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

(End of clause)

52.230-3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201-4(b)(1), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES
(NOV 1993)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR Subpart 9904.402 Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR Subpart 9904.405, Accounting for Unallowable Costs; and 48 CFR Subpart 9904.406 Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, Subparts 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been

agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR, Subpart 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR, Subpart 9903.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards" set forth in FAR 52.230-2, shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

(End of clause)

52.230-4 Consistency in Cost Accounting Practices.

As prescribed in 30.201-4(c), insert the following clause:

CONSISTENCY IN COST ACCOUNTING PRACTICES (AUG 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

52.230-5 Administration of Cost Accounting Standards.

As prescribed in 30.201-4(d)(1), insert the following clause:

ADMINISTRATION OF COST ACCOUNTING STANDARDS (FEB 1995)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards,

or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, shall identify the applicable standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clause at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

52.231 [Reserved]

52.232-1 Payments.

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated:

PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(End of clause)
(R 7-103.7 1958 JAN)
(R 1-7.102-7)

52.232-2 Payments under Fixed-Price Research and Development Contracts.

As prescribed in 32.111(a)(2), insert the following clause, as appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price research and development contract is contemplated:

PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)
(R 7-302.2 1959 JUN)
(R 1-7.302-2)

52.232-3 Payments under Personal Services Contracts.

As prescribed in 32.111(a)(3), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for personal services:

PAYMENTS UNDER PERSONAL SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract. The Government shall also pay the Contractor (a) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101-7) as authorized in appropriate Travel Orders; and (b) any other transportation expenses if provided for in the Schedule.

(End of clause)
(R 7-503.2 1958 JAN)

52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.

As prescribed in 32.111(a)(4), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for transportation or transportation-related services:

PAYMENTS UNDER TRANSPORTATION CONTRACTS AND TRANSPORTATION-RELATED SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor upon the submission of properly certified invoices or vouchers, the amount due for services rendered and accepted, less deductions, if any, as herein provided.

(End of clause)
(R 7-103.7 1958 JAN)
(R1-7.703-5)

52.232-5 Payments under Fixed-Price Construction Contracts.

As prescribed in 32.111(a)(5), insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1989)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by the Contracting Officer. In

(4) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

52.233-1 Disputes.

As prescribed in 33.215, insert the following clause:

DISPUTES (MAR 1994)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, 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 this 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 $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim—

(A) Exceeding $50,000; or

(B) Regardless of the amount claimed, when using—

(*1*) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(*2*) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) 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."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) At the time a claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives

the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

Alternate I (DEC 1991). If it is determined under agency procedures, that continued performance is necessary pending resolution of any claim arising under or relating to the contract, substitute the following paragraph (i) for the paragraph (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(AV 7-103.12(h) 1980 JUN)

52.233-2 Service of Protest.

As prescribed in 33.106, insert the following provision:

SERVICE OF PROTEST (NOV 1988)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from_____

[*Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.*]

(b) The copy of any protest shall be received in the office designated above on the same day a protest is filed with the GSBCA or within one day of filing a protest with the GAO.

(End of provision)

52.233-3 Protest after Award.

As prescribed in 33.106(b), insert the following clause:

PROTEST AFTER AWARD (AUG 1989)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided,* that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(End of clause)

Alternate I (JUN 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

52.234-1 Industrial Resources Developed Under Defense Production Act Title III.

As prescribed at 34.104, insert the following clause:

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (FEB 1995)

(a) *Definitions.*

"Title III industrial resource" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

"Title III project contractor" means a contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091-2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

(End of clause)

52.235 [Reserved]

52.236-1 Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause in solicitations and contracts 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. Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see 36.501(a)).

PERFORMANCE OF WORK BY THE CONTRACTOR
(APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least _____ [*insert the appropriate number in words followed by numerals in parentheses*] percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)
(R 7-603.15 1965 JAN)
(R 1-18.104)

52.236-2 Differing Site Conditions.

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or

(The next page is 52-191.)

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)
(R 7-608.6 1972 APR)

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 are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: _____

Address: _____

_____

Telephone: _____

(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)

52.237-1 Site Visit.

As prescribed in 37.105(a), insert the following provision:

SITE VISIT (APR 1984)

(a) Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)
(R 7-2003.39 1969 OCT)

52.237-2 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed in 37.110(b), insert the following clause in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated:

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)
(R 7-104.63 1968 FEB)

52.237-3 Continuity of Services.

As prescribed in 37.110(c), insert the following clause:

CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employ-

ees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

52.237-4 Payment by Government to Contractor.

As prescribed in 37.304(a), insert the following clause in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract:

PAYMENT BY GOVERNMENT TO CONTRACTOR
(APR 1984)

(a) In . . . . . [*insert "full" if Alternate I is used; otherwise insert "partial"*] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor . . . . . [*fill in amount*].

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) below, in making progress payments the Contracting Officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer shall retain an amount considered adequate for the protection of the Government and, at the Contracting Officer's discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the Contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished after award, upon the Government's issuance of a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government shall make final payment of the amount due the Contractor under this contract. If requested, the Contractor shall release all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)

(R 7-2101.3(a) 1976 OCT)

Alternate I (APR 1984). If the contracting officer determines that the Government shall retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

(R 7-2101.3(a) 1976 OCT)

52.237-5 Payment by Contractor to Government.

As prescribed in 37.304(b), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments:

PAYMENT BY CONTRACTOR TO GOVERNMENT
(APR 1984)

(a) The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated in the Schedule as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished, upon the Government's issuing a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor shall perform the work called for under this contract and within . . . . . days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, shall pay . . . . . [*fill in amount*]. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(End of clause)

(R 7-2101.3(b) 1976 OCT)

52.237-6 Incremental Payment by Contractor to Government.

As prescribed in 37.304(c), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements (a) if the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (b) if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property, only upon receipt of those payments:

INCREMENTAL PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall perform the work called for under this contract and within _____ days of receipt of notice of award, unless otherwise provided in the Schedule, and before proceeding with the work, shall pay _____ [*fill in amount*]. Thereafter, the Contractor shall make payment to the Government in the amount and frequency specified in the Schedule. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(b) Upon the Government's receipt of each increment of payment, the Contractor shall receive title to such property as the Contracting Officer determines to be fair and reasonable for that increment of payment. Upon receipt of the Contractor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

(R 7-2101.3(b) 1976 OCT)

52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 37.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (SEP 1989)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence:*_____.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Certificates of insurance evidencing the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

52.237-8 and 52.237-9 Reserved.

52.238 through 52.240 Reserved.

52.241 Utility Services Provisions and Clauses.

52.241-1 Electric Service Territory Compliance Representation.

As prescribed in 41.501(b), insert a provision substantially the same as the following:

PUBLIC LAW 100-202, ELECTRIC SERVICE TERRITORY COMPLIANCE REPRESENTATION (FEB 1995)

(a) The Offeror represents as part of its offer that the Offeror's sale of electricity in accordance with the terms and conditions of this solicitation is [ ] is not [ ] consistent with Public Law 100-202, section 8093.

(b) The Offeror's supporting rationale is as follows:

_____

_____

_____

_____

_____

(End of provision)

52.241-2 Order of Precedence-Utilities.

As prescribed in 41.501(c)(1), insert a clause substantially the same as the following:

ORDER OF PRECEDENCE-UTILITIES (FEB 1995)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

(End of clause)

52.241-3 Scope and Duration of Contract.

As prescribed in 41.501(c)(2), insert a clause substantially the same as the following:

SCOPE AND DURATION OF CONTRACT (FEB 1995)

(a) For the period _____,[insert period of service] the Contractor agrees to furnish and the Government agrees to purchase _____ [*insert type of service*] utility service in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(c) The Contractor shall provide the Government with one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved rates.

(d) The Contractor shall be paid at the applicable rate(s) under the tariff and the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract shall be equitably prorated for the periods in which commencement and termination of this contract become effective.

(End of clause)

52.241-4 Change in Class of Service.

As prescribed in 41.501(c)(3), insert a clause substantially the same as the following:

CHANGE IN CLASS OF SERVICE (FEB 1995)

(a) In the event of a change in the class of service, such service shall be provided at the Contractor's lowest available rate schedule applicable to the class of service furnished.

(b) Where the Contractor does not have on file with the regulatory body approved rate schedules applicable to services provided, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

52.241-5 Contractor's Facilities.

As prescribed in 41.501(c)(4), insert a clause substantially the same as the following:

CONTRACTOR'S FACILITIES (FEB 1995)

(a) The Contractor, at its expense, unless otherwise provided for in this contract, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities shall remain with the Contractor and the Contractor shall be responsible for loss or damage to such facilities, except that the Government shall be responsible to the extent that loss or damage has been caused by the Government's negligent acts or omissions.

(b) Notwithstanding any terms expressed in this clause, the Contractor shall obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed upon by the parties hereto for the

installation, operation, maintenance, and repair of the facilities of the Contractor required to be located upon Government premises. All applicable taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, maintenance and repair of such facilities, shall be the obligation of the Contractor.

(c) Authorized representatives of the Contractor will be allowed access to the facilities on Government premises at reasonable times to perform the obligations of the Contractor regarding such facilities. It is expressly understood that the Government may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security, public safety).

(d) Unless otherwise specified in this contract, the Contractor shall, at its expense, remove such facilities and restore Government premises to their original condition as near as practicable within a reasonable time after the Government terminates this contract. In the event such termination of this contract is due to the fault of the Contractor, such facilities may be retained in place at the option of the Government for a reasonable time while the Government attempts to obtain service elsewhere comparable to that provided for hereunder.

(End of clause)

52.241-6 Service Provisions.

As prescribed in 41.501(c)(5), insert a clause substantially the same as the following:

SERVICE PROVISIONS (FEB 1995)

(a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if appropriate. In the event any meter fails to register (or registers incorrectly) the service furnished, the parties shall agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment shall be made to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than ___ percent slow or fast shall be deemed correct.

(2) The Contractor shall read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body or applicable bylaws. All billings based on meter readings of less than ___ days shall be prorated accordingly.

(b) *Meter test.* (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters at intervals not exceeding _____ year(s) The Government has the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than ___ percent slow or fast.

(3) No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of ___ percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, but shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities. If any such failure, suspension, diminution, or other variation of service shall aggregate more than _____hour(s) during any billing period hereunder, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge).

(End of clause)

52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.

As prescribed in 41.501(d)(1), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR REGULATED SERVICES (FEB 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give * _____ _____ written notice of (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and (2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service shall be made a part of this contract by the issuance of a contract modification unless otherwise specified in the contract. The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of clause)

---

* Note: Insert language prescribed in 41.501(d)(1)

52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.

As prescribed in 41.501(d)(2), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR UNREGULATED SERVICES (FEB 1995)

(a) This clause applies to the extent that services furnished hereunder are not subject to regulation by a regulatory body.

(b) After _____ [*insert date*], either party may request a change in rates or terms and conditions of service, unless otherwise provided in this contract. Both parties agree to enter in negotiations concerning such changes upon receipt of a written request detailing the proposed changes and specifying the reasons for the proposed changes.

(c) The effective date of any change shall be as agreed to by the parties. The Contractor agrees that throughout the life of this contract the rates so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(d) The failure of the parties to agree upon any change after a reasonable period of time shall be a dispute under the Disputes clause of this contract.

(e) Any changes to rates, terms, or conditions as a result of such negotiations shall be made a part of this contract by the issuance of a contract modification.

(End of clause)

52.241-9 Connection Charge.

As prescribed in 41.501(d)(3), insert a clause substantially the same as the following:

CONNECTION CHARGE (FEB 1995)

(a) *Charge.* In consideration of the Contractor furnishing and installing at its expense the new connection facilities described herein, the Government shall pay the Contractor a connection charge. The payment shall be in the form of progress payments, advance payments or as a lump sum, as agreed to by the parties and as permitted by applicable law. The total amount payable shall be either the estimated cost of $_____ less the agreed to salvage value of $_____, or the actual cost less the salvage value, whichever is less. As a condition precedent to final payment, the Contractor shall execute a release of any claims against the Government arising under or by the virtue of such installation.

(b) *Ownership, operation, maintenance and repair of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated, maintained, and repaired by the Contractor at its expense. All taxes and other charges in connection therewith, together with all liability arising out of the construction, operations, maintenance, or repair of such facilities, shall be the obligation of the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government, on each monthly bill for service furnished under this contract to the service location, a credit of _____ percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or not at all) by means of these facilities, the Contractor shall promptly notify the Government in writing. Unless otherwise agreed by the parties in writing at that time, the Contractor shall promptly accelerate the credits provided for under subparagraph (c)(1) of this clause, up to 100 percent of each monthly bill until there is refunded the amount that reflects the Government's connection costs for that portion of the facilities used in serving others.

(3) In the event the Contractor terminates this contract, or defaults in performance, prior to full credit of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of the termination or default.

(d) *Termination before completion of facilities.* The

Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid the cost of any work accomplished, including direct and indirect costs reasonably allocable to the completed work prior to the time of termination by the Government, plus the cost of removal, less the salvage value.

(e) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government has paid a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the Contractor shall have the following options:

(1) To retain in place for _____ months after the notice of termination by the Government such facilities on condition that—

(i) If, during such _____ month period, the Contractor serves any other customer by means of such facilities, the Contractor, shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credit provided for under paragraph (c) of this clause before such termination; and

(ii) Immediately after such _____ month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(2) To remove such facilities at the Contractor's own expense within _____ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

(End of clause)

Alternate I. (FEB 1995). If the Contracting Officer determines that a nonrefundable charge is to be paid and no credits are due the Government, delete paragraphs (c) and (e), renumber paragraph (d) as (c) and add the following as paragraph (d):

(d) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government is to pay a connection charge, the Contractor shall have the following options:

(1) To retain in place for _____ months after the notice of termination by the Government. If the Contractor and the Government have not agreed on terms for retention in place beyond _____ months, then the Contractor must remove the facilities pursuant to the terms of subparagraph (d)(2) of this clause.

(2) To remove such facilities at the Contractor's own expense within _____ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

52.241-10 Termination Liability.

As prescribed in 41.501(d)(4), insert a clause substantially the same as the following:

TERMINATION LIABILITY (FEB 1995)

(a) If the Government discontinues utility service under this contract before completion of the facilities cost recovery period specified in paragraph (b) of this clause, in consideration of the Contractor furnishing and installing at its expense, the new facility described herein, the Government shall pay termination charges, calculated as set forth in this clause.

(b) *Facility cost recovery period.* The period of time, not exceeding the term of this contract, during which the net cost of the new facility, shall be recovered by the Contractor is—

_____ months. [*Insert negotiated duration.*]

(c) *Net facility cost.* The cost of the new facility, less the agreed upon salvage value of such facility, is—

$_____. [*Insert appropriate dollar amount.*]

(d) *Monthly facility cost recovery rate.* The monthly facility cost recovery rate which the Government shall pay the Contractor whether or not service is received is—

$_____. [*Divide the net facility cost in paragraph (c) of this clause by the facility's cost recovery period in paragraph (b) of this clause and insert the resultant figure.*]

(e) *Termination charges.* Termination charges = $[*Multiply the remaining months of the facility's cost recovery period specified in paragraph (b) of this clause by the monthly facility cost recovery rate in paragraph (d) of this clause and insert the resultant figure.*]

(f) If the Contractor has recovered its capital costs at the time of termination there will be no termination liability charge.

(End of clause)

52.241-11 Multiple Service Locations.

As prescribed in 41.501(d)(5), insert a clause substantially the same as the following:

MULTIPLE SERVICE LOCATIONS (FEB 1995)

(a) At any time by written order, the Contracting Officer may designate any location within the service area of the Contractor at which utility service shall commence or be discontinued. Any changes to the service specifications

shall be made a part of the contract by the issuance of a contract modification to include the name and location of the service, specifying any different rate, the point of delivery, different service specifications, and any other terms and conditions.

