FEDERAL ACQUISITION CIRCULAR

December 20, 1996 Number 90-43

Federal Acquisition Circular (FAC) 90-43 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.

FAR cases 96-601, 93-308, 95-307, 96-328, 95-310, 95-028 and 96-003 are effective December 20, 1996. FAR case 96-310 is effective January 1, 1997. FAR cases 96-004, 93-024, 92-613, 95-003 and 92-035 are effective February 18, 1997.

FAC 90—43 Summary of Items

Federal Acquisition Circular (FAC) 90-43 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—FASA and the Walsh-Healey Public Contracts Act (FAR case 96-601)

This interim rule amends the Federal Acquisition Regulation (FAR) to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. Section 7201 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) amended the Walsh-Healey Public Contracts Act to repeal the "manufacturer" or "regular dealer" requirement.

Replacement pages: Structure to the Subpart Level (pp. 3 and 4); 1-3 & 1-4; 9-1 & 9-2; 9-21 thru 9-23; 14-7 & 14-8; TOC, Part 19 (pp. 1 and 2); 19-1 thru 19-4; 19-31 & 19-32; 19-39 & 19-40; TOC, Part 22 (pp. 1 thru 3); 22-17 thru 22-21; 33-1 & 33-2; TOC, Part 52 (pp. 3 and 4); 52-81 & 52-82; 52-93 & 52-94; and 52-327 & 52-328.

Item II—Individual and Class Deviations (FAR case 96-004)

This final rule amends the FAR to eliminate the requirements for all agencies to submit copies of approved individual deviations to the FAR Secretariat and for DOD and NASA to submit copies of approved class deviations to the FAR Secretariat.

Replacement pages: 1-7 thru 1-10.

Item III—Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification (FAR case 95-307)

This interim rule amends the FAR by adding a new solicitation provision at 52.204-6, and revising Standard Forms 294 and 295 to replace the Contractor Establishment Code with the Data Universal Numbering System number as the means of identifying contractors in the Federal Procurement Data System.

Replacement pages: TOC, Part 4; 4-5 & 4-6; TOC, Part 52 (pp. 1 & 2); 52-15 thru 52-16.2; 52-307 & 52-308; 53-3 & 53-4; and 53-81 thru 53-84.

Item IV—Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items (FAR case 96-310)

This final rule amends FAR Part 12 to implement Section 4205 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4205 amends 41 U.S.C. 422(f) to provide that the statutory requirement for mandatory use of Cost Accounting Standards (CAS) need not apply to contracts or subcontracts for the acquisition of commercial items. While CAS generally will not apply to acquisitions of commercial items, CAS requirements may be invoked as a matter of policy by the CAS Board, pursuant to the authority provided in 41 U.S.C. 422.

Replacement pages: TOC, Part 12; 12-3 & 12-4; and 12-7 & 12-8.

Item V—Allowable Cost and Payment Clause (FAR case 93-024)

This final rule amends the FAR to clarify that reimbursement of subcontract costs under cost-type contracts generally will not be made to a large business contractor until the contractor has made payment to the subcontractor.

Replacement pages: 16-7 & 16-8; 52-58.1 thru 52-60; 52-161 & 52-162; and 52-319 & 52-320.

Item VI—Mentor/Protégé Program (FAR case 93-308)

The interim rule published as Item X of FAC 90-37 is finalized with minor clarifying changes. The rule permits a mentor firm under the DOD Pilot Mentor/Protégé Program to be granted credit toward subcontracting goals for certain costs incurred in providing developmental assistance to its protégé firms, and to award subcontracts on a noncompetitive basis to its protégé firms.

Replacement pages: 19-33 & 19-34; and 52-211 & 52-212.

Item VII—Minority Small Business and Capital Ownership (FAR case 95-028)

This interim rule amends the FAR to reflect revisions to the Small Business Administration's regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) Program. In 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, Alternate II is removed and Alternate III is redesignated as Alternate II and the date is updated.

Replacement pages: TOC, Part 19 (pp. 1 and 2); 19-39 thru 19-44; 52-75 & 52-76; 52-81 thru 52-84; and 52-323 & 52-324.

Item VIII—Extension of Small Business Competitiveness Demonstration Program (FAR case 96-328)

This final rule amends FAR Subpart 19.10 to implement Section 108, Title I (Amendments to Small Business Administration Act), of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-208). Section 108 extends the Small Business Competitiveness Demonstration Program (15 U.S.C. 644 note) until September 30, 1997.

Replacement pages: 19-45 & 19-46.

Item IX—Morale, Health, Welfare Costs/Contractor Overhead Certification (FAR case 92-613)

This final rule amends the cost principle at FAR 31.205-1, Public Relations and Advertising Costs, by removing from paragraph (f)(5) the parenthetical reference to other cost principles to eliminate any confusion as to which cost principle governs.

Replacement pages: 31-11 & 31-12.

Item X—Impairment of Long-Lived Assets (FAR case 95-003)

This final rule amends the FAR to clarify the cost allowability rules concerning the recognition of losses when carrying values of impaired assets are written down for financial reporting purposes.

Replacement pages: 31-23 & 31-24.

Item XI—Local Government Lobbying Costs (FAR case 96-003)

This interim rule amends the FAR to make allowable the costs of lobbying activities to influence local legislation in order to directly reduce contract costs or to avoid material impairment of the contractor's authority to perform the contract.

Replacement pages: 31-27 & 31-28.

Item XII—Clause Flowdown (FAR case 92-035)

This final rule amends the FAR by eliminating requirements for prime contractors to flow down clause provisions to their subcontractors or suppliers from FAR clauses 52.215-26, 52.216-5, 52.216-6, 52.216-16, 52.216-17,

52.222-1, 52.236-21, 52.244-2(i), 52.246-23, 52.246-24, and 52.246-25.

Replacement pages: TOC, Part 46; 46-13; 52-49 & 52-50; 52-55 thru 52-58.2; 52-63 thru 52-70; 52-83 & 52-84; 52-195 thru 52-198; 52-209 & 52-210; and 52-253 thru 52-256.

Item XIII—Collection of FASA-Related Information Within the Federal Procurement Data System (FAR case 95-310)

This final rule amends the FAR to change the Standard Form 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and Standard Form 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less), to incorporate new information categories required by the Federal Acquisition Streamlining Act of 1994.

Replacement pages: TOC, Part 53 (pp. 3 and 4); 53-1 & 53-2; and 53-77 thru 53-84.

Item XIV—Technical Amendments

Technical amendments have been made to correct typographical errors, FAR citations, and clause dates as follows:

Structure of the FAR to the Subpart Level

1. Subpart 22.15 was removed in FAC 90-17 but this entry inadvertently remained in the Structure of the FAR to the Subpart Level. This page is republished to correct that error.

Replacement pages: Structure of the FAR to the Subpart Level (pp. 3 & 4).

1.106 [Corrected]

2. Section 1.106 is amended under the "FAR segment" and "OMB control No." headings following the introductory text by removing "22.15" and "9000-0127", and "All other requirements" and "9000-0063", respectively, and revising the entry "42.203" to read "43.205(f)".

Replacement pages: 1-3 thru 1-6.

4.803 [Corrected]

3. Section 4.803(a)(11) is amended by revising the word "representatives" to read "representations".

Replacement pages: 4-9 & 4-10.

12.301, 12.302, and 12.303 [Corrected]

4. Section 12.301 is amended in paragraphs (b)(1) and (b)(3), section 12.302 is amended in the second sentence of paragraph (d), and section 12.303 is amended in paragraphs (c)(1) and (e)(1) by revising "Block 26" to read "Block 27a".

Replacement pages: 12-3 thru 12-6.

14.408-4 [Corrected]

5. This page is republished to correct a formatting error in paragraph (b).

Replacement pages: 14-19 & 14-20.

17.503 [Corrected]

6. Section 17.503 is amended in paragraph (c) by removing "of this section" and inserting "below" in its place.

Replacement pages: 17-7 & 17-8.

19.502-1 [Corrected]

7. Section 19.502-1 is amended in the introductory text by removing "Using the order of precedence in 19.504, the" and inserting "The" in its place.

Replacement pages: 19-29 & 19-30

19.508 [Corrected]

8. Section 19.508 is amended in the first sentence of paragraphs (c) and (d) by removing "(see 19.504(a)(2))" and "(see 19.504(a)(4))", respectively.

Replacement pages: 19-31 & 19-32.

Pages 22-13 and 22-31

9. Page 22-13 is republished to correct the date of the heading to read February 27, 1995, and page 22-31 is republished to add the heading "FAC 90-40 August 26, 1996" and to insert a change bar at section 22.1005.

Replacement pages: 22-13 & 22-14 and 22-31 & 22-32.

22.1302 [Corrected]

10. Section 22.1302 is corrected in paragraph (b) by inserting "shall not apply to any agency, instrumentality, or subdivision" after "subdivision)".

Replacement pages: 22-39 & 22-40.

31.206-6 [Corrected]

11. Section 31.205-6 is amended in the second sentence of paragraph (g)(1) by revising the citation "subparagraph (j)(6)" to read "subparagraph (j)(7)".

Replacement pages: 31-15 & 31-16.

Page 46-11

12. Page 46-11 is republished to add the header and change bars which were inadvertently omitted when this page was published in FAC 90-41.

Replacement pages: 46-11 & 46-12.

46.805 [Corrected]

13. Section 46.805 is amended in the second sentence of paragraph (b) by removing the words "in Part 13".

Replacement pages: 46-13.

52.208-9 [Corrected]

14. Section 52.208-9 is amended in the fourth sentence of paragraph (c) of the clause by revising the word "contract" to read "contact".

Replacement pages: 52-19 & 52-20.

52.211-4 [Corrected]

15. Section 52.211-4 is amended in the introductory text by revising the provision's prescription to read "11.204(d)".

Replacement pages: 52-25 & 52-26.

52.211-5 [Corrected]

16. Section 52.211-5 is amended in the introductory text by revising the clause's prescription to read "11.302(a)".

Replacement pages: 52-25 & 52-26.

52.211-6 [Corrected]

17. Section 52.211-6 is amended in the introductory text by revising the provision's prescription to read "11.302(b)".

Replacement pages: 52-25 & 52-26.

52.211-7 [Corrected]

18. Section 52.211-7 is amended in the introductory text by revising the clause's prescription to read "11.302(c)".

Replacement pages: 52-25 & 52-26.

52.211-13 [Corrected]

19. Section 52.211-13 is amended by revising the introductory text to read: "As prescribed in 11.504(c), insert the following clause:".

Replacement pages: 52-29 & 52-30.

52.216-13 [Corrected]

20. Section 52.216-13 is amended at the end of paragraph (a)(2) by inserting the word "reimbursable" after the word "not".

Replacement pages: 52-61 & 52-62.

52.222-36 [Corrected]

21. Section 52.222-36 is amended by revising the introductory text to read "As prescribed in 22.1408, insert the following clause:".

Replacement pages: 52-101 & 52-102.

52.228-14 [Corrected]

22. Section 52.228-14 is amended in item 5 of paragraphs (e) and (f) by revising "1983 Revision" to read "1993 Revision" and "Publication No. 400" to read "Publication No. 500".

Replacement pages: 28-11 & 28-12; 52-147 thru 52-148.2.

52.237-1 [Corrected]

23. Section 52.237-1 is amended in the introductory text by revising "37.105(a)" to read "37.110(a)".

Replacement pages: 52-199 & 52-200.

52.301 Matrix

24. The matrix is amended to correct certain FAR prescriptions, alternates, headers and footers.

Replacement pages: 52-307 thru 52-312.1; 52-315 & 52-316; 52-327 thru 52-332; 52-335 & 52-336; 52-339 & 52-340; 52-343 & 52-344; and 52-357 & 52-358.

Part 53 Table of Contents

25. Page 3 of Part 53 Table of Contents is republished to correct typographical errors at 53.302-347 and 53.302-348.

Replacement pages: TOC, Part 53 (pp. 3 & 4).

FAC 90-43 FILING INSTRUCTIONS

REMOVE PAGES	INSERT PAGES
Structure of the FAR to the Subpart Level (pp. 3 and 4)	Structure of the FAR to the Subpart Level (pp. 3 and 4)
1-3 thru 1-10	1-3 thru 1-10
TOC, Part 4 4-5 & 4-6 4-9 & 4-10	TOC, Part 4 4-5 & 4-6 4-9 & 4-10
9-1 & 9-2 9-21 thru 9-23	9-1 & 9-2 9-21 thru 9-23
TOC, Part 12 12-3 thru 12-8	TOC, Part 12 12-3 thru 12-8
14-7 & 14-8 14-19 & 14-20	14-7 & 14-8 14-19 & 14-20
16-7 & 16-8	16-7 & 16-8
17-7 & 17-8	17-7 & 17-8
TOC, Part 19 (pp. 1 and 2) 19-1 thru 19-4 19-29 thru 19-34 19-39 thru 19-46	TOC, Part 19 (pp. 1 and 2) 19-1 thru 19-4 19-29 thru 19-34 19-39 thru 19-46
TOC, Part 22 (pp. 1 thru 3) 22-13 & 22-14 22-17 thru 22-24 22-31 & 22-32 22-39 & 22-40	TOC, Part 22 (pp. 1 thru 3) 22-13 & 22-14 22-17 thru 22-21 22-31 & 22-32 22-39 & 22-40
28-11 & 28-12	28-11 & 28-12
31-11 & 31-12 31-15 & 31-16 31-23 & 31-24 31-27 & 31-28	31-11 & 31-12 31-15 & 31-16 31-23 & 31-24 31-27 & 31-28
33-1 & 33-2	33-1 & 33-2
TOC, Part 46 46-11 thru 46-13	TOC, Part 46 46-11 thru 46-13

REMOVE PAGES	INSERT PAGES
TOC, Part 52 (pp. 1 thru 4)	TOC, Part 52 (pp. 1 thru 4)
52-15 thru 52-16.2	52-15 thru 52-16.2
52-19 & 52-20	52-19 & 52-20
52-25 & 52-26	52-25 & 52-26
52-29 & 52-30	52-29 & 52-30
52-49 & 52-50	52-49 & 52-50
52-55 thru 52-70	52-55 thru 52-70
52-75 & 52-76	52-75 & 52-76
52-81 thru 52-84	52-81 thru 52-84
52-93 & 52-94	52-93 & 52-94
52-101 & 52-102	52-101 & 52-102
52-147 thru 148.2	52-147 thru 148.2
52-161 & 52-162	52-161 & 52-162
52-195 thru 52-200	52-195 thru 52-200
52-209 thru 52-212	52-209 thru 52-212
52-253 thru 52-256	52-253 thru 52-256
52-307 thru 52-312.2	52-307 thru 52-312.1
52-315 & 52-316	52-315 & 52-316
52-319 & 52-320	52-319 & 52-320
52-323 & 52-324	52-323 & 52-324
52-327 thru 52-332.1	52-327 thru 52-332.1
52-335 & 52-336	52-335 & 52-336
52-339 & 52-340	52-339 & 52-340
52-343 & 52-344	52-343 & 52-344
52-357 thru 52-358.1	52-357 & 52-358
TOC, Part 53 (pp. 3 & 4)	TOC, Part 53 (pp. 3 & 4)
53-1 thru 53-4	53-1 thru 53-4
53-77	53-77
53-79	53-79
53-81 & 53-82	53-81 & 53-82
53-83 & 53-84	53-83 & 53-84

Standard Forms 279, 281, 294, and 295 are provided for your convenience. Please file these behind the "Forms for Repro" tab in order by standard form number.

Structure

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—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 PROGRAMS
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
19.7 Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns
19.8 Contracting with the Small Business Administration (The 8(a) Program)
19.9 [Reserved]
19.10 Small Business Competitiveness Demonstration Program

PARTS 20—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

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
23.7 Contracting for Environmentally Preferable and Energy-Efficient Products and Services
23.8 Ozone-Depleting Substances
23.9 Toxic Chemical Release Reporting

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 Use of 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
26-2 Disaster or Emergency Assistance Activities

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

1.103 Authority.

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

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

1.104 Applicability.

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

1.105 Issuance.

1.105-1 Publication and code arrangement.

(a) The FAR is published in (1) the daily issue of the Federal Register, (2) cumulated form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

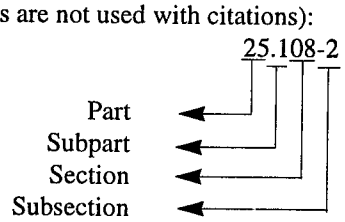
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see Subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

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

1.105-2 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 alpha numerics reading from highest to lowest indenture as follows: lower case alphabet, Arabic numbers, lower case Roman numerals, and upper case alphabet. The following example is illustrative:

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

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

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

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

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

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

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

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

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

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

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

1.105-3 Copies.

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

1.106 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
4.5	9000-0137

FAR segment	OMB Control Number
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
14.407	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
22.8	1215-0072
22.11	9000-0066
22.13	1215-0072
22.14	1215-0072
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
32.000	9000-0138
32.1	9000-0070 and 9000-0138
32.2	9000-0138
32.4	9000-0073
32.5	9000-0010 and 9000-0138
32.7	9000-0074
32.9	9000-0102
32.10	9000-0138
33	9000-0035
34.1	9000-0133
36.302	9000-0037
36.603	9000-0004 and 9000-0005
36.701	9000-0037
41.004-2(c)	9000-0125
42.7	9000-0013
42.12	9000-0076
42.13	9000-0076
42.14	9000-0056
43.205(f)	9000-0026
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
52.203-7	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
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

FAR segment	OMB Control Number
52.214-28	9000-0013
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
52.215-40	9000-0015
52.215-41	9000-0013
52.215-42	9000-0013
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
52.230-6	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
52.232-29	9000-0138
52.232-30	9000-0138
52.232-31	9000-0138
52.232-32	9000-0138
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
52.241-2	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
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

FAR segment	OMB Control Number
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 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 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
SF 1448	9000-0013
SF 1449	9000-0136

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

Civilian Agency Acquisition Council (CAA Council). Members of these councils shall—

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

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

(3) Be funded by their respective agencies.

(b) The chairperson of the CAA Council shall be the representative of the Administrator of General Services. The other members of this council shall be one each representative from the (1) Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, Labor, State, Transportation, and Treasury, and (2) Environmental Protection Agency, Small Business Administration, and Department of Veterans Affairs.

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

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

(e) Each council shall be responsible for—

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

(2) Submitting to the FAR Secretariat (see 1.201-2) the information required under paragraphs 1.501-2(b) and (e) for publication in the Federal Register of a notice soliciting comments on a proposed revision to the FAR;

(3) Considering all comments received in response to notice of proposed revisions;

(4) Arranging for public meetings;

(5) Preparing any final revision in the appropriate FAR format and language; and

(6) Submitting any final revision to the FAR Secretariat for publication in the Federal Register and printing for distribution.