(b) The applicable monthly charge specified in this contract shall be equitably prorated from the period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

(End of clause)

52.241-12 Nonrefundable, Nonrecurring Service Charge.

As prescribed in 41.501(d)(6), insert a clause substantially the same as the following:

NONREFUNDABLE, NONRECURRING SERVICE CHARGE (FEB 1995)

As provided herein, the Government will pay a nonrefundable, nonrecurring charge when the rules and regulations of a Contractor require that a customer pay (1) a charge for the initiation of service, (2) a contribution in aid of construction, or (3) a nonrefundable membership fee. This charge may be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor's schedule a nonrefundable, nonrecurring charge for_____ in the amount of $ _____ dollars payable. *[Specify dates or schedules]*.

(End of clause)

52.241-13 Capital Credits.

As prescribed in 41.501(d)(7), insert a clause substantially the same as the following:

CAPITAL CREDITS (FEB 1995)

(a) The Government is a member of the _____ [*insert cooperative name*], and as any other member, is entitled to capital credits consistent with the bylaws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) The Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing], on an _____ basis [*insert period of time*] a list of accrued credits by contract number, year, and delivery point.

(c) Payment of capital credits will be made by check, payable to the _____ [*insert agency name*], and forwarded to the Contracting Officer at _____ [*insert agency address*], unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

(End of clause)

52.242-1 Notice of Intent to Disallow Costs.

As prescribed in 42.802, insert the following clause in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated:

NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract—

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)

(R 7-203.35 1978 AUG)

52.242-2 Production Progress Reports.

As prescribed in 42.1107(a), insert the following clause:

PRODUCTION PROGRESS REPORTS (APR 1991)

(a) The Contractor shall prepare and submit to the Contracting Officer the production progress reports specified in the contract Schedule.

(b) During any delay in furnishing a production progress report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding $25,000 or 5 percent of the amount of this contract, whichever is less.

(End of clause)

52.242-3 through 52.242-9 [Reserved]

52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.

As prescribed in 42.1404-2(a), insert the following clause in solicitations and contracts when f.o.b origin shipments are to be made using Government bills of lading or prepaid postage:

F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR PREPAID POSTAGE (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system, as appropriate, with postage costs prepaid by the Contractor. Any direct charge for postage costs shall be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by

Contractors is not authorized. Quantities shall not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

(R 7-104.85(a) 1977 DEC)

52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404-2(b), insert the following clause:

F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR INDICIA MAIL (FEB 1993)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal System, using "Penalty Permit Imprint" indicia labels.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (DEC 1989)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing

(The next page is 52.203)

shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(End of clause)
(AV 7-104.90)

52.243-7 Notification of Changes.

As prescribed in 43.107, the contracting officer may insert a clause substantially the same as the following in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than $1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

NOTIFICATION OF CHANGES (APR 1984)

(a) *Definitions.* "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically Authorized Representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice.* The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within . . . . *(to be negotiated)* calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued performance.* Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; *provided,* however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response.* The Contracting Officer shall promptly, within _____ *(to be negotiated)* calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs

(d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable adjustments.* (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

NOTE: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of clause)
(AV 7-104.86)

52.244-1 Subcontracts (Fixed-Price Contracts).

As prescribed in 44.204(a), insert the following clause. The threshold in subparagraphs (b)(1) and (b)(2) of the clause may be lowered when closer surveillance of subcontracting is necessary because of the nature of the industry involved, criticality of the work expected to be subcontracted, absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's purchasing system, or novelty of the supplies or services being purchased.

SUBCONTRACTS (FIXED-PRICE CONTRACTS)
(FEB 1995)

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting 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;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(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 15.903(d) 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*]

(R 23-201.1(b)(ii) 1977 APR)

52.244-2 Subcontracts (Cost-Reimbursement and Letter Contracts).

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTS (COST-REIMBURSEMENT AND LETTER CONTRACTS) (FEB 1995)

(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 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 $10,000 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 $10,000, 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 (2) below.

(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 most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) 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;

(E) 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 15.903(d) of the Federal Acquisition Regulation (FAR).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i)(1) The Contractor shall insert in each price redetermination or incentive price revision subcontract under this contract the substance of the paragraph "Quarterly limitation on payments statement" of the clause at 52.216-5, Price Redetermination—Prospective, 52.216-6, Price Redetermination—Retroactive, 52.216-16, Incentive Price Revision—Firm Target, or 52.216-17, Incentive Price Revision—Successive Targets, as appropriate, modified in accordance with the paragraph entitled "Subcontracts" of that clause.

(2) Additionally, the Contractor shall include in each cost-reimbursement subcontract under this contract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower tier price redetermination or incentive price revision subcontract under that subcontract.

(j) 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.

(k) 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 1985). 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 small purchase limitation in Part 13 of the Federal Acquisition Regulation or (ii) 5 percent of the total estimated cost of this contract.

ed by the offeror and the offeror fails to indicate the quantity per shipping point or plant before bid opening, the Government will evaluate the offer on the basis of delivery of the entire quantity from the point or plant where cost of transportation is most favorable to the Government.

(b) If the offeror, before bid opening (or the closing date specified for receipt of offers) fails to indicate any shipping point or plant, the Government will evaluate the offer on the basis of delivery from the plant at which the contract will be performed, as indicated in the offer. If no plant is indicated in the offer, the offer will be evaluated on the basis of delivery from the Contractor's business address indicated in the offer.

(c) If the offeror uses a shipping point other than that which has been used by the Government as a basis for the evaluation of offers, any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)

(R 7-2003.24(c) 1968 JUN)

52.247-47 Evaluation—F.o.b. Origin.

As prescribed in 47.305-3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; e.g., air, pipeline, barge, or ocean tanker, the provision shall be modified accordingly.

EVALUATION—F.O.B. ORIGIN (APR 1984)

Land methods of transportation by regulated common carrier are the normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating offers, only these methods will be considered in establishing the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the United States (excluding Alaska and Hawaii). This transportation cost will be added to the offer price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)

(R 7-2003.23(d) 1974 APR)

52.247-48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305-4(c), insert the following clause in solicitations and contracts when supplies will or may be purchased f.o.b. destination but inspection and acceptance will be at origin:

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (APR 1984)

If this contract is awarded on an f.o.b. destination basis and if transportation is accomplished by—

(a) Common carrier, the Contractor agrees to furnish in support of the Contractor's invoice, a copy of the signed commercial bill of lading indicating the carrier's receipt of the supplies covered by the invoice for transportation to the destination specified in the contract;

(b) Parcel post, the Contractor agrees to furnish a certificate of mailing with the Contractor's invoice; and

(c) Other than common carrier or parcel post, the Contractor agrees to attach to the Contractor's invoice a receipted copy of the appropriate delivery document showing receipt at the destination specified in the contract.

(End of clause)

(R 7-104.76 1968 JUN)

52.247-49 Destination Unknown.

As prescribed in 47.305-5(b)(2), insert the following provision in solicitations when destinations are tentative and only for the purpose of evaluating offers:

DESTINATION UNKNOWN (APR 1984)

For the purpose of evaluating offers and for no other purpose, the final destination(s) for the supplies will be considered to be as follows:.....

.....

(End of provision)

(R 7-2003.24(a) 1968 JUN)

52.247-50 No Evaluation of Transportation Costs.

As prescribed in 47.305-5(c)(1), insert the following provision in solicitations when exact destinations are not known and it is impractical to establish tentative or general delivery places for the purpose of evaluating transportation costs:

NO EVALUATION OF TRANSPORTATION COSTS (APR 1984)

Costs of transporting supplies to be delivered under this contract will not be an evaluation factor for award.

(End of provision)

(R 7-2003.70 1974 APR)

52.247-51 Evaluation of Export Offers.

As prescribed in 47.305-6(e), insert the following provision:

EVALUATION OF EXPORT OFFERS (FEB 1995)

(a) *Port handling and ocean charges—other than DOD water terminals.* Port handling and ocean charges in tariffs on file with the Bureau of Domestic Regulation, Federal Maritime Commission, or other appropriate regulatory authorities as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment will be used in the evaluation of offers.

(b) *F.o.b. origin, transportation under Government bill of lading.* (1) Offers shall be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, shall be the inland transportation costs from the point of origin in the United States to the port of

loading, port handling charges at the port of loading, and ocean shipping costs from the United States port of loading (see paragraph (d) below) to the overseas port of discharge. The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Offers shall be evaluated on the basis of shipment through one of the ports set forth in paragraph (d) below to the overseas port of discharge. Evaluation shall be made on the basis of shipment through the port that will result in the lowest cost to the Government.

(3) Ports of loading shall be considered as destinations within the meaning of the term "f.o.b. destination" as that term is used in the F.o.b. Origin clause of this contract.

(c) *F.o.b. port of loading with inspection and acceptance at origin.* (1) *F.o.b. port of loading with inspection and acceptance at origin.* Offers shall be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see paragraph (2) below), shall be the port handling charges at the port of loading and the ocean shipping cost from the port of loading (see paragraph (d) below) to the overseas port of discharge.

(2) Unless offers are applicable only to f.o.b. origin delivery under Government bills of lading (see paragraph (b) above), offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY:.....

[*Offerors insert at least one of the ports listed in paragraph (d) below.*]

(d) *Ports of loading for evaluation of offers.* Terminals to be used by the Government in evaluating offers are as follows: (*For the information of the offerors, ocean and port handling charges are set forth if the terminal named is a DOD water terminal.*)

PORTS/TERMINALS OF LOADING	COMBINED OCEAN AND PORT HANDLING CHARGES TO (INDICATE COUNTRY)	UNIT OF MEASURE: I.E. METRIC TON, MEASUREMENT TON, CUBIC FOOT, ETC.
_____	_____	_____
_____	_____	_____
_____	_____	_____

(e) *Ports of loading nominated by offeror.* The ports of loading named in paragraph (d) above are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, offerors may nominate additional ports of loading that the offeror considers to be more favorable to the Government. The Government may disregard such nominated ports if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S.-flag vessels, and other pertinent transportation factors, it determines that use of the nominated ports is not compatible with the required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of offer only for those items scheduled in this provision for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between April 15 and November 30 annually). All ports named, including those nominated by offerors and determined to be eligible as provided in this provision, shall be considered in evaluating all offers received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations shall be based on availability of ocean services by U.S.-flag vessels only. Additional U.S. port(s) of loading nominated by offeror, if any:.....

(f) *Price basis.* Offeror shall indicate whether prices are based on—

( ) Paragraph (b), f.o.b. origin, transportation by GBL to port listed in paragraph (d);

( ) Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d));

( ) Paragraph (e), f.o.b. origin, transportation by GBL to port nominated in paragraph (e); and/or

( ) Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(End of provision)

Alternate I (FEB 1995). When the CONUS ports of export are DOD water terminals, delete paragraph (a) from the basic provision and substitute for it the following paragraph (a):

(a) *Port handling and ocean charges—DOD water terminals.* The port handling and ocean charges are set forth in paragraph (d) of this provision for the information of offerors and are current as of the time of issuance of the solicitation. For evaluation of offers, the Government will use the port handling and ocean charges made available by the Directorate of International Traffic, Military Traffic Management Command rate information letters, on file as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment.

Alternate II (APR 1984). When offers are solicited on an f.o.b. origin only basis, delete paragraphs (c) and (f) from the basic provision, but do not redesignate the ensuing paragraphs. Add the following basic paragraph (g) to the provision:

(g) Paragraphs (c) and (f) have been deleted but ensuing paragraphs have not been redesignated.

(R 7-2003.20 1968 JUN)

Alternate III (APR 1984). When offers are solicited on an f.o.b. destination only basis, delete paragraph (b) from the basic provision but do not redesignate the ensuing paragraphs. Delete subparagraph (c)(2) and paragraph (f) from

dures, 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 Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

(R 7-104.19, Clause paragraph (c) 1979 MAR)

Alternate II (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(c)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) When ocean transportation is required to bring sup plies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.

(R 7-603.41 1979 JUN)

52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.

As prescribed in 47.303-17(f), insert the following clause:

F.O.B. ORIGIN, PREPAID FREIGHT—SMALL PACKAGE SHIPMENTS (JAN 1991)

(a) When authorized by the Contracting Officer, f.o.b. origin freight shipments which do not have a security classification shall move on prepaid commercial bills of lading or other shipping documents to domestic destinations, including air and water terminals. Weight of individual shipments shall be governed by carrier restrictions but shall not exceed 150 pounds by any form of commercial air or 1,000 pounds by other commercial carriers. The Government will reimburse the Contractor for reasonable freight charges.

(b) The Contractor shall annotate the commercial bill of lading as required by the clause of this contract entitled "Commercial Bill of Lading Notations."

(c) The Contractor shall consolidate prepaid shipments in accordance with procedures established by the cognizant transportation office. The Contractor is authorized to combine Government prepaid shipments with the Contractor's commercial shipments for delivery to one or more consignees and the Government will reimburse its pro rata share of the total freight costs. The Contractor shall provide a copy of the commercial bill of lading promptly to each consignee. Quantities shall not be divided into mailable lots for the purpose of avoiding movement by other modes of transportation.

(d) Transportation charges will be billed as a separate item on the invoice for each shipment made. A copy of the pertinent bill of lading, shipment receipt, or freight bill shall accompany the invoice unless otherwise specified in the contract.

(e) Loss and damage claims will be processed by the Government.

(End of clause)

52.247-66 Returnable Cylinders.

As prescribed in 47.305-17, insert the following clause:

RETURNABLE CYLINDERS (MAY 1994)

(a) Cylinder, referred to in this clause, is a pressure vessel designed for pressures higher than 40 psia and having a circular cross section excluding a portable tank, multi-tank car tank, cargo tank or tank car.

(b) Returnable cylinders shall remain the Contractor's property but shall be loaned without charge to the Government for a period of ____ days [*Contracting Officer shall insert number of days*] (hereafter referred to as loan period) following the day of delivery to the f.o.b. point specified in the contract. Any cylinder not returned within the loan period shall be charged a daily rental beginning with the first day after the loan period expires, to and including the day the cylinders are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination). The Government shall pay the Contractor a rental of $_____ [*Contracting Officer shall insert dollar amount for rental, after evaluation of offers*] per cylinder, per day, computed separately for cylinders by type, size,

and capacity and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of replacement value per cylinder specified in paragraph (c) of this clause.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value, less the allocable rental paid for that cylinder as follows: _____

_____

_____

[*Contracting Officer shall insert the cylinder types, sizes, capacities, and associated replacement values.*] These cylinders shall become Government property.

(d) If any lost cylinder is located within _____ [*Contracting Officer shall insert number of days*] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit.

As prescribed in 47.104-4(c), insert the following clause:

SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (FEB 1995)

(a)(1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid (i) by the Contractor under a cost-reimbursement contract, and (ii) by a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding $50.00. Bills under $50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the General Services Administration, ATTN: FWATS, 18th & F Streets, NW, Washington, DC 20405. The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show—

(1) The name and address of the Contractor;

(2) The contract number including any alpha-numeric prefix identifying the contracting office;

(3) The name and address of the contracting office;

(4) The total number of bills submitted with the statement; and

(5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

(End of clause)

52.248-1 Value Engineering.

As prescribed in 48.201, insert the following clause in supply or service contracts to provide a value engineering incentive under the conditions specified in 48.201. In solicitations and contracts for items requiring an extended period for production (e.g., ship construction, major system acquisition), if agency procedures prescribe sharing of future contract savings on all units to be delivered under contracts awarded during the sharing period, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting "under contracts awarded during the sharing period" for "during the sharing period." For engineering-development and low-rate-initial-production solicitations and contracts, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting for "the number of future contract units scheduled for delivery during the sharing period," "a number equal 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."

VALUE ENGINEERING (MAR 1989)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net

acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) *Definitions*. "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities funded after VECP acceptance.

"Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at the later of (1) 3 years after the first unit affected by the VECP is accepted or (2) the last scheduled delivery date of an item affected by the VECP under this contract's delivery schedule in effect at the time the VECP is accepted.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

52.301 Solicitation provisions and contract clauses (Matrix).

KEY:

Type of Contract:

P or C = Provision or Clause
IBR = Is Incorporation by Reference Authorized?
UCF = Uniform Contract Format Section, when Applicable
FP SUP = Fixed-Price Supply
CR SUP = Cost-Reimbursement Supply
FP R&D = Fixed-Price Research & Development
CR R&D = Cost Reimbursement Research & Development
FP SVC = Fixed-Price Service
CR SVC = Cost Reimbursement Service
FP CON = Fixed-Price Construction
CR CON = Cost Reimbursement Construction
T&M LH = Time & Material/Labor Hours
LMV = Leasing of Motor Vehicles
COM SVC = Communication Services
DDR = Dismantling, Demolition, or Removal of Improvements
A&E = Architect-Engineering
FAC = Facilities
IND DEL = Indefinite Delivery
TRN = Transportation
SP = Small Purchases
UTL SVC = Utility Services

Contract Purpose:

R = Required
A = Required when Applicable
O = Optional
√ = Revision

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
					PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																	
52.202-1 Definitions.	2.201	C	Yes	I	R	R	A	R	R	R		R	R	R	R		R	R	R	R		R
Alternate I	2.201	C	Yes	I							R					R	R					
52.203-1 Officials Not to Benefit.	3.102-2	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-2 Certificate of Independent Price Determination.	3.103-1	P	No	K	A		A		A		A			A	A	A	A	A	A	A		A
52.203-3 Gratuities.	3.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-4 Contingent Fee Representation and Agreement.	3.404(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.203-5 Covenant Against Contingent Fees.	3.404(c)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

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	IND DEL	TRN	SP	UTL SVC
52.203-6 Restrictions on Subcontractor Sales to the Government.	3.503-2	C	Yes	I	R	R			R	R									R		R	R
52.203-7 Anti-Kickback Procedures.	3.502-3	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.203-8 Requirement for Certificate of Procurement Integrity.	3.104-10(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	3.104-10(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-9 Requirement for Certificate of Procurement Integrity — Modification.	3.104-10(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.	3.104-10(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	3.808(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.203-12 Limitation on Payments to Influence Certain Federal Transactions.	3.808(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.203-13 Procurement Integrity—Service Contracting.	3.104-10(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-1 Approval of Contract.	4.103	C	No	I	A	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.204-2 Security Requirements.	4.404(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	4.404(b)	C	Yes	I					A													
Alternate II	4.404(c)	C	Yes	I							A	A					A	A				
52.204-3 Taxpayer Identification.	4.904	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-1 Notice of Cost Comparison (Sealed-Bid).	7.305(a)	P	Yes	L	A		A		A		A			A	A	A				A		
52.207-2 Notice of Cost Comparison (Negotiated).	7.305(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A
52.207-3 Right of First Refusal of Employment.	7.305(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A
52.207-4 Economic Purchase Quantity—Supplies.	7.203	P	No	K	A	A													A		A	
52.207-5 Option to Purchase Equipment.	7.404	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-1 Required Sources for Jewel Bearings and Related Items.	8.203-1(a)	C	Yes	I	A	A	A	A			A	A	A	A					A			
52.208-2 Jewel Bearings and Related Items Certificate.	8.203-1(c)	P	No	K	A	A					A	A	A	A					A			
52.208-3 Reserved.																						
52.208-4 Vehicle Lease Payments.	8.1104(a)	C	Yes	I										A							A	
52.208-5 Condition of Leased Vehicles.	8.1104(b)	C	Yes	I										A							A	
52.208-6 Marking of Leased Vehicles.	8.1104(c)	C	Yes	I										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	IND DEL	TRN	SP	UTL SVC
52.208-7 Tagging of Leased Vehicles.	8.1104(d)	C	Yes	I										A							A	
52.208-8 Helium Requirement Forecast and Required Sources for Helium.	8.505	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.209-1 Qualification Requirements.	9.206-2	C	No	I	A	A			A	A				A					A		A	
52.209-2 [Reserved]																						
52.209-3 First Article Approval—Contractor Testing.	9.308-1(a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A	
Alternate I	9.308-1(a)(2) and (b)(2)	C	Yes	I	A	O								A					A		A	
Alternate II	9.308-2(a)(3) and (b)(3)	C	Yes	I	A	O								A					A		A	
52.209-4 First Article Approval—Government Testing.	9.308-2(a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A	
Alternate I	9.308-2(a)(1) and (b)(2)	C	Yes	I	A	O								A					A		A	
Alternate II	9.308-2(a)(1) and (b)(3)	C	Yes	I	A	O								A					A		A	
52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.	9.409(a)	P	No	K	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	9.409(b)	C	Yes	I	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.209-7 Organizational Conflicts of Interest Certificate—Marketing Consultants.	9.507-1(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.209-8 Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.	9.507-1(c)	P	Yes	L					A	A									A			
52.210-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	10.011(a)	P	No	L	A	A	A	A	A	A	A			A	A			A	A		A	
52.210-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).	10.011(b)	P	No	L	A	A	A	A	A	A	A			A	A			A	A		A	
52.210-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	10.011(c)	P	No	L	A	A	A	A	A	A	A			A	A			A	A		A	
52.210-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	10.011(d)	P	No	L	A	A	A	A	A	A	A			A	A			A	A	A	A	
52.210-5 New Material.	10.011(e)	C	Yes	I	O	O	O	O	O	O			O	O	O			O	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	FAC	IND DEL	TRN	SP	UTL SVC
52.210-6 Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.	10.011(f)	P	Yes	L	O	O			O	O			O	O				O	O		O	
52.210-7 Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.	10.011(g)(1)	C	Yes	I	O	O	O	O	O	O			O	O	O			O	O		O	
52.211 Reserved.																						
52.212-1 Time of Delivery.	12.104(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	12.104(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	12.104(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	12.104(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.212-2 Desired and Required Time of Delivery.	12.104(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	12.104(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	12.104(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	12.104(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.212-3 Commencement, Prosecution, and Completion of Work.	12.104(b)	C	Yes	__							R											
Alternate I	12.104(b)	C	Yes	__							R											

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	IND DEL	TRN	SP	UTL SVC
52.212-4 Liquidated Damages—Supplies, Services, or Research and Development.	12.204(a)	C	Yes	F	O		O		O					O							O	O
52.212-5 Liquidated Damages—Construction.	12.204(b)	C	Yes	—							O	O									O	
Alternate I	12.204(b)	C	Yes	—							O	O									O	
52.212-6 Time Extensions.	12.204(c)	C	Yes	—							A	A									A	
52.212-7 Notice of Priority Rating for National Defense Use.	12.304(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.212-8 Defense Priority and Allocation Requirements.	12.304(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.212-9 Variation in Quantity.	12.403(a)	C	Yes	F	A				A					A					A		A	
52.212-10 Delivery of Excess Quantities.	12.403(b)	C	Yes	F	O									O					O		O	
52.212-11 Variation in Estimated Quantity.	12.403(c)	C	Yes	—							A										A	
52.212-12 Suspension of Work.	12.505(a)	C	Yes	—							A						A				A	
52.212-13 Stop-Work Order.	12.505(b)(1)	C	Yes	F	O	O	O	O	O	O				O							O	
Alternate I	12.505(b)(2)	C	Yes	F		O		O		O				O								
52.212-14 Stop-Work Order—Facilities.	12.505(c)	C	Yes	F														A				
52.212-15 Government Delay of Work.	12.505(d)	C	Yes	F	A				O					A							A	
52.213-1 Fast Payment Procedure.	13.305	C	Yes	—	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	IND DEL	TRN	SP	UTL SVC
52.213-2 Invoices.	13.507(c)	C	Yes	—																	A	
52.213-3 Notice to Supplier.	13.507(d)	C	Yes	—																	A	
52.214-1 Solicitation Definitions—Sealed Bidding.	14.201-6 (b)(1)	P	Yes	L	A				A		A			A	A	A			A	A		A
52.214-2 Type of Business Organization—Sealed Bidding.	14.201-6 (b)(2)	P	No	K	A				A		A			A	A	A			A	A		A
52.214-3 Amendments to Invitations for Bids.	14.201-6 (b)(3)	P	Yes	L	A				A		A			A	A	A			A	A		A
52.214-4 False Statements in Bids.	14.201-6 (b)(4)	P	Yes	L	A				A		A			A	A	A			A	A		A
52.214-5 Submission of Bids.	14.201-6 (c)(1)	P	Yes	L	A				A		A			A	A	A			A	A		A
52.214-6 Explanation to Prospective Bidders.	14.201-6 (c)(2)	P	Yes	L	A				A		A			A	A	A			A	A		A
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.	14.201-6 (c)(3)	P	Yes	L	A				A		A			A	A	A			A	A		A
52.214-8 [Reserved]																						
52.214-9 Failure to Submit Bid.	14.201-6 (e)(1)	P	Yes	L	A				A					A	A	A			A	A		A
52.214-10 Contract Award—Sealed Bidding.	14.201-6 (e)(2)	P	Yes	L	A				A					A	A	A			A	A		A
52.214-11 [Reserved]																						
52.214-12 Preparation of Bids.	14.201-6(f)	P	Yes	L	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	IND DEL	TRN	SP	UTL SVC
52.214-13 Telegraphic Bids.	14.201-6 (g)(1)	P	Yes	L	A				A		A			A	A	A			A	A		
Alternate I	14.201-6 (g)(2)	P	Yes	L	A																	
52.214-14 Place of Performance—Sealed Bidding.	14.201-6(h)	P	No	K	A				A					A	A	A			A	A		
52.214-15 Period for Acceptance of Bids.	14.201-6(i)	P	Yes	L	A				A					A	A	A			A	A		
52.214-16 Minimum Bid Acceptance Period.	14.201-6(j)	P	No	K	A				A					A	A	A			A	A		
52.214-17 Affiliated Bidders.	14.201-6(k)	P	Yes	L	A				A		A			A	A	A			A	A		
52.214-18 Preparation of Bids—Construction.	14.201-6(l)	P	Yes	—							A											
52.214-19 Contract Award—Sealed Bidding-Construction.	14.201-6(m)	P	Yes	—							A					A						
52.214-20 Bid Samples.	14.201-6 (o)(1)	P	Yes	L	A				A					A					A			
Alternate I	14.201-6 (o)(2)(i)	P	Yes	L	A				A					A					A			
Alternate II	14.201-6 (o)(2)(ii)	P	Yes	L	A				A					A					A			
52.214-21 Descriptive Literature.	14.201-6 (p)(1)	P	Yes	L	A				A					A					A			
Alternate I	14.201-6 (p)(2)	P	No	L	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	IND DEL	TRN	SP	UTL SVC
52.214-22 Evaluation of Bids for Multiple Awards.	14.201-6(q)	P	Yes	M	A				A		A			A	A	A			A	A		
52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	14.201-6(r)	P	Yes	L	A		A		A		A			A	A	A			A			
52.214-24 Multiple Technical Proposals.	14.201-6(s)	P	Yes	M	A		A		A		A			A					A			
52.214-25 Step Two of Two-Step Sealed Bidding.	14.201-6(t)	P	Yes	L	A				A		A			A	A	A						
52.214-26 Audit—Sealed Bidding.	14.201-7(a)	C	Yes	I	A				A		A			A	A	A			A	A		
52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7 (b)(1)	C	Yes	I	A				A		A			A	A	A			A	A		
52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7 (c)(1)	C	Yes	I	A				A		A			A	A	A			A	A		
52.214-29 Order of Precedence—Sealed Bidding.	14.201-7(d)	C	Yes	I	A				A		A			A	A	A			A	A		
52.214-30 Annual Representations and Certifications—Sealed Bidding.	14.201-6(u)	P	No	K	A				A					A	A	A			A	A		
52.214-31 Facsimile Bids.	14.201-6(w)	P	Yes	L	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	IND DEL	TRN	SP	UTL SVC
52.314-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).	14.201-6 (c)(4)	P	Yes	L	A				A					A	A	A			A	A		
52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas).	14.201-6(v)	P	Yes	L	A				A					A	A	A			A	A		
52.214-34 Submission of Offers in the English Language.	14.201-6(x) 15.407(k) 25.407(c)	P	Yes		A	A	A	A	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(l) 25.407(c)	P	Yes		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-1 Examination of Records by Comptroller General.	15.106-1(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-2 Audit—Negotiation.	15.106-2(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A			A		A
Alternate I	15.106-2(b)	C	Yes	I														R				
52.215-3 Solicitation for Information or Planning Purposes.	15.405-2	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-4 Notice of Possible Standardization.	15.407(b)	P	Yes	L	O	O								O					O			
52.215-5 Solicitation Definitions.	15.407(c)(1)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-6 Type of Business Organization.	15.407(c)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-7 Unnecessarily Elaborate Proposals or Quotations.	15.407(c)(3)	P	Yes	L	A	A	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	IND DEL	TRN	SP	UTL SVC
52.215-8 Amendments to Solicitations.	15.407(c)(4)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-9 Submission of Offers.	15.407(c)(5)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.	15.407(c)(6)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-11 Authorized Negotiators.	15.407(c)(7)	P	No	K	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-12 Restriction on Disclosure and Use of Data.	15.407(c)(8)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-13 Preparation of Offers.	15.407(d)(1)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-14 Explanation to Prospective Offerors.	15.407(d)(2)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-15 Failure to Submit Offer.	15.407(d)(3)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-16 Contract Award.	15.407(d)(4)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
Alternate I	15.407 (d)(4)(ii)	P	Yes	L							R	R										
Alternate II	15.407 (d)(4)(iii)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
Alternate III	15.407 (d)(4)(iv)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
52.215-17 Telegraphic Proposals.	15.407(e)(1)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A
Alternate I	15.407(e)(2)	P	Yes	L	A																	
52.215-18 Facsimile Proposals.	15.407(j)	P	Yes	L	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.215-19 Period for Acceptance of Offer.	15.407(f)	P	No	K	A	A	A	A	A	A			A	A	A	A	A	A	A	A		A
52.215-20 Place of Performance.	15.407(g)	P	No	K	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		
52.215-21 Changes or Additions to Make-or-Buy Program.	15.708	C	Yes	I	A	A	A	A	A	A												
Alternate I	15.708	C	Yes	I	A	A	A	A	A	A												
Alternate II	15.708	C	Yes	I	A	A	A	A	A	A												
52.215-22 Price Reduction for Defective Cost or Pricing Data.	15.804-8(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.	15.804-8(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-24 Subcontractor Cost or Pricing Data.	15.804-8(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-25 Subcontractor Cost or Pricing Data—Modifications.	15.804-8(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-26 Integrity of Unit Prices.	15.812-2(a)	C	Yes	I	A	A	A	A	A	A			A		A			A	A	A		
Alternate I	15.812-2(b)	C	Yes	I	A	A	A	A	A	A			A	A	A			A	A	A		
52.215-27 Termination of Defined Benefit Pension Plans.	15.804-8(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-28 [Reserved]																						
52.215-29 [Reserved]																						
52.215-30 Facilities Capital Cost of Money.	15.904(a)	P	Yes	√ L	A	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	IND DEL	TRN	SP	UTL SVC
52.215-31 Waiver of Facilities Capital Cost of Money.	15.904(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A				A
52.215-32 [Reserved]																						
Alternate I	14.214 15.813-7 (a)(2)	C	No	I	A	A	A	A	A	A			A		A				A			A
52.215-33 Order of Precedence.	15.406-3(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A		A
52.215-34 Evaluation of Offers for Multiple Awards.	15.407(h)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.215-35 Annual Representations and Certifications—Negotiation.	15.407(i)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).	15.407(c)(9)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-37 [Reserved]																						
52.215-38 Preparation of Offers—Construction.	15.407	P	Yes	K							R	R										
52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).	15.804-8(f)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.215-40 Notification of Ownership Changes.	15.804-8(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
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	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	IND DEL	TRN	SP	UTL SVC
52.216-2 Economic Price Adjustment—Standard Supplies.	16.203-4(a)	C	No	I	O									O					O			
52.216-3 Economic Price Adjustment—Semistandard Supplies.	16.203-4(b)	C	No	I	O									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	O	O			
52.216-5 Price Redetermination—Prospective.	16.205-4	C	Yes	I			A		A		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		A	A			
52.216-7 Allowable Cost and Payment.	16.307(a)	C	Yes	I		A		A		A		A	A	A	A	A	A		A	A		
52.216-8 Fixed Fee.	16.307(b)	C	Yes	I		A		A		A			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			A	A		
52.216-11 Cost Contract—No Fee.	16.307(e)(1)	C	Yes	I		A		A		A		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	A	A	A		
Alternate I	16.307(f)(2)	C	Yes	I				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	IND DEL	TRN	SP	UTL SVC
52.216-13 Allowable Cost and Payment —Facilities.	16.307(g)(1)	C	Yes	I														A				
Alternate I	16.307(g)(2)	C	Yes	I														O				
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		A			
Alternate I	16.405(a)	C	Yes	I	A				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		A			
Alternate I	16.405(b)	C	Yes	I	A		A		A				A	A	A				A			
52.216-18 Ordering.	16.505(a)	C	Yes	I															A			
52.216-19 Delivery-Order Limitations.	16.505(b)	C	Yes	I															A			
52.216-20 Definite Quantity.	16.505(c)	C	Yes	I															A			
52.216-21 Requirements.	16.505(d)(1)	C	Yes	I															A			
Alternate I	16.505(d)(2)	C	Yes	I															A			
Alternate II	16.505(d)(3)	C	Yes	I															A			
Alternate III	16.505(d)(4)	C	Yes	I															A			
Alternate IV	16.505(d)(5)	C	Yes	I															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	IND DEL	TRN	SP	UTL SVC
52.216-22 Indefinite Quantity.	16.505(e)	C	Yes	I															A			
52.216-23 Execution and Commencement of Work. (See Note 1.)	16.603-4 (b)(1)	C	Yes	I																		
52.216-24 Limitation of Government Liability. (See Note 1.)	16.603-4 (b)(2)	C	Yes	I																		
52.216-25 Contract Definitization. (See Note 1.)	16.603-4 (b)(3)	C	Yes	I																		
Alternate I (See Note 1.)	16.603-4 (b)(3)	C	Yes	I																		
52.216-26 Payments of Allowable Costs Before Definitization. (See Note 1.)	16.603-4(c)	C	Yes	I																		
52.217-1 Limitation of Price and Contractor Obligations.	17.105(a)(1)	C	Yes	I	A				A					A					A			
52.217-2 Cancellation of Items.	17.105(a)(2)	C	Yes	I	A				A					A					A			
Alternate I	17.105(a)(2)	C	Yes	I	A				A					A					A			
52.217-3 Evaluation Exclusive of Options.	17.208(a)	P	Yes	M	A	A			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					A	A		
52.217-5 Evaluation of Options.	17.208(c)	P	Yes	M	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	IND DEL	TRN	SP	UTL SVC
52.217-6 Option for Increased Quantity.	17.208(d)	C	Yes	I	A				A					A					A	A		
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	C	Yes	I	A	A							A	A					A			
52.217-8 Option to Extend Services.	17.208(f)	C	Yes	I					A	A			A						A	A		
52.217-9 Option to Extend the Term of the Contract.	17.208(g)	C	Yes	I					A	A			A						A	A		
52.218 [Reserved]																						
52.219-1 Small Business Concern Representation.	19.304(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-2 Small Disadvantaged Business Concern Representation.	19.304(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.219-3 Women-Owned Small Business Representation.	19.304(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.219-4 Notice of Small Business -Small Purchase Set-Aside.	19.508(a)	P	—	—																	A	
52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.	19.508(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	19.508(b)	C	Yes	I	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	A	A		A
Alternate I	19.508(c)	C	Yes	I	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	IND DEL	TRN	SP	UTL SVC
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	A	A		A
Alternate I	19.508(d)	C	Yes	I	A								A									
52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	19.708(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.	19.708(b)(1)	C	Yes	I	A	A	A	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			A	A		A
52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.	19.708(c)(1)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O		O
52.219-11 Special 8(a) Contract Conditions. (See Note 2.)	19.811-3(a)	C	Yes	I																		
Alternate I (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																		
Alternate I (See Note 2.)	19.811-3(b)	C	Yes	I																		
52.219-13 Utilization of Women-Owned Small Businesses.	19.902	C	Yes	I	A	A	A	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	IND DEL	TRN	SP	UTL SVC
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	A	A		A
52.219-15 Notice of Participation by Organizations for the Handicapped.	19.508(f)	C	√ No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.219-16 Liquidated Damages—Small Business Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	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																		
Alternate III (See Note 2.)	19.811-3 (d)(3)	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		A			
52.219-20 Notice of Emerging Small Business Set-Aside.	19.1007(b)	P	No	K																	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	IND DEL	TRN	SP	UTL SVC
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	A	A	A		
52.219-22 SIC Code and Small Business Size Standard.	19.304(d)	P	No	√ L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.220-1 Preference for Labor Surplus Area Concerns.	20.103(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.220-2 Notice of Total Labor Surplus Area Set-Aside.	20.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.220-3 Utilization of Labor Surplus Area Concerns.	20.302(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.220-4 Labor Surplus Area Subcontracting Program.	20.302(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.221 [Reserved]																						
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	A	A	A	A	A
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I		A		A		A		A			A	A	A		A	A		
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A
52.222-5 [Reserved]																						