1.201-2 FAR Secretariat.

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

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

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

(2) Assigning FAR case numbers;

(3) Maintaining official files;

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

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

1.202 Agency compliance with the FAR.

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

SUBPART 1.3—AGENCY ACQUISITION REGULATIONS

1.301 Policy.

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

(2) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, workflow procedures, and internal reporting requirements).

(b) Agency heads shall establish procedures to ensure that agency acquisition regulations are published for comment in the Federal Register in conformance with the procedures in Subpart 1.5 and as required by section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and other applicable statutes, when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. However, publication is not required for issuances that merely implement or supplement higher level issuances that have previously undergone the public comment process, unless such implementation or supplementation results in an additional significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. Issuances under 1.301(a)(2) need not be publicized for public comment.

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

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

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

(2) NASA activities, issued subject to the authorities

of the Administrator of NASA; and

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

1.302 Limitations.

Agency acquisition regulations shall be limited to—

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

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

1.303 Publication and codification.

(a) Agency-wide acquisition regulations shall be published in the Federal Register as required by law, shall be codified under an assigned chapter in Title 48, Code of Federal Regulations, and shall parallel the FAR in format, arrangement, and numbering system (but see 1.105-1(c)). Coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the appropriate FAR number and title. Supplementary material for which there is no counterpart in the FAR shall be codified using chapter, part, subpart, section, or subsection numbers of 70 and up *(e.g.*, for the Department of Interior, whose assigned chapter number in Title 48 is 14, Part 1470, Subpart 1401.70, section 1401.370, or subsection 1401.301-70).

(b) Issuances under 1.301(a)(2) need not be published in the Federal Register.

1.304 Agency control and compliance procedures.

(a) Under the authorities of 1.301(c), agencies shall control and limit issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR, and shall establish formal procedures for the review of these documents to assure compliance with this Part 1.

(b) Agency acquisition regulations shall not—

(1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations; or

(2) Except as required by law or as provided in Subpart 1.4, conflict or be inconsistent with FAR content.

(c) Agencies shall evaluate all regulatory coverage in agency acquisition regulations to determine if it could apply to other agencies. Coverage that is not peculiar to one agency shall be recommended for inclusion in the FAR.

SUBPART 1.4—DEVIATIONS FROM THE FAR

1.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR. Exceptions pertaining to the use of forms prescribed by the FAR are covered in Part 53 rather than in this subpart.

1.401 Definition.

"Deviation" means any one or combination of the following:

(a) The issuance or use of a policy, procedure, solicitation provision (see definition in 52.101(a)), contract clause (see definition in 52.101(a)), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.

(b) The omission of any solicitation provision or contract clause when its prescription requires its use.

(c) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the FAR (see definitions of "modification" and "alternate" in 52.101(a)).

(d) The use of a solicitation provision or contract clause prescribed by the FAR on a "substantially as follows" or "substantially the same as" basis (see definitions in 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the FAR.

(e) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the FAR.

(f) The issuance of policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into agency acquisition regulations in accordance with 1.301(a).

1.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the FAR may be granted as specified in this subpart when necessary to meet the specific needs and requirements of each agency. The development and testing of new techniques and methods of acquisition should not be stifled simply because such action would require a FAR deviation. The fact that deviation authority is required should not, of itself, deter agencies in their development and testing of new techniques and acquisition methods. Refer to 31.101 for instructions concerning deviations pertaining to the subject matter of Part 31, Contract Cost Principles and Procedures. Deviations are not authorized with respect to Part 30. Refer to 30.201-5 for instructions concerning waivers pertaining to Cost Accounting Standards.

1.403 Individual deviations.

Individual deviations affect only one contracting action, and, unless 1.405(e) is applicable, may be authorized by agency heads or their designees. The justification and agency approval shall be documented in the contract file.

1.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, an agency should propose an appropriate FAR revision to cover the matter. For civilian agencies other than NASA, a copy of each approved class deviation

shall be furnished to the FAR Secretariat.

(a) For civilian agencies except NASA, class deviations may be authorized by agency heads or their designees, unless 1.405(e) is applicable. Delegation of this authority shall not be made below the head of a contracting activity. Authorization of class deviations by agency officials is subject to the following limitations:

(1) An agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless that agency official determines that urgency precludes such consultation.

(2) Recommended revisions to the FAR shall be transmitted to the FAR Secretariat by agency heads or their designees for authorizing class deviations.

(b) For DOD, class deviations shall be controlled, processed, and approved in accordance with the Defense FAR Supplement.

(c) For NASA, class deviations shall be controlled and approved by the Associate Administrator for Procurement. Deviations shall be processed in accordance with agency regulations.

1.405 Deviations pertaining to treaties and executive agreements.

(a) "Executive agreements," as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the United States is a party.

(b) Any deviation from the FAR required to comply with a treaty to which the United States is a party is authorized, unless the deviation would be inconsistent with FAR coverage based on a law enacted after the execution of the treaty.

(c) Any deviation from the FAR required to comply with an executive agreement is authorized unless the deviation would be inconsistent with FAR coverage based on law.

(d) For civilian agencies other than NASA, a copy of the text deviation authorized under paragraph (b) or (c) of this section shall be transmitted to the FAR Secretariat through a central agency control point.

(e) For civilian agencies other than NASA, if a deviation required to comply with a treaty or an executive agreement is not authorized by paragraph (b) or (c) of this section, then the request for deviation shall be processed through the FAR Secretariat to the Civilian Agency Acquisition Council.

SUBPART 1.5—AGENCY AND PUBLIC PARTICIPATION

1.501 Solicitation of agency and public views.

1.501-1 Definition.

"Significant revisions," as used in this subpart, means revisions that alter the substantive meaning of any coverage in the FAR System having a significant cost or administrative impact on contractors or offerors, or significant effect beyond the internal operating procedures of the issuing agency. This expression, for example, does not include editorial, stylistic, or other revisions that have no impact on the basic meaning of the coverage being revised.

1.501-2 Opportunity for public comments.

(a) Views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and procedures.

(b) The opportunity to submit written comments on proposed significant revisions shall be provided by placing a notice in the Federal Register. Each of these notices shall include—

(1) The text of the revision or, if it is impracticable to publish the full text, a summary of the proposal;

(2) The address and telephone number of the individual from whom copies of the revision, in full text, can be requested and to whom comments thereon should be addressed; and

(3) When 1.501-3(b) is applicable, a statement that the revision is effective on a temporary basis pending completion of the public comment period.

(c) A minimum of 30 days and, normally, at least 60 days will be given for the receipt of comments.

1.501-3 Exceptions.

(a) Comments need not be solicited when the proposed coverage does not constitute a significant revision.

(b) Advance comments need not be solicited when urgent and compelling circumstances make solicitation of comments impracticable prior to the effective date of the coverage, such as when a new statute must be implemented in a relatively short period of time. In such case, the coverage shall be issued on a temporary basis and shall provide for at least a 30 day public comment period.

1.502 Unsolicited proposed revisions.

Consideration shall also be given to unsolicited recommendations for revisions that have been submitted in writing with sufficient data and rationale to permit their evaluation.

1.503 Public meetings.

Public meetings may be appropriate when a decision to adopt, amend, or delete FAR coverage is likely to benefit from significant additional views and discussion.

SUBPART 1.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized

supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.

(b) Agency heads may mutually agree to—

(1) Assign contracting functions and responsibilities from one agency to another; and

(2) Create joint or combined offices to exercise acquisition functions and responsibilities.

1.602 Contracting officers.

1.602-1 Authority.

(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

(b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

1.602-2 Responsibilities.

Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. Contracting officers shall—

(a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;

(b) Ensure that contractors receive impartial, fair, and equitable treatment; and

(c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

1.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

"Ratification," as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

"Unauthorized commitment," as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) The ratification authority in subparagraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(4) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution. (See 1.602-3(d).)

(5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with Subpart 33.2, Disputes and Appeals.

(c) *Limitations.* The authority in subparagraph (b)(2) of this subsection may be exercised only when—

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

(2) The ratifying official has the authority to enter into a contractual commitment;

(3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;

(4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(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

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—PAPER DOCUMENTS

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—ELECTRONIC COMMERCE IN CONTRACTING
4.500 Scope of subpart.
4.501 Definitions.
4.502 Policy.
4.503 Contractor registration.
4.504 FACNET functions.
4.505 FACNET certification.
4.505-1 Interim certification.
4.505-2 Full certification.
4.505-3 Governmentwide certification.
4.505-4 Contract actions excluded.
4.506 Exemptions.

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

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.

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.

full FACNET; and

(b) The Administrator of OFPP has certified implementation of Governmentwide FACNET to the Congress.

4.505-4 Contract actions excluded.

For purposes of calculating the percentage of FACNET use referred to in 4.505-2 and 4.505-3, actions issued against established contracts, such as delivery orders, task orders, and in-scope modifications, shall not be included.

4.506 Exemptions.

The following are exempted from the use of FACNET as specified and shall not be considered when determining compliance with the requirements to implement FACNET:

(a) *Interim FACNET.* (1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost-effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost-effective to process via FACNET. Such determinations shall be centrally maintained at the contracting office.

(2) Contracts that do not require notice under Subpart 5.2.

(b) *Full FACNET.* Contracts awarded by a contracting office (or a portion of a contracting office), if the office is exempted from use of FACNET by the head of the agency, or the Secretary of Defense for the military departments and defense agencies. Any such exemption shall be based on a written determination that FACNET processing is not cost-effective or practicable for the contracting office, or portions thereof. Determinations shall be maintained in the office of the senior procurement executive, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies.