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	IND DEL	TRN	SP	UTL SVC
52.222-6 Davis-Bacon Act.	22.407(a)	C	Yes	I							A	A									A	
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I							A	A										
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I							A	A										
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I							A	A										
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I							A	A										
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I							A	A										
52.222-12 Contract Termination—Debarment.	22.407(a)	C	Yes	I							A	A									A	
52.222-13 Compliance with Davis-Bacon and Related Act Regulations.	22.407(a)	C	Yes	I							A	A									A	
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I							A	A									A	
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I							A	A									A	
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I								A										
52.222-17 Labor Standards for Construction Work—Facilities Contracts.	22.407(d)	C	Yes	I														A				
52.222-18 [Reserved]																						

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	IND DEL	TRN	SP	UTL SVC
52.222-19 Walsh-Healey Public Contracts Act Representation.	22.610(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-20 Walsh-Healey Public Contracts Act.	22.610(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-21 Certification of Nonsegregated Facilities.	22.810(a)(1)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-22 Previous Contracts and Compliance Reports.	22.810(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.	22.810(b)	P	Yes	__							A	A									A	
52.222-24 Preaward On-Site Equal Opportunity Compliance Review.	22.810(c)	P	Yes	L	A	A	A	A	A	A			A	A	A	A	A	A	A	A		A
52.222-25 Affirmative Action Compliance.	22.810(d)	P	No	K	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A	A
52.222-26 Equal Opportunity.	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-27 Affirmative Action Compliance Requirements for Construction.	22.810(f)	C	Yes	__							A	A									A	
52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.	22.810(g)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A		A
52.222-29 Notification of Visa Denial.	22.810(h)	C	Yes	I	A	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.222-30—52.222-34 [Reserved]																						
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.	22.1308(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	√ 22.1308(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	√ A	A
52.222-36 Affirmative Action for Handicapped Workers.	22.1408(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.	22.1308(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-38—52.222-39 [Reserved]																						
52.222-40 Service Contract Act of 1965, As Amended—Contracts of $2,500 or Less.	22.1005	C	Yes	I					A	A			A		A	A	A			A	A	
52.222-41 Service Contract Act of 1965, As Amended.	22.1006(a)	C	Yes	I					A	A			A		A	A	A			A	A	
52.222-42 Statement of Equivalent Rates for Federal Hires.	22.1006(b)	C	No	I					A	A			A		A	A	A			A	A	
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	22.1006 (c)(1)	C	Yes	I					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	IND DEL	TRN	SP	UTL SVC
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.	22.1006 (c)(2)	C	Yes	I					A				A		A	A	A			A	A	
52.222-45 [Reserved]																						
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L					A	A												
52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).	22.1006(d) 22.1012-3 (d)(1)	C	Yes	I					A	A			A		A	A				A	A	
52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.	22.1006 (e)(1)	C	Yes	I					A	A			A								A	
52.222-49 Service Contract Act—Place of Performance Unknown.	22.1006(f) 22.1009-4(c)	C	Yes	I					A	A			A		A	A				A	A	
52.223-1 Clean Air and Water Certification.	23.105(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.223-2 Clean Air and Water.	23.105(b)	C	Yes	I	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-4 Recovered Material Certification.	23.405	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A
52.223-5 Certification Regarding A Drug-Free Workplace.	23.505(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-6 Drug-Free Workplace.	23.505(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A	A			A		A	A		A	
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-1 Buy American Certificate.	25.109(a)	P	No	K	A	A	A	A	A	A			A	A	A				A		A	
52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.109(c)	P	Yes	L	A	A	A	A						A					A		A	
52.225-3 Buy American Act—Supplies.	25.109(d)	C	Yes	I	A	A	A	A	A	A			A	A	A				A		A	
52.225-4 [Reserved]																						
52.225-5 Buy American Act—Construction Materials.	25.205	C	Yes	___							A	A										
52.225-6 Balance of Payments Program Certificate.	25.305(a)	P	No	K	A	A	A	A	A	A			A	A	A						A	
52.225-7 Balance of Payments Program.	25.305(c)	C	Yes	I	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	IND DEL	TRN	SP	UTL SVC
52.225-5 Buy American Act—Construction Materials.	25.205	C	Yes	—							A	A										
52.225-6 Balance of Payments Program Certificate.	25.305(a)	P	No	K	A	A	A	A	A	A			A	A	A						A	
52.225-7 Balance of Payments Program.	25.305(c)	C	Yes	I	A	A	A	A	A	A			A	A	A						A	
52.225-8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.	√ 25.408(a)(1)	P	No	K	A	A							A	A					A			
52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.	√ 25.408(a)(2)	C	Yes	I	A	A							A	A					A			
52.225-10 Duty-Free Entry.	25.605(a)	C	Yes	I	A	A	A	A	A	A			A	A	A				A		A	
52.225-11 Restrictions on Certain Foreign Purchases.	25.704	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A				A		A	
52.225-12 Reserved.																						
52.225-13 Reserved.																						
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.902	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-15 Buy American Act—Construction Materials under European Community Agreement.	25.205(b)	C	Yes	I							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	IND DEL	TRN	SP	UTL SVC
52.225-16 Buy American Act—Supplies under European Community Agreement Certificate.	25.109(e)	√ P	Yes	√ K	A	A	A	A	A	A			A	A	A				A			
52.225-17 Buy American Act—Supplies under European Community Agreement.	25.109(f)	C	Yes	I	A	A	A	A	A	A			A	A	A				A			
52.225-18 European Community Sanctions for End Products.	25.1003(a)	C	Yes	I	A	A	A	A					A						A		√	
52.225-19 European Community Sanction for Services.	25.1003(b)	C	Yes	I					A	A			A		A						√	
52.225-20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.	25.408(a)(3)	P	No	K	A	A	A	A	A	A			A	A	A						A	
52.225-21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.	25.408(a)(4)	C	Yes	I	A	A	A	A	A	A			A	A	A						A	
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.227-1 Authorization and Consent.	27.201-2(a)	C	Yes	I	A	A			A		A	A			A	A	A	A	A		O	
Alternate I	27.201-2(b)	C	Yes	I			A	A			A	A			A		A	A				
Alternate II	27.201-2(c)	C	Yes	I			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	IND DEL	TRN	SP	UTL SVC
Alternate II	27.203-2(b)	C	Yes	I	A	A			A	A					A				A			
Alternate III	27.203-2(c)	C	Yes	I											A						A	
52.227-4 Patent Indemnity—Construction Contracts.	27.203-5	C	Yes	—							A	A				A						
Alternate I	27.203-5	C	Yes	—							O	O				O						
52.227-5 Waiver of Indemnity.	27.203-6	C	Yes	I	A	A	A	A	A	A	A	A				A		A	A			
52.227-6 Royalty Information.	27.204-2	P	No	K	A	A	A	A	A	A	A	A				A		A	A			
Alternate I	27.204-2	P	No	K											A			A				
52.227-7 Patents—Notice of Government License.	27.204-3(c)	P	No	K	A	A	A	A	A	A	A	A			A	A		A	A			
52.227-8 [Reserved]																						
52.227-9 Refund of Royalties.	27.206-2	C	Yes	I	A		A		A		A				A	A		A	A			
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.207-2	C	Yes	I	A	A	A	A	A	A	A	A			A	A		A	A			
52.227-11 Patent Rights—Retention by the Contractor (Short Form).	27.303(a)	C	Yes	I			A	A			A	A					A					
Alternate I	27.303(a)(3)	C	Yes	I			A	A			A	A					A					
Alternate II	27.303(a)(3)	C	Yes	I			A	A			A	A					A					
Alternate III	27.303(a)(4)	C	Yes	I			A	A			A	A										
Alternate IV	27.303(a)(5)	C	Yes	I			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	IND DEL	TRN	SP	UTL SVC
52.227-12 Patent Rights—Retention by the Contractor (Long Form).	27.303(b)	C	Yes	I			A	A			A	A					A					
Alternate I	27.303(b)(2)	C	Yes	I			A	A			A	A					A					
Alternate II	27.303(b)(2)	C	Yes	I			A	A			A	A					A					
52.227-13 Patent Rights—Acquisition by the Government.	27.303(c)	C	Yes	I			A	A			A	A					A					
Alternate I	27.303(c)(3)	C	Yes	I			A	A			A	A					A					
Alternate II	27.303(c)(3)	C	Yes	I			A	A			A	A					A					
52.227-14 Rights in Data—General.	27.409(a)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A	A
Alternate I	27.409(b)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A	A
Alternate II	27.409 (c)&(g)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A	A
Alternate III	27.409 (d)&(g)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A	A
Alternate IV	27.409(e)	C	Yes	I	O	O	A	A	O	O			O	O	O	O		O	O	O	O	O
Alternate V	27.409(f)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A	A
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(g)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.227-16 Additional Data Requirements.	27.409(h)	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	IND DEL	TRN	SP	UTL SVC
52.227-17 Rights in Data—Special Works.	27.409(i)	C	Yes	I	A	A	A	A	A	A	O	O	A		A		O				A	
52.227-18 Rights in Data—Existing Works.	27.409(j)	C	Yes	I	A	A	A	A	A	A			A		A		A		A		A	
52.227-19 Commercial Computer Software—Restricted Rights.	27.409(k)	C	Yes	I	A				A						A						A	
52.227-20 Rights in Data—SBIR Program.	27.409(l)	C	Yes	I			A	A														
52.227-21 Technical Data Certification, Revision, and Withholding of Payment—Major Systems.	27.409(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.227-22 Major System—Minimum Rights.	27.409(r)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.227-23 Rights to Proposal Data (Technical).	27.409(s)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-1 Bid Guarantee.	28.101-3(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-3 Workers' Compensation Insurance (Defense Base Act).	28.309(a)	C	Yes	I					A	A	A	A	A				A					
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309(b)	C	Yes	I					A	A	A	A	A				A					
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	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	IND DEL	TRN	SP	UTL SVC
52.228-6 Insurance—Immunity From Tort Liability.	28.311-1	P	Yes	√ L				A														
52.228-7 Insurance—Liability to Third Persons.	28.311-2	C	Yes	I		A		A		A					A			A	A			
Alternate I	28.311-2	C	Yes	I		A		A		A					A			A	A			
Alternate II	28.311-2	C	Yes	I		A		A		A					A			A	A			
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I										R							A	
52.228-9 Cargo Insurance.	28.313(a)	C	Yes	I																A	A	
52.228-10 Vehicular and General Public.	28.313(b)	C	Yes	I																A		
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																A		
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I							A	A										
Alternate I	29.401-2	C	Yes	I					A	A												
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A		
52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract).	29.401-4	C	Yes	I	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	IND DEL	TRN	SP	UTL SVC
52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	29.401-5	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A		
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A		
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A	A	
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A		
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A		
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.	29.401-6(b)	C	Yes	I		A		A		A		A	A	A	A	A	A	A	A	A		
52.230-1 Cost Accounting Standards Notices and Certification.	30.201-3	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.230-2 Cost Accounting Standards.	30.201-4(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.230-3 Disclosure and Consistency of Cost Accounting Practices.	30.201-4 (b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.230-4 Consistency in Cost Accounting Practices.	30.201-4(c)	C	Yes	I	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.230-5 Administration of Cost Accounting Standards.	30.201-4(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.231 [Reserved]																						
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R				R					√	A						A	A
52.232-2 Payments under Fixed-Price Research and Development Contracts.	32.111(a)(2)	C	Yes	I			R															
52.232-3 Payments under Personal Services Contracts.	32.111(a)(3)	C	Yes	I					A	A												
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.	32.111(a)(4)	C	Yes	I																R	A	
52.232-5 Payments under Fixed-Price Construction Contracts.	32.111(a)(5)	C	Yes	—							R											
52.232-6 Payment under Communication Service Contracts with Common Carriers.	32.111(a)(6)	C	Yes	I											A						A	
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.	32.111(b)	C	Yes	I									A									
Alternate I	32.111(b)	C	Yes	I									A									
Alternate II	32.111(b)	C	Yes	I									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	IND DEL	TRN	SP	UTL SVC
52.232-8 Discounts for Prompt Payment.	32.111(c)(1)	C	Yes	I	A				A				A	A							A	
52.232-9 Limitation on Withholding of Payments.	32.111(c)(2)	C	Yes	I	A	A	A	A	A	A			A	A								
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.	32.111(d)(1)	C	Yes	—													A					
52.232-11 Extras.	32.111(d)(2)	C	Yes	I	A				A					A						A	A	
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.412(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	32.412(c)	C	No	I		A		A		A		A		A	A		A	A	A	A		
Alternate III	32.412(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate IV	32.412(e)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate V	32.412(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A		A		A					A	A		A	A	A	A		
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502-3 (b)(2)	P	Yes	L	A		A		A		A			A	A			A	A	A		
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A		A		A					A	A			A	A	A		
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A		A		A		A	A		A	A		A	A	A	A		
Alternate I	32.502-4(b)	C	Yes	I	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	IND DEL	TRN	SP	UTL SVC
Alternate II (See Note 1.)	32.502-4(c)	C	Yes	I																		
52.232-17 Interest.	32.617(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	32.617(b)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.232-18 Availability of Funds.	32.705-1(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-19 Availability of Funds for the Next Fiscal Year.	32.705-1(b)	C	Yes	I					A	A									A			A
52.232-20 Limitation of Cost.	32.705-2(a)	C	Yes	I		A		A		A				A	A	A		A	A	A		
52.232-21 Limitation of Cost (Facilities).	32.705-2(b)	C	Yes	I														R				
52.232-22 Limitation of Funds.	32.705-2(c)	C	Yes	I		A		A		A				A	A	A		A	A	A		
52.232-23 Assignment of Claims.	32.806(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.806(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-24 Prohibition of Assignment of Claims.	32.806(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-25 Prompt Payment.	32.908(c)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A	A
52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.	32.908(a)	C	Yes	I													A					
52.232-27 Prompt Payment for Construction Contracts.	32.908(b)	C	Yes	I							R	R										
52.232-28 Electronic Funds Transfer Payment Methods.	32.908(d)	C	Yes	I	A	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.233-1 Disputes.	√ 33.215	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	33.214	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.233-2 Service of Protest.	33.106(a)	P	No	L	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R
52.233-3 Protest after Award.	33.106(b)	C	Yes	I	R		R		R		R		R	R	A	R	A	A	R	A	R	R
Alternate I	33.106(b)	C	Yes	I		R		R		R		R			A		A	A		A		
52.234-1 Industrial Resources Developed Under Defense Production Act Title III.	34.104	C	N	I	A	A	A	A														
52.235 [Reserved]																						
52.236-1 Performance of Work by the Contractor.	36.501(b)	C	Yes	__							A											
52.236-2 Differing Site Conditions.	36.502	C	Yes	__							A					A					O	
52.236-3 Site Investigation and Conditions Affecting the Work.	36.503	C	Yes	__							A					A					O	
52.236-4 Physical Data.	36.504	C	No	__							A										A	
52.236-5 Material and Workmanship.	36.505	C	Yes	__							R	R									A	
52.236-6 Superintendence by the Contractor.	36.506	C	Yes	__							A					A					O	
52.236-7 Permits and Responsibilities.	36.507	C	Yes	__							R	R				A					A	
52.236-8 Other Contracts.	36.508	C	Yes	__							A					A					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	FAC	IND DEL	TRN	SP	UTL SVC
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	C	Yes	__							A					A					O	
52.236-10 Operations and Storage Areas.	36.510	C	Yes	__							A					A					O	
52.236-11 Use and Possession Prior to Completion.	36.511	C	Yes	__							A										O	
52.236-12 Cleaning Up.	36.512	C	Yes	__							A					A					O	
52.236-13 Accident Prevention.	36.513	C	Yes	__							A					A					O	
Alternate I	36.513	C	Yes	__							A					A					O	
52.236-14 Availability and Use of Utility Services.	36.514	C	Yes	__							A					A					A	
52.236-15 Schedules for Construction Contracts.	36.515	C	Yes	__							O											
52.236-16 Quantity Surveys.	36.516	C	Yes	__							O										O	
Alternate I	36.516	C	Yes	__							O											
52.236-17 Layout of Work.	36.517	C	Yes	__							A										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										
52.236-20 [Reserved]																						

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	IND DEL	TRN	SP	UTL SVC
52.236-21 Specifications and Drawings for Construction.	36.521	C	Yes	__							A					A					O	
Alternate I	36.521	C	Yes	__							A					A					O	
Alternate II	36.521	C	Yes	__							A					A					O	
52.236-22 Design Within Funding Limitations.	36.609-1(c)	C	Yes	__													A				O	
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						
52.237-1 Site Visit.	37.110(a)	P	Yes	L			A	A	A	A			A	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	A	A	A	A	A
52.237-3 Continuity of Services.	37.110(c)	C	Yes	I					O	O											O	
52.237-4 Payment by Government to Contractor.	√ 37.404(a)	C	Yes	I												A					A	
Alternate I	√ 37.404(a)	C	Yes	I												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	IND DEL	TRN	SP	UTL SVC
52.237-5 Payment by Contractor to Government.	√ 37.404(b)	C	Yes	I												A					A	
52.237-6 Incremental Payment by Contractor to Government.	√ 37.404(c)	C	Yes	I												A					A	
52.237-7 Indemnification and Medical Liability Insurance.	37.503	C	Yes	I					A	A			A						A		O	
52.237-8—52.237-9 [Reserved]																						
52.238—52.240 [Reserved]																						
52.241-1 Electric Service Territory Compliance Representation.	41.501(b)	P	No	K																	A	A
52.241-2 Order of Precedence-Utilities.	41.501(c)(1)	C	Yes	I																	O	R
52.241-3 Scope of Duration of Contract.	41.501(c)(2)	C	No	I																	O	R
52.241-4 Change in Class of Service.	41.501(c)(3)	C	Yes	I																	O	R
52.241-5 Contractor's Facilities.	41.501(c)(4)	C	Yes	I																	O	R
52.241-6 Service Provisions.	41.501(c)(5)	C	No	I																	O	R
52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.	41.501(d)(1)	C	No	I																	O	A
52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.	41.501(d)(2)	C	No	I																	O	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	IND DEL	TRN	SP	UTL SVC
52.241-9 Connection Charge.	41.501(d)(3)	C	No	I																	O	A
52.241-10 Termination Liability.	41.501(d)(4)	C	No	I																	O	A
52.241-11 Multiple Service Locations.	41.501(d)(5)	C	Yes	I																	O	A
52.241-12 Nonrefundable, Nonrecurring Service Charge.	41.501(d)(6)	C	No	I																	O	A
52.241-13 Capital Credits.	41.501(d)(7)	C	No	I																	O	A
52.242-1 Notice of Intent to Disallow Costs.	42.802	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	R	A	A		
52.242-2 Production Progress Reports.	42.1107(a)	C	Yes	I	A	A	A	A	A	A			A	A			A		A			
52.242-3—52.242-9 [Reserved]																						
52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.	42.1404-2(a)	C	Yes	I	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	IND DEL	TRN	SP	UTL SVC
52.242-11 F.o.b. Origin—Government Bills of Lading Or Indicia Mail.	42.1404-2(b)	C	Yes	I	A	A	A	A	A	A			A	A	A		A	A	A		A	
52.242-12 Report of Shipment (REPSHIP).	42.1406-2	C	Yes	I	A	A	A	A	A	A			A	A	A		A	A	A		A	
52.242-13 Bankruptcy.	42.903	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	A
52.243-1 Changes—Fixed Price.	43.205(a)(1)	C	Yes	I	R									R					A		A	
Alternate I	43.205(a)(2)	C	Yes	I					A												A	
Alternate II	43.205(a)(3)	C	Yes	I					A												A	
Alternate III	43.205(a)(4)	C	Yes	I					A								A					
Alternate IV	43.205(a)(5)	C	Yes	I																A	A	
Alternate V	43.205(a)(6)	C	Yes	I			O														O	
52.243-2 Changes—Cost Reimbursement.	43.205(b)(1)	C	Yes	I		R																
Alternate I	43.205(b)(2)	C	Yes	I						A												
Alternate II	43.205(b)(3)	C	Yes	I						A												
Alternate III	43.205(b)(4)	C	Yes	I								A										
Alternate IV	43.205(b)(5)	C	Yes	I														A				
Alternate V	43.205(b)(6)	C	Yes	I				O														
52.243-3 Changes—Time-and-Materials or Labor-Hours.	43.205(c)	C	Yes	I									R									
52.243-4 Changes.	43.205(d)	C	Yes	I							A					R						