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) of this section 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) In addition to the information described in paragraphs (b) and (c) of this section, for procurements in excess of $25,000, agencies shall be able to access information on the following from the computer file:

(1) Awards to small disadvantaged businesses using either set-asides or full and open competition.

(2) Awards to business concerns owned and controlled by women.

(3) The number of offers received in response to a solicitation.

(4) Task or delivery order contracts.

(5) Contracts for the acquisition of commercial items.

(e) 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, small disadvantaged and women-owned small 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 report a Contractor Identification Number for each successful offeror. A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors. The DUNS number reported must identify the successful offeror's name and address exactly as stated in the offer and resultant contract. The contracting officer shall ask the offeror to provide its DUNS number by using the provision prescribed at 4.603(a). If the successful offeror does not provide its number, the contracting officer shall contact the offeror and obtain the DUNS number.

4.603 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.204-6, Contractor Identification Number—Data Universal Numbering System (DUNS) Number, in solicitations that are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or similar agency form.

(b) The contracting officer shall insert the provision at 52.204-5, Women-Owned Business, in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

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) Audit and Records—Sealed Bidding (52.214-26).

(2) Audit and Records—Negotiation (52.215-2).

(3) Audit—Commercial Items (52.215-43).

(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 records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, 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 records 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 records 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) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(iii) Cost/price proposals; and

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

(11) Contractor's 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, or information other than cost or pricing data.

(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 or pricing data, Certificates of Current Cost or Pricing Data, or information other than 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) of this section, time standards for closing out contract files are as follows:

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on 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) Contract files for contracts using simplified acquisition procedures 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

PART 9

CONTRACTOR QUALIFICATIONS

9.000 Scope of part.

This part prescribes policies, standards, and procedures pertaining to prospective contractors' responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest.

SUBPART 9.1—RESPONSIBLE PROSPECTIVE CONTRACTORS

9.100 Scope of subpart.

This subpart prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

9.101 Definitions.

"Preaward survey" means an evaluation by a surveying activity of a prospective contractor's capability to perform a proposed contract.

"Responsible prospective contractor" means a contractor that meets the standards in 9.104.

"Surveying activity" means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

(1) In the United States, its possessions, or Puerto Rico; or

(2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with (1) foreign, State, or local governments; (2) other U.S. Government agencies or their instrumentalities; or (3) agencies for the blind or other severely handicapped (see Subpart 8.7).

9.103 Policy.

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with Subpart 19.6, Certificates of Competency. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see Subpart 19.8.)

(c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

9.104 Standards.

9.104-1 General standards.

To be determined responsible, a prospective contractor must—

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(a));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record (see 9.104-3(b) and Subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;

(d) Have a satisfactory record of integrity and business ethics;

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See 9.104-3(a).)

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(a)); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

9.104-2 Special standards.

(a) When it is necessary for a particular acquisition or class of acquisitions, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

(b) Contracting officers shall award contracts for subsistence only to those prospective contractors that meet the general standards in 9.104-1 and are approved in accordance with agency sanitation standards and procedures.

9.104-3 Application of standards.

(a) *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources (see 9.104-1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel.

(b) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with Small, Small Disadvantaged Business and Women-Owned Small Business Concerns, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

(c) *Affiliated concerns.* Affiliated concerns (see "Affiliates" and "Concerns" in 19.101) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the contracting officer shall consider the affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

(d) *Small business concerns.* If a small business concern's offer that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether or not to issue a Certificate of Competency (see Subpart 19.6).

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (*e.g.*, when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

9.105 Procedures

9.105-1 Obtaining information.

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning (i) the low bidder or (ii) those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required 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

cant potential organizational conflicts of interest are normally resolved by imposing some restraint, appropriate to the nature of the conflict, upon the contractor's eligibility for future contracts or subcontracts. Therefore, affected solicitations shall contain a provision that—

(1) Invites offerors' attention to this subpart;

(2) States the nature of the potential conflict as seen by the contracting officer;

(3) States the nature of the proposed restraint upon future contractor activities; and

(4) Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation.

(b) The contracting officer shall insert the provision at 52.209-7, Organizational Conflicts of Interest Certificate—Marketing Consultants, in solicitations, other than sealed bids, if the contract amount is expected to exceed $200,000.

(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract is expected to exceed the simplified acquisition threshold.

(d) The provisions required by paragraphs (b) and (c) of this subsection shall not be used in solicitations for—

(1) Services excluded in Subpart 37.2;

(2) Routine engineering and technical services (such as installation, operation or maintenance of systems, equipment, software components, or facilities);

(3) Routine legal, actuarial, auditing and accounting services;

(4) Training services; and

(5) Services rendered in connection with intelligence activities defined in section 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs.

9.507-2 Contract clause.

(a) If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a proposed clause that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the clause in the contract, first negotiating the clause's final terms with the successful offeror, if it is appropriate to do so (see 9.506(d) of this subsection).

(b) The restraint imposed by a clause shall be limited to a fixed term of reasonable duration, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor has performed systems engineering and technical direction. In every case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

9.508 Examples.

The examples in paragraphs (a) through (i) following illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help the contracting officer apply the general rules in 9.505 to individual contract situations.

(a) Company A agrees to provide systems engineering and technical direction for the Navy on the powerplant for a group of submarines (i.e., turbines, drive shafts, propellers, etc.). Company A should not be allowed to supply any powerplant components. Company A can, however, supply components of the submarine unrelated to the powerplant (*e.g.*, fire control, navigation, etc.). In this example, the system is the powerplant, not the submarine, and the ban on supplying components is limited to those for the system only.

(b) Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.

(c) Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.

(d) XYZ Tool Company and PQR Machinery Company, representing the American Tool Institute, work under Government supervision and control to refine specifications or to clarify the requirements of a specific acquisition. These companies may supply the item.

(e) Before an acquisition for information technology is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on information technology hardware acquisition.

(f) Company A receives a contract to define the detailed performance characteristics an agency will require for purchasing rocket fuels. Company A has not developed the particular fuels. When the definition contract is awarded, it is clear to both parties that the agency will use the performance characteristics arrived at to choose competitively a contractor to develop or produce the fuels. Company A may not be awarded this follow-on contract.

(g) Company A receives a contract to prepare a detailed

plan for scientific and technical training of an agency's personnel. It suggests a curriculum that the agency endorses and incorporates in its request for proposals to institutions to establish and conduct the training. Company A may not be awarded a contract to conduct the training.

(h) Company A is selected to study the use of lasers in communications. The agency intends to ask that firms doing research in the field make proprietary information available to Company A. The contract must require Company A to (1) enter into agreements with these firms to protect any proprietary information they provide and (2) refrain from using the information in supplying lasers to the Government or for any purpose other than that for which it was intended.

(i) An agency that regulates an industry wishes to develop a system for evaluating and processing license applications. Contractor X helps develop the system and process the applications. Contractor X should be prohibited from acting as a consultant to any of the applicants during its period of performance and for a reasonable period thereafter.

SUBPART 9.6—CONTRACTOR TEAM ARRANGEMENTS

9.601 Definition.

"Contractor team arrangement" means an arrangement in which—

(a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(b) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

9.602 General.

(a) Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to (1) complement each other's unique capabilities and (2) offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.

(b) Contractor team arrangements may be particularly appropriate in complex research and development acquisitions, but may be used in other appropriate acquisitions, including production.

(c) The companies involved normally form a contractor team arrangement before submitting an offer. However, they may enter into an arrangement later in the acquisition process, including after contract award.

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided,* the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. The Government will not normally require or encourage the dissolution of contractor team arrangements.

9.604 Limitations.

Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

(a) Require consent to subcontracts (see Subpart 44.2);

(b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see Subpart 9.1);

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and

(e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

SUBPART 9.7—DEFENSE PRODUCTION POOLS AND RESEARCH AND DEVELOPMENT POOLS

9.701 Definition.

"Pool," as used in this subpart, means a group of concerns (see 19.001) that have—

(a) Associated together in order to obtain and perform, jointly or in conjunction with each other, defense production or research and development contracts;

(b) Entered into an agreement governing their organization, relationship, and procedures; and

(c) Obtained approval of the agreement by either—

(1) The Small Business Administration (SBA) under section 9 or 11 of the Small Business Act (15 U.S.C. 638 or 640) (see 13 CFR 125); or

(2) A designated official under Part V of Executive Order 10480, August 14, 1953 (18 FR 4939, August 20, 1953) and section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

9.702 Contracting with pools.

(a) Except as specified in this subpart, a pool shall be treated the same as any other prospective or actual contractor.

(b) The contracting officer shall not award a contract to a pool unless the offer leading to the contract is submitted by the pool in its own name or by an individual pool member expressly stating that the offer is on behalf of the pool.

(c) Upon receipt of an offer submitted by a group representing that it is a pool, the contracting officer shall verify its approved status with the SBA District Office Director or other approving agency and document the contract file that the verification was made.

(d) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges

accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(e) Before awarding a contract to an unincorporated pool, the contracting officer shall require each pool member participating in the contract to furnish a certified copy of a power of attorney identifying the agent authorized to sign the offer or contract on that member's behalf. The contracting officer shall attach a copy of each power of attorney to each signed copy of the contract retained by the Government.

9.703 Contracting with individual pool members.

(a) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

(b) If a pool member submits an individual offer, independent of the pool, the contracting officer shall consider the pool agreement, along with other factors, in determining whether that pool member is a responsible prospective contractor under Subpart 9.1.