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	IND DEL	TRN	SP	UTL SVC
52.243-5 Changes and Changed Conditions.	43.205(e)	C	Yes	I							A										A	
52.243-6 Change Order Accounting.	43.205(f)	C	Yes	I	O	O	O	O						O								
52.243-7 Notification of Changes.	43.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.244-1 Subcontracts (Fixed-Price Contracts).	44.204(a)(1)	C	Yes	I	A		A		A		A			A	A	A		A	A	A	O	A
Alternate I	44.204(a)(3)	C	Yes	I	O		O		O		O			O	O	O		O	O	O	O	O
52.244-2 Subcontracts (Cost-Reimbursement and Letter Contracts). (See Note 1.)	44.204(b)	C	Yes	I		A		A		A		A		A	A	A		A	A	A		A
Alternate I (See Note 1.)	44.204(b)	C	Yes	I		A		A		A		A		A	A	A		A	A	A		A
52.244-3 Subcontracts (Time-and-Materials and Labor-Hour Contracts).	44.204(c)	C	Yes	I									R									
52.244-4 Subcontractors and Outside Associates and Consultants.	44.204(d)	C	Yes	I													A					
52.244-5 Competition in Subcontracting.	44.204(e)	C	Yes	I	A	A	A	A	A	A		A		A		A		A	A	A		A
52.245-1 Property Records.	45.106(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-2 Government Property (Fixed-Price Contracts).	45.106(b)(1)	C	Yes	I	A		A		A		A			A		A		A	A		A	
Alternate I	45.106(b)(2)	C	Yes	I	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	IND DEL	TRN	SP	UTL SVC
Alternate II	45.106(b)(3)	C	Yes	I			A									A						
52.245-3 Identification of Government-Furnished Property.	45.106(c)	C	Yes	I							A										A	
52.245-4 Government-Furnished Property (Short Form).	45.106(d)	C	Yes	I	O		O		O		O		O	O		O			O		O	
52.245-5 Government Property (Cost-Reimbursement, Time-and-Material or Labor-Hour Contracts).	45.106(f)(1)	C	Yes	I		A		A		A		A	A			A			A			
Alternate I	45.106(f)(2)	C	Yes	I				A					A									
52.245-6 Liability for Government Property (Demolition Services Contracts).	45.106(g)	C	Yes	I												R					A	
52.245-7 Government Property (Consolidated Facilities).	45.302-6(a)	C	Yes	I														A				
52.245-8 Liability for the Facilities.	45.302-6(b)	C	Yes	I														A				
52.245-9 Use and Charges.	45.302-6(c)	C	Yes	I	A		A		A		A			A		A		A	A		A	
52.245-10 Government Property (Facilities Acquisition).	45.302-6(d)	C	Yes	I														A				
52.245-11 Government Property (Facilities Use).	45.302-6 (e)(1)	C	Yes	I														A				
Alternate I	45.302-6 (e)(2)	C	Yes	I														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	IND DEL	TRN	SP	UTL SVC
52.245-12 Contract Purpose (Nonprofit Educational Institutions).	45.302-7(a)	C	Yes	I														O				
52.245-13 Accountable Facilities (Nonprofit Educational Institutions).	45.302-7(b)	C	Yes	I														O				
52.245-14 Use of Government Facilities.	45.302-7(c)	C	Yes	I														O				
52.245-15 Transfer of Title to the Facilities.	45.302-7(d)	C	Yes															O				
52.245-16 Facilities Equipment Modernization.	45.302-7(e)	C	Yes	I														O				
52.245-17 Special Tooling.	45.306-5	C	Yes	I	A		A		A					A		A			A		A	
52.245-18 Special Test Equipment.	45.307-3	C	Yes	I	A	A	A	A			A			A							A	
52.245-19 Government Property Furnished "As Is".	45.308-2	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A		A	
52.246-1 Contractor Inspection Requirements.	46.301	C	Yes	—																	A	
52.246-2 Inspection of Supplies—Fixed-Price.	46.302	C	Yes	E	A		A		A					A					A		O	
Alternate I	46.302	C	Yes	E	A		A		A					A								
Alternate II	46.302	C	Yes	E	A				A					A								
52.246-3 Inspection of Supplies—Cost-Reimbursement.	46.303	C	Yes	E		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	IND DEL	TRN	SP	UTL SVC
52.246-4 Inspection of Services—Fixed-Price.	46.304	C	Yes	E	A		A		A				A	A					A		O	
52.246-5 Inspection of Services—Cost-Reimbursement.	46.305	C	Yes	E		A		A		A												
52.246-6 Inspection—Time-and-Material and Labor-Hour.	46.306	C	Yes	E									R									
Alternate I	46.306	C	Yes	E									A								O	
52.246-7 Inspection of Research and Development—Fixed Price.	46.307(a)	C	Yes	E			A														O	
52.246-8 Inspection of Research and Development—Cost Reimbursement.	46.308	C	Yes	E				A														
Alternate I	46.308	C	Yes	E				A														
52.246-9 Inspection of Research and Development (Short Form).	46.309	C	Yes	E			A	A													O	
52.246-10 Inspection of Facilities.	46.310	C	Yes	E														R				
52.246-11 Higher-Level Contract Quality Requirement (Government Specification).	46.311	C	Yes	E	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.246-12 Inspection of Construction.	46.312	C	Yes	__							A	A									O	
52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.	46.313	C	Yes	__												R					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	IND DEL	TRN	SP	UTL SVC
52.246-14 Inspection of Transportation.	46.314	C	Yes	E																A	A	
52.246-15 Certificate of Conformance.	46.315	C	Yes	E	A	A	A	A	A	A				A					A		A	
52.246-16 Responsibility of Supplies.	46.316	C	Yes	E	A		A		A					A							A	
52.246-17 Warranty of Supplies of a Noncomplex Nature.	46.710(a)(1)	C	Yes	I	O									O					O			
Alternate I	46.710(a)(2)	C	Yes	I	O									O					O			
Alternate II	46.710(a)(3)	C	Yes	I	O									O					O			
Alternate III	46.710(a)(4)	C	Yes	I	O									O					O			
Alternate IV	46.710(a)(5)	C	Yes	I	O									O								
Alternate V	46.710(a)(6)	C	Yes	I	O									O					O			
52.246-18 Warranty of Supplies of a Complex Nature.	46.710(b)(1)	C	Yes	I	O		O							O					O			
Alternate I	46.710(b)(2)	C	Yes	I	O									O					O			
Alternate II	46.710(b)(3)	C	Yes	I	O		O							O					O			
Alternate III	46.710(b)(4)	C	Yes	I	O		O							O					O			
Alternate IV	46.710(b)(5)	C	Yes	I	O		O							O					O			
52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.	46.710(c)(1)	C	Yes	I	O		O		O					O								
Alternate I	46.710(c)(2)	C	Yes	I	O		O		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	FAC	IND DEL	TRN	SP	UTL SVC
Alternate II	46.710(c)(3)	C	Yes	I	O		O		O					O								
Alternate III	46.710(c)(4)	C	Yes	I	O		O		O					O								
52.246-20 Warranty of Services.	46.710(d)	C	Yes	I					O						O				O	O		
52.246-21 Warranty of Construction.	46.710(e)(1)	C	Yes	__							O										O	
Alternate I	46.710(e)(2)	C	Yes	__							O										O	
52.246-22 [Reserved]																						
52.246-23 Limitation of Liability.	46.805	C	Yes	I	A	A	A	A						A					A		O	
52.246-24 Limitation of Liability—High-Value Items.	46.805(a)	C	Yes	I	A	A	A	A						A					A			
Alternate I	46.805(a)	C	Yes	I	A	A	A	A					A	A					A			
52.246-25 Limitation of Liability—Services.	46.805(a)(4)	C	Yes	I			A	A	A	A			A					A	A	A	O	A
52.247-1 Commercial Bill of Lading Notations.	47.104-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.247-2 Permits, Authorities, or Franchises.	47.207-1(a)	C	No	I																A	A	
52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.	47.207-1 (b)(1)	C	Yes	I																A	A	
Alternate I	47.207-1 (b)(2)	C	Yes	I																	A	
52.247-4 Inspection of Shipping and Receiving Facilities.	47.207-1(c)	P	Yes	L																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	IND DEL	TRN	SP	UTL SVC
52.247-5 Familiarization with Conditions.	47.207-1(d)	C	Yes	I																A	A	
52.247-6 Financial Statement.	47.207-1(e)	P	Yes	L																A	A	
52.247-7 Freight Excluded.	47.207-3 (d)(2)	C	Yes	I																A	A	
52.247-8 Estimated Weights or Quantities Not Guaranteed.	47.207-3 (e)(2)	C	Yes	I																A	A	
52.247-9 Agreed Weight—General Freight.	47.207-4 (a)(1)	C	Yes	I																A	A	
52.247-10 Net Weight—General Freight.	47.207-4 (a)(2)	C	Yes	I																A	A	
52.247-11 Net Weight—Household Goods or Office Furniture.	47.207-4(b)	C	Yes	I																A	A	
52.247-12 Supervision, Labor, or Materials.	47.207-5(b)	C	Yes	I																A	A	
52.247-13 Accessorial Services—Moving Contracts.	47.207-5(c)	C	Yes	I																A	A	
52.247-14 Contractor Responsibility for Receipt of Shipment.	47.207-5(d)	C	Yes	I																A	A	
52.247-15 Contractor Responsibility for Loading and Unloading.	47.207-5(e)	C	Yes	I																A	A	
52.247-16 Contractor Responsibility for Returning Undelivered Freight.	47.207-5(f)	C	Yes	I																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	IND DEL	TRN	SP	UTL SVC
52.247-17 Charges.	47.207-6 (a)(2)	C	Yes	I																A	A	
52.247-18 Multiple Shipments.	47.207-6 (c)(5)(i)	C	Yes	I																A	A	
52.247-19 Stopping in Transit for Partial Uploading.	47.207-6 (c)(5)(ii)	C	No	I																A	A	
52.247-20 Estimated Quantities or Weights for Evaluation of Offers.	47.207-6 (c)(6)	P	Yes	M																A	A	
52.247-21 Contractor Liability for Personal Injury and/or Property Damage.	47.207-7(c)	C	Yes	I																A	A	
52.247-22 Contractor Liability for Loss of and/or Damage to Freight Other Than Household Goods.	47.207-7(d)	C	Yes	I																A	A	
52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.	47.207-7(e)	C	Yes	I																A	A	
52.247-24 Advance Notification by the Government.	47.207-8 (a)(1)	C	Yes	I																A	A	
52.247-25 Government-Furnished Equipment with or without Operators.	47.207-8 (a)(2)(i)	C	Yes	I																A	A	
52.247-26 Government Direction and Marking.	47.207-8 (a)(3)	C	Yes	I																A	A	
52.247-27 Contract Not Affected by Oral Agreement.	47.207-8(b)	C	Yes	I																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	IND DEL	TRN	SP	UTL SVC
52.247-28 Contractor's Invoices.	47.207-9(c)	C	Yes	I																A	A	
52.247-29 F.o.b. Origin.	47.303-1(c)	C	Yes	F	A									A					A		A	
52.247-30 F.o.b. Origin, Contractor's Facility.	47.303-2(c)	C	Yes	F	A									A					A		A	
52.247-31 F.o.b. Origin, Freight Allowed.	47.303-3(c)	C	Yes	F	A									A					A		A	
52.247-32 F.o.b. Origin, Freight Prepaid.	47.303-4(c)	C	Yes	F	A									A					A		A	
52.247-33 F.o.b. Origin, with Differentials.	47.303-5(c)	C	No	F	A						A			A					A		A	
52.247-34 F.o.b. Destination.	47.303-6(c)	C	Yes	F	A									A					A		A	
52.247-35 F.o.b. Destination, within Consignee's Premises.	47.303-7(c)	C	Yes	F	A									A					A		A	
52.247-36 F.a.s. Vessel, Port of Shipment.	47.303-8(c)	C	Yes	F	A									A					A		A	
52.247-37 F.o.b. Vessel, Port of Shipment.	47.303-9(c)	C	Yes	F	A									A					A		A	
52.247-38 F.o.b. Inland Carrier, Point of Exportation.	47.303-10(c)	C	Yes	F	A									A					A		A	
52.247-39 F.o.b. Inland Point, Country of Importation.	47.303-11(c)	C	Yes	F	A									A					A		A	
52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.	47.303-12(c)	C	Yes	F	A									A					A		A	
52.247-41 C.&f. Destination.	47.303-13(c)	C	Yes	F	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	IND DEL	TRN	SP	UTL SVC
52.247-42 C.i.f. Destination.	47.303-14(c)	C	Yes	F	A									A					A		A	
52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.	47.303-15(c)	C	Yes	F	A									A					A		A	
52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.	47.303-16(c)	C	Yes	F	A									A					A		A	
52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.	47.305-2(b)	P	Yes	L	A									A					A		A	
52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	47.305-3 (b)(4)(ii)	P	Yes	L	A									A					A		A	
52.247-47 Evaluation—F.o.b. Origin.	47.305-3 (f)(2)	P	Yes	M	A									A					A		A	
52.247-48 F.o.b. Destination—Evidence of Shipment.	47.305-4(c)	C	Yes	F	A									A					A		A	
52.247-49 Destination Unknown.	47.305-5 (b)(2)	P	Yes	M	A									A					A		A	
52.247-50 No Evaluation of Transportation Costs.	47.305-5 (c)(1)	P	Yes	M	A									A					A		A	
52.247-51 Evaluation of Export Offers.	47.305-6(e)	P	No	M	A									A					A		A	
Alternate I	47.305-6 (e)(1)	P	No	M	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	IND DEL	TRN	SP	UTL SVC
Alternate II	47.305-6 (e)(2)	P	No	M	A									A					A		A	
Alternate III	47.305-6 (e)(3)	P	No	M	A									A					A		A	
52.247-52 Clearance and Documentation Requirements Shipments to DOD Air or Water Terminal Transshipment Points.	47.305-6 (f)(2)	C	Yes	F	A						A			A					A		A	
52.247-53 Freight Classification Description.	47.305-9 (b)(1)	P	No	K	A									A					A		A	
52.247-54 Diversion of Shipment under F.o.b. Destination Contracts.	47.305-11 (b)(2)	C	Yes	F	A		A							A	A				A		A	
52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.	47.305-12 (a)(2)	C	Yes	F	A									A					A		A	
52.247-56 Transmit Arrangements.	47.305-13 (a)(3)(i)	P	No	M	A									A					A			
52.247-57 Transportation Transit Privilege Credits.	47.305-13 (b)(4)	C	No	F	A									A					A		A	
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.	47.305-15 (a)(2)	C	Yes	F	A									A					A		A	
52.247-59 F.o.b. Origin—Carload and Truckload Shipments.	47.305-16(a)	C	Yes	F	A									A					A		A	
52.247-60 Guaranteed Shipping Characteristics.	47.305-16 (b)(1)	C	No	F	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	IND DEL	TRN	SP	UTL SVC
52.247-61 F.o.b. Origin—Minimum Size of Shipments.	47.305-16(c)	C	Yes	F	A									A					A		A	
52.247-62 Specific Quantities Unknown.	47.305-16 (d)(2)	C	No	F	A									A					A		A	
52.247-63 Preference for U.S.-Flag Air Carriers.	47.405	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.	47.507(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A		A
Alternate I	47.507(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A		A
Alternate II	47.507(c)	C	__	I							A	A										
52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.	47.303-17	C	Yes	F	A									A					A		A	
52.247-66 Returnable Cylinders.	47.305-17	C	No	I	A				A		A				A				A			
52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit.	47.104-4(c)	C	No	I	A	A	A	A	A	A	A	A	A			A			A	A	A	
52.248-1 Value Engineering.	48.201	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A		A
Alternate I	48.201(c)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A		A
Alternate II	48.201(d)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A		A
Alternate III	48.201(e)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A	A	A		A
52.248-2 Value Engineering Program—Architect-Engineer.	48.201(f)	C	Yes	__													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	IND DEL	TRN	SP	UTL SVC
52.248-3 Value Engineering-Construction.	48.202	C	Yes	—							A	A										
Alternate I	48.202	C	Yes	—							A	A										
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).	49.502(a)(1)	C	Yes	I	A		A		A				A	A		A			A	A	A	
Alternate I	49.502(a)(2)	C	Yes	I												A						
52.249-2 Termination for Convenience of the Government (Fixed-Price).	49.502 (b)(1)(i)	C	Yes	I	A		A		A				A	A					A	A		
Alternate I	49.502 (b)(1)(ii)	C	Yes	I							A											
Alternate II	49.502 (b)(1)(iii)	C	Yes	I	A		A		A				A	A					A	A		
Alternate III	49.502 (b)(1)(iii)	C	Yes	I							A											
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	49.502(b)(2)	C	Yes	I												A						
Alternate I	49.502(b)(2)	C	Yes	I												A						
52.249-4 Termination for Convenience of the Government (Services) (Short Form).	49.502(c)	C	Yes	I					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	IND DEL	TRN	SP	UTL SVC
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	49.502(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	IND DEL	TRN	SP	UTL SVC
52.249-6 Termination (Cost-Reimbursement).	49.503(a)(1)	C	Yes	I		A		A		A				A	A	A		A	A	A		
Alternate I	49.503(a)(2)	C	Yes	__								A										
Alternate II	49.503(a)(3)	C	Yes	I		A		A		A				A	A	A		A	A	A		
Alternate III	49.503(a)(3)	C	Yes	__								A										
Alternate IV	49.503(a)(4)	C	Yes	I									A									
Alternate V	49.503(a)(4)	C	Yes	I									A									
52.249-7 Termination (Fixed-Price Architect-Engineer).	49.503(b)	C	Yes	__													A				A	
52.249-8 Default (Fixed-Price Supply and Service).	49.504(a)(1)	C	Yes	I	A				A					A					A		O	
Alternate I	49.504(a)(2)	C	Yes	I																A	O	
52.249-9 Default (Fixed-Price Research and Development).	49.504(b)	C	Yes	I			A														O	
52.249-10 Default (Fixed-Price Construction).	49.504(c)(1)	C	Yes	__							A										O	
Alternate I	49.504(c)(2)	C	Yes	__												A					O	
Alternate II	49.504(c)(3)	C	Yes	__							O										O	
Alternate III	49.504(c)(3)	C	Yes	__												A					O	
52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).	49.505(a)	C	Yes	I														A				
Alternate I	49.505(a)	C	Yes	I														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	IND DEL	TRN	SP	UTL SVC
52.249-12 Termination (Personal Services).	49.505(b)	C	Yes	I					A	A											A	
52.249-13 Failure to Perform.	49.505(c)	C	Yes	I														A				
52.249-14 Excusable Delays.	49.505(d)	C	Yes	I		A		A		A			A					A			A	
52.250-1 Indemnification under Public Law 85-804.	50.403-3	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.403-3	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A	A	A
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A
Alternate I	51.107	C	Yes	I														A				
52.251-2 Interagency Fleet Management System (IFMS) Vehicles and Related Services.	51.105	C	Yes	I		A		A		A		A			A							
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	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	IND DEL	TRN	SP	UTL SVC
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.253-1 Computer Generated Forms.	53.111	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

Note 1:

The following clauses are prescribed for use in letter contracts:

52.216-23, Execution and Commencement of Work.
52.216-24, Limitation of Government Liability.
52.216-25, Contract Definitization.
52.216-25, Contract Definitization, Alternate I.
52.216-26, Payments of Allowable Costs Before Definitization.
52.232-16, Progress Payments, Alternate II.
52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts).
52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), Alternate I.

Further instructions concerning provisions and clauses for letter contracts are set forth in 16.603-4(a).

Note 2:

The following clauses are prescribed for use in Small Business Administration 8(a) contracts:

52.219-11, Special 8(a) Contract Conditions.
52.219-11, Alternate I (8(a) construction contracts only).
52.219-12, Special 8(a) Subcontract Conditions.
52.219-12, Alternate I (8(a) construction contracts only).
52.219-14, Limitations on Subcontracting.
52.219-17, Section 8(a) Award.
52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns.
52.219-18, Alternate I
52.219-18, Alternate II
52.219-18, Alternate III

53.301-1413 SF 1413, Statement and Acknowledgment.
53.301-1414 SF 1414, Consent of Surety.
53.301-1415 SF 1415, Consent of Surety and Increase of Penalty.
53.301-1416 SF 1416, Payment Bond for Other than Construction Contracts.
53.301-1417 SF 1417, Pre-solicitation Notice (Construction Contract).
53.301-1420 SF 1420, Performance Evaluation - 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.
53.302-17 Optional Form 17, Offer Label.
53.302-90 Optional Form 90, Release of Lien on Real Property.
53.302-91 Optional Form 91, Release of Personal Property from Escrow.
53.302-333 Optional Form 333, Procurement Integrity Certification for Procurement Officials.
53.302-336 Optional Form 336, Continuation Sheet.
53.302-338 Optional Form 348, Order for Supplies or Services Schedule—Continuation.
53.302-346 Optional Form 347, Order for Supplies or Services.
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 Continuation Sheet
SF 34 Annual Bid Bond
SF 35 Annual Performance Bond
SF 119 Statement of Contingent or Other Fees
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 1408 Preaward Survey of Prospective Contractor - Accounting System

SF 1415	Consent of Surety and Increase of Penalty
SF 1416	Payment Bond for Other than Construction Contracts
SF 1423	Inventory Verification Survey
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 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
OF 90	Release of Lien on Real Property
OF 91	Release of Personal Property from Escrow
OF 333	Procurement Integrity Certification for Procurement Officials.

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. 10/89), Federal Procurement Data System (FPDS) - Individual Contract Action Report.* (See 4.602(c).)

(b) *SF 281 (REV. 10/88), 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 26, Award/Contract, SF 1447, Solicitation/Contract, or OF 347, Order for Supplies or Services. SF 26, prescribed in 53.214(a), SF 1447, prescribed in 53.215-1(g), or OF 347 (or an approved agency form), prescribed in 53.213(e), shall be used to place orders for paid advertisements, within the dollar limitations and as otherwise specified in 5.503(c).

53.206 — 53.208 [Reserved]

53.209 Contractor qualifications.

53.209-1 Responsible prospective contractors.

The following forms are prescribed for use in conducting preaward surveys of prospective contractors, as specified in 9.106-1, 9.106-2, and 9.106-4.

(a) *SF 1403 (REV. 9/88), Preaward Survey of Prospective 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 —53.212 [Reserved]

53.213 Small purchases and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

The following forms are prescribed as stated below for use in small purchases, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18 (REV. 5/93), Request for Quotations.* SF 18, prescribed in 53.215-1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers for small purchases, as specified in 13.107(a).

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503(b).

(c) *SF 44 (REV. 10/83), Purchase Order-Invoice-Voucher.* SF 44 is prescribed for use in small purchases, as specified in 13.505-3.

(d) *SF 1165, Receipt for Cash-Subvoucher. SF 1165 (GAO)* may be used for imprest fund purchases, as specified in 13.405(e).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services—Schedule Continuation.* OF's 347 and 348 (or approved agency forms) may be used as follows:

(1) To accomplish small purchases, as specified in 13.505-1(a)(2).

(2) To establish blanket purchase agreements (BPA's), as specified in 13.203, and to make purchases under BPA's, as specified in 13.204(e)(3).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this regulation (e.g., see 5.503(c), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)). Pending the publication of a new edition of OF 347, the title and the effective date of FAR clause 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation—General (APR 1984), in the block titled "Purchase Order Terms and Conditions" are revised to Contract Work Hours and Safety Standards Act—Overtime Compensation (MAR 1986).

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, Award/Contract.* SF 26, prescribed in 53.215-1(b), shall be used in awarding sealed bid contracts

for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.407-1(d). 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".

(d) *SF 1447 (5/88), Solicitation/Contract.* SF 1447, prescribed in 53.215-1(g), shall be used in soliciting supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see 14.201-9) and may be used in place of the SF 26 or SF 33 with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

(e) *SF 129 (REV. 10/83), Solicitation Mailing List Application.* SF 129 is prescribed for use in establishing 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 and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or small purchases):

(a) *SF 18 (REV. 5/93), Request For Quotations.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers for negotiated acquisitions, as specified in 15.406-2(a)(2).

(b) *SF 26 (REV. 4/85), Award/Contract.* SF 26 is prescribed for use in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.414(b).

(c) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used for amending requests for proposals, and may be used for amending requests for quotations, as specified in 15.410.

(d) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), shall be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406-1(b) and 15.414.

(e) *OF 336, Continuation Sheet.* OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 15.406-2(b).

(f) *SF 129, Solicitation Mailing List Application.* SF 129, prescribed in 53.214(e), shall be used in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).

(g) *SF 1447, Solicitation/Contract.* SF 1447 is prescribed for use in soliciting offers for supplies or services and for awarding contracts that result from the offers. It shall be used in connection with solicitations and contracts which use the simplified contract format (see 15.416) and may be used in place of the SF 26 or SF 33 with other solicitations (see 15.414(c)). Agencies may prescribe additional detailed instructions for use of the form.

(h) *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 15.408(e).

53.215-2 Price negotiation (SF's 1411, 1412).

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data from offerors or contractors, as specified in 15.804:

(a) *SF 1411 (REV. 7/87), Contract Pricing Proposal Cover Sheet.* (See 15.804-6(b).)

(b) *SF 1412 (10/83), Claim for Exemption from Submission of Certified Cost or Pricing Data.* (See 15.804-3(e).)

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(e), (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 and small disadvantaged business concerns.

The following standard forms are prescribed for use in reporting small business subcontracting data, as specified in Part 19:

(a) *SF 294 (REV. 1/90), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV. 1/90), 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 looseleaf 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), Request for Determination and Response to Request.* (See 22.404-3(a) and (b).)

(d) *SF 1093 (GAO) (10/71), 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 new edition of the form, the "prescribed by" reference at the bottom right of the form is revised to read "53.222(e)".

(f) *SF 1444 (10/87), Request for Authorization of Additional Classification and Rate.* (See 22.406-3(a) and 22.1019.)

(g) *SF 1445 (10/87), Labor Standards Interview.* (See 22.406-7(b).)

(h) *SF 1446 (10/87), Labor Standards Investigation 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 28.106-3(c).)

(d) *SF 25-B (REV. 10/83), Continuation Sheet* (For Standard Forms 24, 25, and 25-A). (See 28.106-1(d).)

(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.

(n) *OF 90 (REV. 1/90), Release of Lien on Real Property.* (See 28.106-1(n) and 28.203-5(a).) OF 90 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(o) *OF 91 (1/90), Release of Personal Property from Escrow.* (See 28.106-1(o) and 28.203-5(a).) OF 91 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. 10/83), U.S. Tax Exemption Certificate, and SF 1094-A (REV. 10/83), Tax Exemption Certificates 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), 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]**

(e) *SF 1442 (4/85), Solicitation, Offer and Award (Construction, Alteration, or Repair).* SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the small purchase limitation for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the small purchase limitation), as specified in 36.701(b).

(f) *OF 347 (10/83), Order for Supplies or Services.* OF 347, prescribed in 53.213(e), (or an approved agency form) may be used for contracts of $10,000 or less 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), Abstract of Offers—Construction, and OF 1419A (11/88), 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), 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.

53.242-1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in connection with novation and change of name agreements, as specified in 42.1203(f).

53.243 Contract modifications (SF 30).

SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in (a) amending solicitations, whether advertised or negotiated, as specified in 14.208, 15.410, and 43.301, (b) modifying purchase and delivery orders, as specified in 13.503(b), and (c) modifying contracts, as specified in 42.1203(f), 43.301, 49.602-5, and elsewhere in this regulation. 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), 45.608-5(d)(1), 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).)

REQUEST FOR QUOTATIONS *(THIS IS NOT AN ORDER)*	THIS RFQ ☐ IS ☐ IS NOT A SMALL BUSINESS-SMALL PURCHASE SET- ASIDE (52.219–4)			PAGE OF PAGES
1. REQUEST NO.	2. DATE ISSUED	3. REQUISITION/PURCHASE REQUEST NO.	4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1 ▶	RATING
5A. ISSUED BY			6. DELIVER BY *(Date)*	
5B. FOR INFORMATION CALL: *(Name and telephone no.) (No collect calls)*			7. DELIVERY ☐ FOB DESTINATION ☐ OTHER *(See Schedule)*	
8. TO: NAME AND ADDRESS, INCLUDING ZIP CODE			9. DESTINATION *(Consignee and address, including ZIP Code)*	

10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE IN BLOCK 5A ON OR BEFORE CLOSE OF BUSINESS *(Date)*	11. BUSINESS CLASSIFICATION *(Check appropriate boxes)* a. STANDARD INDUSTRIAL CLASSIFICATION CODE_____ b. SMALL BUSINESS SIZE STANDARD _____ c. ☐ SMALL ☐ OTHER THAN SMALL ☐ DISADVANTAGED ☐ WOMEN-OWNED

IMPORTANT: This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it to the address in Block 5A. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this quotation or to contract for supplies or services. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotations must be completed by the quoter.

12. SCHEDULE *(Include applicable Federal, State and local taxes)*

ITEM NO. (a)	SUPPLIES/SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)

13. DISCOUNT FOR PROMPT PAYMENT ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

NOTE: Additional provisions and representations ☐ are ☐ are not attached.

14. NAME AND ADDRESS OF QUOTER *(Street, city, county, State and ZIP Code)*	15. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	16. DATE OF QUOTATION
	17. NAME AND TITLE OF SIGNER *(Type or print)*	18. TELEPHONE NO. *(Include area code)*

NSN 7540–01–152–8084
PREVIOUS EDITION NOT USABLE

18–120

STANDARD FORM 18 (Rev. 5–93)
Prescribed by GSA
FAR (48 CFR) 53.215–1(a)

CONSENT OF SURETY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED

The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended.

4. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
5. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Corporate Seal)*

6. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

The Principal or authorized representative shall execute this Consent of Surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joining venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
D	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*

(Add similar signature blocks on the back of this form if necessary for additional co-Sureties)

Authorized for Local Reproduction
(Previous edition not usable)

STANDARD FORM 1414 (Rev. 10-93)
Prescribed by GSA, FAR (48 CFR) 53.228(k)

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED

4. The surety (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (co-sureties) further agree that on or after the execution of this consent, the penalty of the performance bond or bonds is increased by _____ dollars ($_____) and the penalty of the payment bond or bonds is increased by _____ dollars ($_____). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a.	$	$
b.		
c.		

8. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE*	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
9. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)** BY	(Affix Corporate Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	

*The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

10. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	

Add similar signature blocks on the back of this form if necessary for additional co-sureties.

Previous editions not usable
AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1415 (REV. 7-93)
Prescribed by GSA - FAR (48 CFR) 53.228(l)

OF-17 (12/93)
Offer Label

FAR (48) CFR 53.214(g))
FAR (48) CFR 53.215-1(h))

NOTICE TO OFFEROR

1. THIS LABEL MAY ONLY BE USED ON ENVELOPES LARGER THAN 156 mm (6 1/8 INCHES) IN HEIGHT AND 292 mm (11 1/2 INCHES) IN LENGTH.
2. Print or type your name and address in the UPPER left corner of the envelope containing your offer.
3. Complete the bottom portion of this form and paste it on the LOWER left corner of the envelope, unless the envelope is 156 mm by 292 mm (6 1/8 inches by 11 1/2 inches) or smaller.

OFFER

SOLICITATION NO.
DATE FOR RECEIPT OF OFFERS
TIME FOR RECEIPT OF OFFERS AM PM
OFFICE DESIGNATED TO RECEIVE OFFERS

☆ GPO:1994-367-191

CONSENT OF SURETY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED

The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended.

4. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
5. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Corporate Seal)*

6. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

The Principal or authorized representative shall execute this Consent of Surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joining venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
D	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*

(Add similar signature blocks on the back of this form if necessary for additional co-Sureties)

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED

4. The surety (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (co-sureties) further agree that on or after the execution of this consent, the penalty of the performance bond or bonds is increased by _____ dollars ($_____) and the penalty of the payment bond or bonds is increased by _____ dollars ($_____). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a.	$	$
b.		
c.		

8. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE*	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
9. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)** BY	(Affix Corporate Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	

*The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

10. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	

Add similar signature blocks on the back of this form if necessary for additional co-sureties.

APPENDIX B

TO THE

FEDERAL ACQUISITION REGULATION

PART 9900 - SCOPE OF CHAPTER

AUTHORITY: Pub.L. 100-679, 102 Stat. 4056, 41 U.S.C. 422.

9900.000 Scope of chapter.
This chapter describes policies and procedures for applying the Cost Accounting Standards (CAS) to negotiated contracts and subcontracts. This chapter does not apply to sealed bid contracts or to any contract with a small business concern (see 9903.201-1(b) for these and other exemptions).

SUBCHAPTER A—ADMINISTRATION

PART 9902 - [RESERVED]

SUBCHAPTER B - PROCUREMENT PRACTICES AND COST ACCOUNTING STANDARDS

PART 9903 - CONTRACT COVERAGE

Subpart 9903.1 - General

9903.101 Cost Accounting Standards.
Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

9903.102 OMB Approval Under the Paperwork Reduction Act.
The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. OMB has assigned Control Number 0348-0051 to the paperwork, recordkeeping and forms associated with this regulation.

Subpart 9903.2 - CAS Program Requirements

9903.201 Contract requirements.

9903.201-1 CAS applicability.
(a) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904). Negotiated contracts not exempt in accordance with 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 9903.201-2.

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

(1) Sealed bid contracts.

(2) Negotiated contracts and subcontracts not in excess of $500,000. For purposes of this paragraph (b)(2) an order issued by one segment to another segment shall be treated as a subcontract.

(3) Contracts and subcontracts with small businesses.

(4) Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned, any contract or subcontract awarded to a foreign concern.

(5) Contracts and subcontracts in which the price is set by law or regulation.

(6) Contracts and subcontracts when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see 48 CFR, Chap. 1, 15.804-3(c)).

(7) - (9) [Reserved]

(10) Contracts and subcontracts with educational institutions other than those to be performed by Federally Funded Research and Development Centers (FFRDC's) operated by such institutions. Costs incurred by and allocated from an exempt institution to an FFRDC are exempted from the requirement to prepare Part VIII of the Disclosure Statement.

(11) Contracts awarded to labor surplus area concerns pursuant to a labor surplus area set-aside (see 48 CFR, Chap. 1, Part 20).

(12) Contracts and subcontracts awarded to a United Kingdom contractor for performance substantially in the United Kingdom, provided that the contractor has filed with the United Kingdom Ministry of Defence, for retention by the Ministry, a completed Disclosure Statement (Form No. CASB-DS-1) which shall adequately describe its cost accounting practices. Whenever that contractor is already required to follow U.K. Government Accounting Conventions, the disclosed practices shall be in accord with the requirements of those conventions. (See 9903.201-4(d).)

(13) Subcontracts under the NATO PHM Ship program to be performed outside the United States by a foreign concern.

(14) Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions.

(15) Firm-fixed-price contracts and subcontracts awarded without submission of any cost data.

9903.201-2 Types of CAS coverage.
(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. Full coverage applies to contractor business units that--

(1) Receive a single CAS-covered contract award of $25 million or more; or

(2) Received $25 million or more in net CAS-covered awards during its preceding cost accounting period, of which, at least one award exceeded $1 million.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs, and Standard 9904.406, Cost Accounting Standard - Cost Accounting Period. Modified, rather than full, CAS coverage may be applied to a covered contract of less than $25 million awarded to a business unit that received less than $25 million in net CAS-covered awards in the immediately preceding cost accounting period. It also applies to covered contracts of business units that received more than $25 million in net CAS covered awards in the immediately preceding cost accounting period, wherein no single contract award exceeded $1 million.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of $25 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(3) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

(c) [Reserved]

(d) *Subcontracts.* Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total net CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor.

(e) *Foreign concerns.* Contracts with foreign concerns subject to CAS shall only be subject to modified coverage.

9903.201-3 Solicitation provisions.
Cost Accounting Standards Notices and Certification. The contracting officer shall insert the provision set forth below, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 9903.201. The provision allows offerors to--

(a) Certify their Disclosure Statement status;

(b) [Reserved];

(c) Claim exemption from full CAS coverage and elect modified CAS coverage when appropriate; and

(d) Certify whether award of the contemplated contract would require a change to existing cost accounting practices.

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NOV 1993)

Note: This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. Disclosure Statement--Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of 9903 and 9904, except for those contracts which are exempt as specified in 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of Parts 9903 and 9904 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection

with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS-1. Forms may be obtained from the cognizant ACO or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:
Name and Address of Cognizant ACO where filed:

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement:
Name and Address of Cognizant ACO where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $25 million (of which at least one award exceeded $1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraphs (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards--Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding $1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $25 million or more.

III. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐YES ☐ NO

(End of provision)

9903.201-4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201-1), the contract is subject to modified coverage (see 9903.201-2), or the clause prescribed in paragraph (d) of this subsection is used.

(2) The clause below requires the contractor to disclose actual cost accounting practices (applicable to CAS-covered contracts only) and to follow these practices consistently.