PART 12

ACQUISITION OF COMMERCIAL ITEMS

TABLE OF CONTENTS

12.000 Scope of subpart.
12.001 Definition.

SUBPART 12.1—ACQUISITION OF COMMERCIAL ITEMS—GENERAL
12.101 Policy.
12.102 Applicability.

SUBPART 12.2—SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS
12.201 General.
12.202 Market research and description of agency need.
12.203 Procedures for solicitation, evaluation, and award.
12.204 Solicitation/contract form.
12.205 Offers.
12.206 Use of past performance.
12.207 Contract type.
12.208 Contract quality assurance.
12.209 Pricing of commercial items when contracting by negotiation.
12.210 Contract financing.
12.211 Technical data.
12.212 Computer software.
12.213 Other customary commercial practices.
12.214 Cost Accounting Standards.

SUBPART 12.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS
12.300 Scope of subpart.
12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
12.302 Tailoring of provisions and clauses for the acquisition of commercial items.
12.303 Contract format.

SUBPART 12.4—UNIQUE REQUIREMENTS REGARDING TERMS AND CONDITIONS FOR COMMERCIAL ITEMS
12.401 General.
12.402 Acceptance.
12.403 Termination.
12.404 Warranties.

SUBPART 12.5—APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS
12.500 Scope of subpart.
12.501 Applicability.
12.502 Procedures.
12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.
12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

SUBPART 12.6—STREAMLINED PROCEDURES FOR EVALUTION AND SOLICITATION FOR COMMERCIAL ITEMS
12.601 General.
12.602 Streamlined evaluation of offers.
12.603 Streamlined solicitation for commercial items.

a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see Part 27 or agency FAR supplements).

12.212 Computer software.

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

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

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

(b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract.

12.213 Other customary commercial practices.

It is customary practice in the commercial marketplace for both the buyer and seller to propose terms and conditions for a given transaction, each written from their particular perspectives. The terms and conditions prescribed in this Part 12 seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other customary commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or executive order.

12.214 Cost Accounting Standards .

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

SUBPART 12.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

12.300 Scope of subpart.

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

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

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

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

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

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

(1) *The provision at 52.212-1, Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, SF 1449). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.302;

(2) *The provision at 52.212-3, Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4;

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

(4) *The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212-5(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to Part 15 to establish the reasonableness of prices for commercial

items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

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

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

(2) Include a similar provision containing all evaluation factors required by 13.106-2, Subpart 14.2 or Subpart 15.6, as an addendum (see 12.302(d)).

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

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in 12.302. For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.505 may be used for this purpose.

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

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

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

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

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

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

(1) Assignments;

(2) Disputes;

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

(4) Invoice;

(5) Other compliances; and

(6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the SF 1449 if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the SF 1449; any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this Part 12 shall be assembled, to the maximum extent practicable, using the following format:

(a) Standard Form (SF) 1449;

(b) Continuation of any block from SF 1449, such as—

(1) Block 10 if set-aside for emerging small businesses;

(2) Block 18B for remittance address;

(3) Block 19 for contract line item numbers;

(4) Block 20 for schedule of supplies/services; or

(5) Block 25 for accounting data;

(c) Contract clauses—

(1) 52.212-4, Contract Terms and Conditions—Commercial Items, by reference (see SF 1449 block 27a);

(2) Any addendum to 52.212-4; and

(3) 52.212-5, Contract Terms and Conditions Required to Implement Statutes and Executive orders;

(d) Any contract documents, exhibits or attachments; and

(e) Solicitation provisions—

(1) 52.212-1, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 27a);

(2) Any addendum to 52.212-1;

(3) 52.212-2, Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and

(4) 52.212-3, Offeror Representations and Certifications—Commercial Items.

SUBPART 12.4—UNIQUE REQUIREMENTS REGARDING TERMS AND CONDITIONS FOR COMMERCIAL ITEMS

12.401 General.

This subpart provides—

(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in 52.212-4 differ substantially from those contained elsewhere in the FAR.

12.402 Acceptance.

(a) The acceptance paragraph in 52.212-4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available postaward remedies (see 12.404).

(c) The acquisition of commercial items under other circumstances such as on an "as is" basis may also require acceptance procedures different from those contained in 52.212-4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

12.403 Termination.

(a) *General.* The clause at 52.212-4 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in 52.212-4 entitled "Termination for the Government's Convenience" and "Termination for Cause" contain concepts which differ from those contained in the termination clauses prescribed in Part 49. Consequently, the requirements of Part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures in this section. Contracting officers may continue to use Part 49 as guidance to the extent that Part 49 does not conflict with this section and the language of the termination paragraphs in 52.212-4.

(b) *Policy.* The contracting officer should exercise the Government's right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause.* (1) The paragraph in 52.212-4 entitled "Excusable Delay" requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government's rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess reprocurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

(iii) Indicate which remedies the Government intends to seek or provide a date by which the

Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see 33.211).

(d) *Termination for the Government's convenience.* (1) When the contracting officer terminates a contract for commercial items for the Government's convenience, the contractor shall be paid—

(i) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination, and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in Part 31. The Government does not have any right to audit the contractor's records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

12.404 Warranties.

(a) *Implied warranties.* The Government's post award rights contained in 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when—

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties.* The Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 264 note) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if—

(i) The warranty is adequate to protect the needs of the Government, *e.g.*, items covered by the warranty and length of warranty;

(ii) The terms allow the Government effective postaward administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and

(iii) The warranty is cost-effective.

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

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

SUBPART 12.5—APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS

12.500 Scope of subpart.

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

12.501 Applicability.

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

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distribut-

ing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

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

12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in 12.503 has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.

(b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244-6, Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in 12.504 by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

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

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

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

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

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

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

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

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

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

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

(4) 41 U.S.C. 423(e)(1)(B), Requirement for a certain certification under the Procurement Integrity Act (see 3.104-9).

(5) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 23.105).

(6) 49 U.S.C. 40118, Requirement for a certificate and clause under the Fly American provisions (see 47.405).

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

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

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.804).

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

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see Subpart 19.2).

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

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

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

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

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

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

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

(9) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see Subpart 15.1).

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

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

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

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

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

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

(16) Pub. L. 90-469, William Langer Jewel Bearing Plant Special Act (see Subpart 8.2).

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

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

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

(3) 41 U.S.C. 423(e)(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see Subpart 3.1).

(4) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see Subpart 23.1).

(c) The applicability of the following laws has been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see Subpart 3.5).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see Subpart 15.8).

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

SUBPART 12.6—STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ITEMS

12.601 General.

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

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106-2 if the acquisition is being made using the procedures in Part 13. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. This provision contemplates an approach designed to select the source whose offer will provide the Government with the greatest value in terms of performance and other factors. Other methods of evaluation and basis for award may be more appropriate for a given acquisition.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in 13.106-2 or Subpart 15.6, as applicable. The contracting officer shall ensure the instructions provided in the provision at 52.212-1, Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at 52.212-2, Evaluation— Commercial Items, are in agreement.

(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.

12.603 Streamlined solicitation for commercial items.

(a) When a written solicitation will be issued, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the Commerce Business Daily (CBD) synopsis required by 5.203 and the issuance of the solicitation into a single document with the following limitations:

(1) Section 5.207 limits submissions to the CBD to 12,000 textual characters (approximately 3 1/2 single-spaced pages).

(2) This combined CBD synopsis/solicitation is only appropriate where the solicitation is relatively simple and is not recommended for use when lengthy addenda to the solicitation are necessary.

(b) When using the combined synopsis/solicitation procedure, the SF 1449 is not used for issuing the solicitation.

(c) To use these procedures, the contracting officer shall—

(1) Prepare the synopsis as described at 5.207 for items 1-16.

(2) In item 17, Description, include the following additional information:

(i) The following statement:

This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in Subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

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 considered in the evaluation of bids, and (iv) the rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature furnished does not comply with the requirements of the invitation.

(2) If bidders are to furnish descriptive literature, see 14.201-6(p).

(e) *Waiver of requirements for descriptive literature.* (1) The requirement for furnishing descriptive literature may be waived if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids. When the requirement may be waived, see 14.201-6(p)(2).

(2) When descriptive literature is not considered necessary and a waiver of literature requirements of a Federal, Military, or other formal specification has been authorized, a statement shall be included in the invitation that, notwithstanding the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature to be furnished or a previously furnished product. If the bid is submitted on one basis, the bidder is precluded from having it considered on the other basis after bids are opened.

(f) *Unsolicited descriptive literature.* If descriptive literature is furnished when not required by the invitation for bids, the procedures set forth in 14.202-4(g) shall be followed.

14.202-6 Final review of invitations for bids.

Each invitation for bids shall be thoroughly reviewed before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids. Contracting officers are responsible for the reviews.

14.202-7 Facsimile bids.

(a) Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile bids (see 14.201-6(w)). In determining whether or not to authorize facsimile bids, the contracting officer shall consider factors such as—

(1) Anticipated bid size and volume;

(2) Urgency of the requirement;

(3) Frequency of price changes;

(4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and

(5) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile bids, and ensuring their timely delivery to the bids opening location.

(b) If facsimile bids are authorized, contracting officers may, after the date set for bid opening, request the apparently successful offeror to provide the complete, original signed bid.

14.202-8 Electronic bids.

In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

14.203 Methods of soliciting bids.

14.203-1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices shall be transmitted as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by electronic data interchange or international air mail if security classification permits.

14.203-2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing in the Commerce Business Daily are set forth in 5.101 and 5.2.

(b) For procedures that apply to publishing notices in the Commerce Business Daily to determine whether commercial sources are available, as prescribed by OMB Circular A-76, see 5.205(d) and 7.303(b).

14.203-3 Master solicitation.

(a) *Definition.* "Master solicitation," as used in this subsection, means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

(b) *Use.* The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations shall reference the date of the current master solicitation and any changes thereto. Copies of the master solicitation shall be made available on request. Cognizant contract administration activities shall be provided a current copy of the master solicitation.

14.204 Records of invitations for bids and records of bids.

(a) Each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting officers shall review and utilize the information available in connection with subsequent acquisitions of the same or similar items.

(b) The file for each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

14.205 Solicitation mailing lists.

14.205-1 Establishment of lists.

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when (1) the requirements of the contracting office can be obtained through use of simplified acquisition procedures (see Part 13), (2) the requirements are nonrecurring, or (3) electronic commerce methods are used which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity. Lists may be established as a central list for use by all contracting offices within the contracting activity, or as local lists maintained by each contracting office.

(b) All eligible and qualified concerns that have submitted solicitation mailing list applications, or that the contracting office considers capable of filling the requirements of a particular acquisition, shall be placed on the appropriate solicitation mailing list. (See also 5.403(b).) Planned producers under the Industrial Preparedness Planning Program shall be included on lists for their planned items. Prospective bidders shall be notified that they have been added to solicitation mailing lists in accordance with agency procedures. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Applicants shall be notified if they do not meet the criteria for placement on the list.

(c) The names of prospective bidders who are furnished invitations in response to their requests shall be added to the list of those initially mailed copies of a particular solicitation, so that they will be furnished copies of any solicitation amendments, etc. However, when it is known that the request was made by a person or an organization that is known not to be a prospective bidder, no entry shall be made on the list.

(d)(1) Standard Form 129, Solicitation Mailing List Application, shall be used for obtaining information needed to establish and maintain lists. Supplemental information, where required, may be obtained as specified in agency implementing regulations.

(2) The application shall be submitted and signed by the supplier, as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive solicitations.

(3) In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, acquired by the contracting activity maintaining the list, which are considered applicable to the supplier's type of business.

(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged and women-owned business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern.

14.205-2 Removal of names from solicitation mailing lists.

(a) The name of each concern failing to either (1) submit a bid, (2) respond to a presolicitation notice (see 14.205-4(c)), or (3) otherwise respond to an invitation for bids may be removed from the solicitation mailing list without notice to the concern. However, the removal shall be limited to the items involved in the invitation or notice.

solicitations for the same or similar items, and include a notation of such action in the records of the invitation for bids (see 14.204).

(c)(1) Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder.

(2) When a notice of award is issued, it shall be followed as soon as possible by the formal award.

(3) When more than one award results from any single invitation for bids, separate award documents shall be suitably numbered and executed.

(4) When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the Government may make subsequent awards on those additional items within the bid acceptance period.

(5) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitute the contract.

(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer from a SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams or electronic transmissions, as notices of awards.

14.408-2 Responsible bidder—reasonableness of price.

(a) The contracting officer shall determine that a prospective contractor is responsible (see Subpart 9.1) and that the prices offered are reasonable before awarding the contract. The price analysis techniques in 15.805-2 may be used as guidelines. In each case the determination shall be made in the light of all prevailing circumstances. Particular care must be taken in cases where only a single bid is received.

(b) The price analysis shall consider whether bids are materially unbalanced (see 15.814).

14.408-3 Prompt payment discounts.

(a) Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award, and will be taken by the payment center if payment is made within the discount period specified by the bidder. As an alternative to indicating a discount in conjunction with the offer, bidders may prefer to offer discounts on individual invoices.

(b) See 32.111(c)(1), which prescribes the contract clause at 52.232-8, Discounts for Prompt Payment.

14.408-4 Economic price adjustment.

(a) *Bidder proposes economic price adjustment.* (1) When a solicitation does not contain an economic price adjustment clause but a bidder proposes one with a ceiling that the price will not exceed, the bid shall be evaluated on the basis of the maximum possible economic price adjustment of the quoted base price.

(2) If the bid is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause (see 16.203) that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award may be made on the basis of the bid as originally submitted.

(3) Bids that contain economic price adjustments with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) *Government proposes economic price adjustment.* (1) When an invitation contains an economic price adjustment clause and no bidder takes exception to the provisions, bids shall be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added.

(2) When a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation or limits the downward economic price adjustment provisions of the invitation, the bid shall be rejected as nonresponsive.

(3) When a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as nonresponsive since the downward economic price adjustment provisions are thereby limited.

(4) When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

14.408-5 [Reserved]

14.408-6 Equal low bids.

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Small business concerns that are also labor surplus area concerns.

(2) Other small business concerns.

(3) Other business concerns.

(b) If two or more bidders still remain equally eligible after application of paragraph (a) of this section, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be

witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

(c) When an award is to be made by using the priorities under this 14.408-6, the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

14.408-7 Documentation of award.

(a) The contracting officer shall document compliance with 14.103-2 in the contract file.

(b) The documentation shall either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award.

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

14.408-8 Protests against award.

See Subpart 33.1, Protests.

14.409 Information to bidders.

14.409-1 Award of unclassified contracts.

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify each unsuccessful bidder in writing or electronically within three days after contract award, that its bid was not accepted. "Day," for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday;

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall include in notices given unsuccessful bidders from designated or NAFTA countries—

(i) The dollar amount of the successful bid; and

(ii) The name and address of the successful bidder.

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. In such circumstances, only information concerning location of the abstract of offers need be given.

(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(d) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

14.409-2 Award of classified contracts.

In addition to 14.409-1, if classified information was furnished or created in connection with the solicitation, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. Information regarding a classified award shall not be furnished by telephone.

SUBPART 14.5—TWO-STEP SEALED BIDDING

14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Subparts 14.3 and 14.4.

14.502 Conditions for use.

(a) Unless other factors require the use of sealed bid-

reduction have indicated a high degree of probability that the development is achievable and the Government has established reasonably firm performance objectives and schedules.

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless—

(1) All limitations in 16.301-3 are complied with; and

(2) The contracting officer has signed a determination and findings establishing the basis for application of the statutory price or fee limitation (see 15.903(d)).

(d) *Completion and term forms.* A cost-plus-fixed-fee contract may take one of two basic forms—completion or term.

(1) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (e.g., a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee. However, in the event the work cannot be completed within the estimated cost, the Government may require more effort without increase in fee, provided the Government increases the estimated cost.

(2) The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if the performance is considered satisfactory by the Government, the fixed fee is payable at the expiration of the agreed-upon period, upon contractor certification that the level of effort specified in the contract has been expended in performing the contract work. Renewal for further periods of performance is a new acquisition that involves new cost and fee arrangements.

(3) Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work.

(4) The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

16.307 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.216-7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract (other than a facilities contract) is contemplated. If the contract is with an educational institution, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.3." If the contract is with a State or local government, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.6." If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A-122, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.7."

(2) If the contract is a construction contract and contains the clause at 52.232-27, Prompt Payment for Construction Contracts, the contracting officer shall use the clause at 52.216-7 with its Alternate I.

(b) The contracting officer shall insert the clause at 52.216-8, Fixed Fee, in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

(c) The contracting officer shall insert the clause at 52.216-9, Fixed-Fee—Construction, in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated.

(d) The contracting officer shall insert the clause at 52.216-10, Incentive Fee, in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated.

(e)(1) The contracting officer shall insert the clause at 52.216-11, Cost Contract—No Fee, in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract.

(2) If a cost-reimbursement research and development contract with an educational institution or a nonprofit organization that provides no fee or other payment above cost and is not a cost-sharing contract is contemplated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer shall use the clause with its Alternate I.

(f)(1) The contracting officer shall insert the clause at 52.216-12, Cost-Sharing Contract—No Fee, in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated.

(2) If a cost-sharing research and development contract with an educational institution or a nonprofit organization is contemplated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer shall use the clause with its Alternate I.

(g)(1) The contracting officer shall insert the clause at 52.216-13, Allowable Cost and Payment—Facilities, in solicitations and contracts when a cost-reimbursement consolidated facilities contract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated.

(2) If a facilities acquisition contract is contemplated and, in the judgment of the contracting officer, it may be necessary to withhold payment of an amount to protect the Government's interest, the contracting officer shall use the clause with its Alternate I.

(h) The contracting officer shall insert the clause at 52.216-

14, Allowable Cost and Payment—Facilities Use, in solicitations and contracts when a facilities use contract is contemplated.

(i) The contracting officer shall insert the clause at 52.216-15, Predetermined Indirect Cost Rates, in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution (see 42.705-3(b)) is contemplated and predetermined indirect cost rates are to be used. If the contract is a facilities contract, modify paragraph (c) by deleting the words "Subpart 31.1" and substituting for them "section 31.106."

SUBPART 16.4—INCENTIVE CONTRACTS

16.401 General.

(a) Incentive contracts as described in this subpart are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific acquisition objectives by—

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to (i) motivate contractor efforts that might not otherwise be emphasized and (ii) discourage contractor inefficiency and waste.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee are provided only for achievement that surpasses the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive contracts (see 16.403) and cost-reimbursement-incentive contracts (see 16.404). Since it is usually to the Government's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain. Cost-reimbursement incentive contracts are subject to the overall limitations in 16.301 that apply to all cost-reimbursement contracts.

16.402 Application of predetermined, formula-type incentives.

16.402-1 Cost incentives.