COST ACCOUNTING STANDARDS (APR 1992)

(a) Unless the contract is exempt under 9903.201-1 and 9903.201-2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall--

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202-1 through 9903.202-5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as

appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in Part 9904 or a CAS rule or regulation in Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on--

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

(b) [Reserved]

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000 but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause below requires the contractor to comply with CAS 9904.401 9904.402, 9904.405, and 9904.406 to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (NOV 1993)

(a) The Contractor, in connection with this contract, shall--

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard -- Cost Accounting Period, in effect on the date of award of this contract, as indicated in Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201-6(b) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that--

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in 9903.201-4(a), shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on--

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

(d) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause set forth below, Consistency in Cost Accounting Practices, in negotiated defense contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 9903.201-1(b)(12)).

CONSISTENCY IN COST ACCOUNTING PRACTICES (APR 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

9903.201-5 Waiver.

(a) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201-4(a), Cost Accounting Standards, or 9903.201-4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain--

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(b) Except as provided by the Cost Accounting Standards Board, the authority in 9903.201-5(a) shall not be delegated.

9903.201-6 Findings.

(a) Prior to the utilization of the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201-4(a), the Contracting Officer shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

(b) Prior to making any equitable adjustment under the provisions of paragraph (a)(3)(ii) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

9903.202 Disclosure requirements.

9903.202-1 General requirements.

(a) A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. The submission of a new or revised Disclosure Statement is not required for any non-CAS-covered contract or from any small business concern.

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $25 million in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $500,000, unless (i) The contract or subcontract is of the type or value exempted by 9903.201-1 or (ii) In the most recently completed cost accounting period the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than $10 million.

(d) Each corporate or other home office that allocates costs to one or more disclosing segments performing CAS-covered contracts must submit a Part VIII of the Disclosure Statement.

(e) Foreign contractors and subcontractors who are required to submit a Disclosure Statement may, in lieu of filing a Form No. CASB DS-1, make disclosure by using a disclosure form prescribed by an agency of its Government, provided that the Cost Accounting Standards Board determines that the information disclosed by that means will satisfy the objectives of Public Law 100-679. The use of alternative forms has been approved for the contractors of the following countries:

(1) Canada.

(2) Federal Republic of Germany.

9903.202-2 Impracticality of submission.

The agency head may determine that it is impractical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. He shall, within 30 days of having done so, submit a report to the Cost Accounting Standards Board setting forth all material facts. This authority may not be delegated.

9903.202-3 Amendments and revisions.

Contractors and subcontractors are responsible for maintaining accurate Disclosure Statements and complying with disclosed practices. Amendments and revisions to Disclosure Statements may be submitted at any time and may be proposed by either the contractor or the Government. Resubmission of complete, updated, Disclosure Statements is discouraged except when extensive changes require it to assist the review process.

9903.202-4 Privileged and confidential information.

If the offeror or contractor notifies the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information, which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside the Government.

9903.202-5 Filing Disclosure Statements.

(a) Disclosure must be on Form Number CASB DS-1. Forms may be obtained from the cognizant administrative contracting officer (ACO).

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO; and

(2) One copy with the cognizant contract auditor.

(c) Amendments and revisions shall be submitted to the currently cognizant ACO and auditor.

9903.202-6 - 9903.202-7 [Reserved]

9903.202-8 Subcontractor Disclosure Statements.

(a) The contractor or higher tier subcontractor is responsible for administering the CAS requirements contained in subcontracts.

(b) If the subcontractor has previously furnished a Disclosure Statement to an ACO, the subcontractor may satisfy the submission requirement by identifying to the contractor or higher tier subcontractor the ACO to whom it was submitted.

(c)(1) If the subcontractor considers the Disclosure Statement (or other similar information) privileged or confidential, the subcontractor may submit it directly to the ACO and auditor cognizant of the subcontractor, notifying the contractor or higher tier subcontractor. A preaward determination of adequacy is not required in such cases. Instead, the ACO cognizant of the subcontractor shall

(i) Notify the auditor that the adequacy review will be performed during the postaward compliance review and, upon completion,

(ii) Notify the subcontractor, the contractor or higher tier subcontractor, and the cognizant ACOs of the findings.

(2) Even though a Disclosure Statement is not required, a subcontractor may

(i) Claim that CAS-related reviews by contractors or higher tier subcontractors would reveal proprietary data or jeopardize the subcontractor's competitive position and

(ii) Request that the Government perform the required reviews.

(d) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall make such recommendation to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACOs cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

9903.202-9 Illustration of Disclosure Statement Form, CASB DS-1.

The data which are required to be disclosed are set forth in detail in the Disclosure Statement Form, CASB DS-1, which is illustrated below:

Subpart 9903.3--CAS Rules and Regulations

9903.301 Definitions.

The definitions set forth below apply to this chapter 99.

Accrued benefit cost method. See 9904.412-30.

Accumulating costs. See 9904.401-30.

Actual cash value. See 9904.416-30.

Actual cost. See 9904.401-30 for the broader definition and 9904.407-30 for a more restricted definition applicable only to the standard on the use of standard costs for direct material and direct labor.

Actuarial assumption. See 9904.412-30 or 9904.413-30.

Actuarial cost method. See 9904.412-30 or 9904.413-30.

Actuarial gain and loss. See 9904.412-30 or 9904.413-30.

Actuarial liability. See 9904.412-30 or 9904.413-30.

Actuarial valuation. See 9904.412-30 or 9904.413-30.

Allocate. See 9904.402-30, 9904.403-30, 9904.406-30, 9904.410-30, 9904.411-30, 9904.418-30 or 9904.420-30.

Asset accountability unit. See 9904.404-30.

Assignment of cost to cost accounting periods. See 9903.302-1(b).

Bid and proposal (B&P) cost. See 9904.420-30.

Business unit. See 9904.410-30, 9904.411-30 or 9904.414-30.

CAS-covered contract, as used in this part, means any negotiated contract or subcontract in which a CAS clause is required to be included.

Category of material. See 9904.411-30.

Change to a cost accounting practice. See 9903.302-2.

Compensated personal absence. See 9904.408-30.

Cost accounting practice. See 9903.302-1.

Cost input. See 9904.410-30.

Cost objective. See 9904.402-30, 9904.406-30, 9904.410-30 or 9904.411-30.

Cost of capital committed to facilities. See 9904.414-30.

Currently performing, as used in this part, means that a contractor has been awarded a contract, but has not yet received notification of final acceptance of all supplies, services, and data deliverable under the contract (including options).

Deferred compensation. See 9904.415-30.

Defined-benefit pension plan. See 9904.412-30.

Defined-contribution pension plan. See 9904.412-30.

Direct cost. See 9904.402-30 or 9904.418-30.

Directly associated cost. See 9904.405-30.

Disclosure statement, as used in this part, means the Disclosure Statement required by 9903.202-1.

Entitlement. See 9904.408-30.

Established catalog or market price of commercial items sold in substantial quantities to the general public is defined at 48 CFR 15.804-3(c).

Estimating costs. See 9904.401-30.

Expressly unallowable cost. See 9904.405-30.

Facilities capital. See 9904.414-30.

Final cost objective. See 9904.402-30 or 9904.410-30.

Fiscal year. See 9904.406-30.

Funded pension cost. See 9904.412-30.

Funding agency. See 9904.412-30.

General and administrative (G&A) expense. See 9904.410-30 or 9904.420-30.

Home office. See 9904.403-30 or 9904.420-30.

Immediate-gain actuarial cost method. See 9904.413-30.

Independent research and development (IR&D) cost. See 9904.420-30.

Indirect cost. See 9904.402-30, 9904.405-30, 9904.418-30 or 9904.420-30.

Indirect cost pool. See 9904.401-30, 9904.402-30, 9904.406-30 or 9904.418-30.

Insurance administration expenses. See 9904.416-30.

Intangible capital asset. See 9904.414-30 or 9904.417-30.

Labor cost at standard. See 9904.407-30.

Labor-rate standard. See 9904.407-30.

Labor-time standard. See 9904.407-30.

Material cost at standard. See 9904.407-30.

Material inventory record. See 9904.411-30.

Material-price standard. See 9904.407-30.

Material-quantity standard. See 9904.407-30.

Measurement of cost. See 9903.302-1(c).

Moving average cost. See 9904.411-30.

Multiemployer pension plan. See 9904.412-30.

Negotiated subcontract, as used in this part, means any subcontract except a firm fixed-priced subcontract made by a contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such contractor or subcontractor, providing

(1) The solicitation to all competitors is identical,

(2) Price is the only consideration in selecting the subcontractor from among the competitors solicited, and

(3) The lowest offer received in compliance with the solicitation from among those solicited is accepted.

Net awards, as used in this chapter, means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions.

Normal cost. See 9904.412-30 or 9904.413-30.

Operating revenue. See 9904.403-30.

Original complement of low cost equipment. See 9904.404-30.

Pay-as-you-go cost method. See 9904.412-30.

Pension plan. See 9904.412-30 or 9904.413-30.

Pension plan participant. See 9904.413-30.

Pricing. See 9904.401-30.

Production unit. See 9904.407-30.

Projected average loss. See 9904.416-30.

Projected benefit cost method. See 9904.412-30 or 9904.413-30.

Proposal. See 9904.401-30.

Repairs and maintenance. See 9904.404-30.

Reporting costs. See 9904.401-30.

Residual value. See 9904.409-30.

Segment. See 9904.403-30, 9904.410-30, 9904.413-30 or 9904.420-30.

Self-insurance. See 9904.416-30.

Self-insurance charge. See 9904.416-30.

Service life. See 9904.409-30.

Small business, as used in this part, means any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which, under 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration in Part 121 of Title 13 of the Code of Federal Regulations, is determined to be a small business concern for the purpose of Government contracting.

Spread-gain actuarial cost method. See 9904.413-30.

Standard cost. See 9904.407-30.

Tangible capital asset. See 9904.403-30, 9904.404-30, 9904.409-30, 9904.414-30 or 9904.417-30.

Termination gain or loss. See 9904.413-30.

Unallowable cost. See 9904.405-30.

Variance. See 9904.407-30.

Weighted average cost. See 9904.411-30.

9903.302 Definitions, explanations, and illustrations of the terms, "cost accounting practice" and "change to a cost accounting practice."

9903.302-1 Cost accounting practice.

Cost accounting practice, as used in this part, means any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost.

(a) *Measurement of cost,* as used in this part, encompasses accounting methods and techniques used in defining the components of cost, determining the basis for cost measurement, and establishing criteria for use of alternative cost measurement techniques. The determination of the amount paid or a change in the amount paid for a unit of goods and services is not a cost accounting practice. Examples of cost accounting practices which involve measurement of costs are--

(1) The use of either historical cost, market value, or present value;

(2) The use of standard cost or actual cost; or

(3) The designation of those items of cost which must be included or excluded from tangible capital assets or pension cost.

(b) *Assignment of cost to cost accounting periods,* as used in this part, refers to a method or technique used in determining the amount of cost to be assigned to individual cost accounting periods. Examples of cost accounting practices which involve the assignment of cost to cost accounting periods are requirements for the use of specified accrual basis accounting or cash basis accounting for a cost element.

(c) *Allocation of cost to cost objectives,* as used in this part, includes both direct and indirect allocation of cost. Examples of cost accounting practices involving allocation of cost to cost objectives are the accounting methods or techniques used to accumulate cost, to determine whether a cost is to be directly or indirectly allocated to determine the composition of cost pools, and to determine the selection and composition of the appropriate allocation base.

9903.302-2 Change to a cost accounting practice.

Change to a cost accounting practice, as used in this part, means any alteration in a cost accounting practice, as defined in 9903.302-1, whether or not such practices are covered by a Disclosure Statement, except for the following:

(a) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice. As used here, function is an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished.

(b) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

9903.302-3 Illustrations of changes which meet the definition of "change to a cost accounting practice."

(a) The method or technique used for measuring costs has been changed.

Description	Accounting Treatment
(1) Contractor changes its actuarial cost method for computing pension costs.	(1)(i) Before change: The contractor computed pensioon costs using the aggregate cost method.
(2) Contractor uses standard costs to account for its direct labor. Labor cost at standard was computed by multiplying labor-time standard by actual labor rates. The contractor changes the computation by multiplying labor-time standard by labor-rate standard.	(2)(i) Before change: Contractor's direct labor cost was measured with only one component set at standard. (ii) After change: Contractor's direct labor cost is measured with both the time and rate components set at standard.

(b) The method or technique used for assignment of cost to cost accounting periods has been changed.

Description	Accounting Treatment
(1) Contractor changes his established criteria for capitalizing certain classes of tangible capital assets whose acquisition costs totaled $1 million per cost accounting period.	(1)(i) Before change: Items having acquisition costs of between $200 and $400 per unit were capitalized and depreciated over a number of cost accounting periods. (ii) After change: The contractor charges the value of assets costing between $200 and $400 per unit to an indirect expense pool which is allocated to the cost objectives of the cost accounting period in which the cost was incurred.
(2) Contractor changes his methods for computing depreciation for a class of assets.	(2)(i) Before change: The contractor assigned depreciation costs to cost accounting periods using an accelerated method. (ii) After change: The contractor assigns depreciation costs to cost accounting periods using the straight line method.
(3) Contractor changes his general method of determining asset lives for classes of assets acquired prior to the effective date of CAS 409.	(3)(i) Before change: The contractor identified the cost accounting periods to which the cost of tangible capital assets would be assigned using guideline class lives provided in IRS Rev. Pro. 72-10. (ii) After change: The contractor changes the method by which he identifies the cost accounting periods to which the costs of tangible capital assets will be assigned. He now uses the expected actual lives based on past usage.

SUBSCRIPTION PROBLEMS

Please complete this form to notify the FAR Secretariat of errors, omissions, or inconsistencies in the text of Federal Acquisition Circulars (FAC's). **DO NOT** use this form to report defective issues (see below) or to submit suggested changes to the Regulation (see FAR 1.502). This form should be mailed to:

General Services Administration
Office of Federal Acquisition Policy
FAR Secretariat (VRS)
Washington, DC 20405
(202) 501-4755

Federal Government and military subscribers having problems with defective copies, late distributions, or missing issues should direct inquiries to the printing liaison officer in the Publications Division of their agency.

Subscribers outside the Federal Government having problems with the Federal Acquisition Regulation subscription, *i.e.*, defective or missing issues, should contact:

Superintendent of Documents
Subscription Research Section (SSOM)
U.S. Government Printing Office
Washington, DC 20402-9375
(202) 512-1806

CORRECTIONS

FAR PART, SUBPART, OR SECTION: _____

PAGE NUMBER: _____

NATURE OF ERROR: _____

_____

_____

NAME: _____ TELEPHONE _____

ADDRESS: _____

_____

SUBSCRIPTION PROBLEMS

Please complete this form to notify the FAR Secretariat of errors, omissions, or inconsistencies in the text of Federal Acquisition Circulars (FAC's). **DO NOT** use this form to report defective issues (see below) or to submit suggested changes to the Regulation (see FAR 1.502). This form should be mailed to:

General Services Administration
Office of Federal Acquisition Policy
FAR Secretariat (VRS)
Washington, DC 20405
(202) 501-4755

Federal Government and military subscribers having problems with defective copies, late distributions, or missing issues should direct inquiries to the printing liaison officer in the Publications Division of their agency.

Subscribers outside the Federal Government having problems with the Federal Acquisition Regulation subscription, *i.e.*, defective or missing issues, should contact:

Superintendent of Documents
Subscription Research Section (SSOM)
U.S. Government Printing Office
Washington, DC 20402-9375
(202) 512-1806

CORRECTIONS

FAR PART, SUBPART, OR SECTION: _____

PAGE NUMBER: _____

NATURE OF ERROR: _____

_____

_____

NAME: _____ TELEPHONE _____

ADDRESS: _____

_____