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).

(b) Except for cost-plus-award-fee contracts (see 16.404-2), incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

16.402-2 Technical performance incentives.

(a) Technical performance incentives may be considered in connection with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to tailor profit or fee to results achieved by the contractor, compared with specified target goals.

(b) Technical performance incentives may be particularly appropriate in major systems contracts, both in development (when performance objectives are known and the fabrication of prototypes for test and evaluation is required) and in production (if improved performance is attainable and highly desirable to the Government).

(c) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. Accordingly, the incentives on individual technical characteristics must be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(d) Performance tests are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria such as testing conditions, instrumentation precision, and data interpretation.

(e) Because performance incentives present complex problems in contract administration, the contracting officer should negotiate them in full coordination with Government engineering and pricing specialists.

(f) It is essential that the Government and contractor agree explicitly on the effect that contract changes (*e.g.*, pursuant to the Changes clause) will have on performance incentives.

(g) The contracting officer must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

16.402-3 Delivery incentives.

(a) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract (*e.g.*, earliest possible delivery or earliest quantity production).

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

(1) The solicitation contains an option clause;

(2) An option is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) The contracting officer has determined that there is a reasonable likelihood that the option will be exercised. For sealed bids, the determination shall be in writing.

(d) The contracting officer shall insert a clause substantially the same as the clause at 52.217-6, Option for Increased Quantity, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

(e) The contracting officer shall insert a clause substantially the same as the clause at 52.217-7, Option for Increased Quantity—Separately Priced Line Item, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is identified as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

(f) The contracting officer shall insert a clause substantially the same as the clause at 52.217-8, Option to Extend Services, in solicitations and contracts for services when the inclusion of an option is appropriate. (See 17.200, 17.202, and 37.111.)

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract a requirement that the Government shall give the contractor a preliminary written notice of its intent to extend the contract, a stipulation that an extension of the contract includes an extension of the option, and/or a specified limitation on the total duration of the contract.

SUBPART 17.3—[RESERVED]

SUBPART 17.4—LEADER COMPANY CONTRACTING

17.401 General.

Leader company contracting is an extraordinary acquisition technique that is limited to special circumstances and utilized only when its use is in accordance with agency procedures. A developer or sole producer of a product or system is designated under this acquisition technique to be the leader company, and to furnish assistance and know-how under an approved contract to one or more designated follower companies, so they can become a source of supply. The objectives of this technique are one or more of the following:

(a) Reduce delivery time.

(b) Achieve geographic dispersion of suppliers.

(c) Maximize the use of scarce tooling or special equipment.

(d) Achieve economies in production.

(e) Ensure uniformity and reliability in equipment, compatibility or standardization of components, and interchangeability of parts.

(f) Eliminate problems in the use of proprietary data that cannot be resolved by more satisfactory solutions.

(g) Facilitate the transition from development to production and to subsequent competitive acquisition of end items or major components.

17.402 Limitations.

(a) Leader company contracting is to be used only when—

(1) The leader company has the necessary production know-how and is able to furnish required assistance to the follower(s);

(2) No other source can meet the Government's requirements without the assistance of a leader company;

(3) The assistance required of the leader company is limited to that which is essential to enable the follower(s) to produce the items; and

(4) Its use is authorized in accordance with agency procedures.

(b) When leader company contracting is used, the Government shall reserve the right to approve subcontracts between the leader company and the follower(s).

17.403 Procedures.

(a) The contracting officer may award a prime contract to a—

(1) Leader company, obligating it to subcontract a designated portion of the required end items to a specified follower company and to assist it to produce the required end items;

(2) Leader company, for the required assistance to a follower company, and a prime contract to the follower for production of the items; or

(3) Follower company, obligating it to subcontract with a designated leader company for the required assistance.

(b) The contracting officer shall ensure that any contract awarded under this arrangement contains a firm agreement regarding disclosure, if any, of contractor trade secrets, technical designs or concepts, and specific data, or software, of a proprietary nature.

SUBPART 17.5—INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for

placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include acquisitions from required sources of supplies prescribed in Part 8, which have separate statutory authority.

17.501 Definition.

Interagency acquisition means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency).

17.502 General.

(a) The Economy Act authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition.

(b) The Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.

(c) Acquisitions under the Economy Act are not exempt from the requirements of Subpart 7.3, Contractor Versus Government Performance.

(d) The Economy Act may not be used to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under the Federal Property and Administrative Services Act).

17.503 Determinations and findings requirements.

(a) Each Economy Act order shall be supported by a Determination and Finding (D&F). The D&F shall state that—

(1) Use of an interagency acquisition is in the best interest of the Government; and

(2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

(b) If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable—

(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;

(2) The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or

(3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(c) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

17.504 Ordering procedures.

(a) Before placing an Economy Act order for supplies or services with another Government agency, the requesting agency shall make the D&F required in 17.503. The servicing agency may require a copy of the D&F to be furnished with the order.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.505); and

(5) Acquisition authority as may be appropriate (see 17.504(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.503) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action, and (ii) complying fully with the competition requirements of Part 6 (see 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by Part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the

PART 19

SMALL BUSINESS PROGRAMS

TABLE OF CONTENTS

19.000 Scope of part.
19.001 Definitions.

SUBPART 19.1—SIZE STANDARDS
19.101 Explanation of terms.
19.102 Size standards.

SUBPART 19.2—POLICIES
19.201 General policy.
19.202 Specific policies.
19.202-1 Encouraging small business participation in acquisitions.
19.202-2 Locating small business sources.
19.202-3 Equal low bids.
19.202-4 Solicitation.
19.202-5 Data collection and reporting requirements.
19.202-6 Determination of fair market price.

SUBPART 19.3—DETERMINATION OF STATUS AS A SMALL BUSINESS CONCERN
19.301 Representation by the offeror.
19.302 Protesting a small business representation.
19.303 Determining product or service classifications.
19.304 Solicitation provision and contract clause.

SUBPART 19.4—COOPERATION WITH THE SMALL BUSINESS ADMINISTRATION
19.401 General.
19.402 Small Business Administration procurement center representatives.
19.403 Small Business Administration breakout procurement center representative.

SUBPART 19.5—SET-ASIDES FOR SMALL BUSINESS
19.501 General.
19.502 Setting aside acquisitions.
19.502-1 Requirements for setting aside acquisitions.
19.502-2 Total set-asides.
19.502-3 Partial set-asides.
19.502-4 Methods of conducting set-asides.
19.502-5 Insufficient causes for not setting aside an acquisition.
19.503 Setting aside a class of acquisitions.
19.504 [Reserved]
19.505 Rejecting Small Business Administration recommendations.
19.506 Withdrawing or modifying set-asides.
19.507 Automatic dissolution of a set-aside.
19.508 Solicitation provisions and contract clauses.

SUBPART 19.6—CERTIFICATES OF COMPETENCY
19.601 General.
19.602 Procedures.
19.602-1 Referral.
19.602-2 Issuing or denying a certificate of competency (COC).
19.602-3 Resolving differences between the agency and the Small Business Administration.
19.602-4 Awarding the contract.

SUBPART 19.7—SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS
19.701 Definition.
19.702 Statutory requirements.
19.703 Eligibility requirements for participating in the program.
19.704 Subcontracting plan requirements.
19.705 Responsibilities of the contracting officer under the subcontracting assistance program.
19.705-1 General support of the program.
19.705-2 Determining the need for a subcontracting plan.
19.705-3 Preparing the solicitation.
19.705-4 Reviewing the subcontracting plan.
19.705-5 Awards involving subcontracting plans.
19.705-6 Postaward responsibilities of the contracting officer.
19.705-7 Liquidated damages.
19.706 Responsibilities of the cognizant administrative contracting officer.
19.707 The Small Business Administration's role in carrying out the program.
19.708 Solicitation provisions and contract clauses.

SUBPART 19.8—CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

19.800 General.
19.801 [Reserved]
19.802 Selecting concerns for the 8(a) program.
19.803 Selecting acquisitions for the 8(a) program.
19.804 Evaluation, offering, and acceptance.
19.804-1 Agency evaluation.
19.804-2 Agency offering.
19.804-3 SBA acceptance.
19.804-4 Repetitive acquisitions.
19.805 Competitive 8(a).
19.805-1 General.
19.805-2 Procedures.
19.806 Pricing the 8(a) contract.
19.807 Estimating the fair market price.
19.808 Contract negotiation.
19.808-1 Sole source.
19.808-2 Competitive.
19.809 Preaward considerations.
19.810 SBA appeals.
19.811 Preparing the contracts.
19.811-1 Sole source.
19.811-2 Competitive.
19.811-3 Contract clauses.
19.812 Contract administration.

SUBPART 19.9 [RESERVED]

SUBPART 19.10—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

19.1001 General.
19.1002 Definition.
19.1003 Purpose.
19.1004 Participating agencies.
19.1005 Applicability.
19.1006 Procedures.
19.1007 Solicitation provisions.

PART 19

SMALL BUSINESS PROGRAMS

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. 2302, 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.

"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.

"Labor surplus area" means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern" means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

"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 appropri-

ate 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.

"Women-owned small business concern" means a small business concern—

(a) Which is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more women.

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.

(d) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(e) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(f) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(1) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(2) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(3) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(g) *Control through contractual relationships*—(1) Definition of a joint venture for size determination purposes. A joint venture for size determination purposes is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(2) *Joint venture—procurement and property sale assistance*—Concerns bidding on a particular procurement or property sale as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties.

(3) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(4) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

"Annual receipts." (a) Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffil-

iate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

(1) In any case of change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be restated to the accrual method. In any case, where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated on an accrual basis using the percentage of completion method.

(2) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, "annual receipts" shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(b) Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. In calculating total receipts, the definitions and adjustments related to a change of accounting method and the completed contract method of paragraph (a) of this section, are applicable.

"Number of employees" is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period.

19.102 Size standards.

(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR 121.)

(b) Small business size standards are applied by—

(1) Classifying the product or service being acquired in the industry whose definition, as found in the Standard Industrial Classification (SIC) Manual, best describes the principal nature of the product or service being acquired;

(2) Identifying the size standard SBA established for that industry; and

(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.

(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—

(1) Except as provided in subparagraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, such nonmanufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term "nonmanufacturer" includes a concern which can manufacture or produce the product referred to in the specific acquisition but does not do so in connection with that acquisition. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being acquired is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. However, see the limitations on subcontracting at 52.219-14 which apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

(2) A concern which purchases items and packages

accorded a public or private organization for the handicapped for the purposes of other preferential provisions available to small business concerns; e.g., eligibility for certificates of competency or higher progress payment rates.

(l) The contracting officer shall rely on the offeror's self-certification in a specific bid or proposal that it is a public or private organization for the handicapped unless another offeror or interested party files a protest. An interested party may file a protest challenging an offeror's self-certification by forwarding the protest to the contracting officer by close of business on the fifth working day after bid opening or receipt of the 15.1002(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any protest, whether timely or untimely, the contracting officer shall promptly forward the protest and its supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration. Upon receipt of a protest, the SBA will notify the contracting officer and the protester of the date it was received, and that the status of the public or private organization for the handicapped being challenged is under consideration by the SBA. Within 10 working days after receiving a protest, the SBA will determine the eligibility of the public or private organization for the handicapped and notify the contracting officer, the protester, and the challenged offeror of its decision by certified mail, return receipt requested. The determination of the Associate Administrator for Procurement Assistance, SBA, is final. Award will be made based on this determination. After receiving a protest involving the status of a public or private organization for the handicapped, the contracting officer shall not award the contract until (i) the SBA has made a status determination or (ii) 10 working days have expired since SBA's receipt of a protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) Any small business offeror which experiences or is likely to experience severe economic injury as a result of award to a public or private organization for the handicapped may file an appeal of the award with the contracting officer. The appeal must be received by close of business on the tenth working day after bid opening or receipt of the 15.1002(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any appeal, whether timely or untimely, or whether received before or after award, the contracting officer shall forward the appeal and supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision shall be final. The contracting officer should, when practical, withhold award until expiration of the 10-day appeal period, or; when an appeal is filed, withhold award until the contracting officer receives the SBA determination of appeal, unless delay would be disadvantageous to the Government. The SBA shall notify the contracting officer of the SBA determination and advise the agency or department to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

19.502 Setting aside acquisitions.

19.502-1 Requirements for setting aside acquisitions.

The contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist. This requirement does not apply to purchases of $2,500 or less, or purchases from required sources of supply under Part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502-2 Total set-asides.

(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500, but not over $100,000, is automatically reserved exclusively for small business concerns and shall be set aside unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract with a value not greater than $100,000 under Subpart 19.8, Contracting with the Small Business Administration, or under 19.1006(c), Emerging small business set-aside.

(b) The contracting officer shall set aside any acquisition over $100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of an item or similar items is always

important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For set-asides other than for construction or services, any concern proposing to furnish a product which it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has granted either a waiver or exception to the nonmanufacturer rule (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see 19.102(f)(4) and (5)). In addition, SBA has excepted procurements processed under simplified acquisition procedures (see Part 13), where the anticipated cost of the procurement will not exceed $25,000, from the nonmanufacturer rule. Waivers permit small businesses to provide any firm's product. The exception permits small businesses to provide any domestic firms's product. In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.

(d) The requirements of this subsection do not apply to acquisitions over $25,000 during the period when set-asides cannot be considered for the four designated industry groups (see 19.1006(b)).

19.502-3 Partial set-asides.

(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—

(1) A total set-aside is not appropriate (see 19.502-2);

(2) The requirement is severable into two or more economic production runs or reasonable lots;

(3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price;

(4) The acquisition is not subject to simplified acquisition procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery 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 (c)(2)(ii) of this section). 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 set-asides may be conducted by using simplified acquisition procedures (see Part 13), sealed bids (see Part 14), or competitive proposals (see Part 15). Partial small business set-asides may be conducted using sealed bids (see Part 14), or competitive proposals (see Part 15).

(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 nonresponsive 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 automatically reserved for small business concerns under 19.502-2(a).

(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 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 [Reserved]

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 working 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 working 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 working days. Pending issuance of a 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 working day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

(2) The SBA shall be allowed 15 working 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 working 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, the contracting officer considers that award 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 business 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 business specialist 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 business specialist 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 set-asides under $100,000.

(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 supplies 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)—(b)[Reserved]

(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. 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 waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

(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. 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 waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

(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 simplified acquisition 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

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) 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.

(b) If a partial set-aside is involved, the contracting officer shall refer to the SBA the entire quantity to which the concern may be entitled, if responsible.

(c) The referral shall consist of—

(1) A notice that a small business concern has been determined to be nonresponsible, specifying the elements of responsibility the contracting officer found lacking; and

(2) If applicable, a copy of the solicitation, drawings and specifications, preaward survey findings, pertinent technical and financial information, abstract of bids (if available), and any other pertinent information that supports the contracting officer's determination.

(d) For any single acquisition, the contracting officer shall make only one referral at a time regarding a determination of nonresponsibility.

19.602-2 Issuing or denying a certificate of competency (COC).

Within 15 business days (or a longer period agreed to by the SBA and the contracting agency) after receiving a notice that a small business concern lacks certain elements of responsibility, the SBA will take the following actions:

(a) Inform the small business concern of the contracting officer's determination and offer it an opportunity to apply to the SBA for a certificate of competency (COC). (A concern wishing to apply for a COC should notify the SBA Regional Office for the geographical area where it is located.)

(b) Upon timely receipt of the application and required documentation, send an SBA team to visit the concern to investigate it only for the specific elements of responsibility that the agency notice specified as lacking, and to make recommendations to the SBA Regional Administrator.

•(c) If the Regional Administrator plans to issue or recommend issuance of a COC, provide advance notice of the proposed action to the contracting officer together with a brief statement of the reasons for it. If the contracting officer disagrees with the proposal, resolve the disagreement as provided in 19.602-3.

(d) Notify the concern and the contracting officer that the COC is denied or is being issued.

19.602-3 Resolving differences between the agency and the Small Business Administration.

(a) When disagreements arise about a concern's ability to perform, the contracting officer and the SBA shall make every effort to reach a resolution before the SBA takes final action on a COC. This shall be done through the complete exchange of information and in accordance with agency procedures. If agreement cannot be reached between the contracting officer and the SBA Regional Office, the contracting officer shall request that the Regional Office suspend action and refer the matter to the SBA Central Office for review.

(b) The SBA Central Office, upon receiving a referral, shall—

(1) Inform the contracting officer that it does not concur with its Regional Office; or

(2) Inform the contracting officer that it concurs with its Regional Office.

In either case, the initial notification shall be by telephone to the contracting officer, followed by written confirmation.

(c) If the agency intends to file a formal appeal, it shall notify the SBA Central Office within 10 business days (or a period acceptable to both) after receiving the Central Office's written position on the matter. The agency shall file any formal appeal within 10 business days after SBA is informed that an appeal will be taken, or within a period acceptable to both.

(d) The SBA Central Office shall make the final determination.

19.602-4 Awarding the contract.

(a) If new information causes the contracting officer to determine that the concern referred to the SBA is actually responsible to perform the contract, and award has not already been made under paragraph (c) of this subsection, the contracting officer shall reverse the determination of nonresponsibility, notify the SBA of this action, withdraw the referral, and proceed to award the contract.

(b) The contracting officer shall award the contract to the concern in question if the SBA issues a COC after receiving the referral. An SBA-certified concern shall not be required to meet any other requirements of responsibility. SBA COC's are conclusive with respect to all elements of responsibility of prospective small business contractors.

(c) The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected and responsible offeror if the SBA has not issued a COC within 15 business days (or a longer period of time agreed to with the SBA) after receiving the referral.

SUBPART 19.7—SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS

19.701 Definitions.

"Failure to make a good faith effort to comply with the subcontracting plan," as used in this subpart, means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

"Small business subcontractor" means any concern that—

(a) In connection with subcontracts of $10,000 or less if, including its affiliates, its number of employees does not exceed 500 persons; and

(b) In connection with subcontracts exceeding $10,000, if its number of employees or average annual receipts, including its affiliates, does not exceed the size standard

under section 19.102 for the product or service it is providing on the subcontract.

"Subcontract," as used in this subpart, means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for contract performance, contract modification, or subcontract.

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold shall agree in the contract that small business concerns, small disadvantaged business concerns and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. 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, small disadvantaged business concerns and women-owned small business concerns.

(a) Except as stated in paragraph (b) of this section, the Small Business Act imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans.

(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, which individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award.

(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, which individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award.

(b) Subcontracting plans (see subparagraphs (a)(1) and (2) of this section) are not required—

(1) From small business concerns;

(2) For personal services contracts;

(3) For contracts or contract modifications that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; or

(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior clauses).

(c) As stated in 15 U.S.C. 637(d)(8), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.

(d) As authorized by 15 U.S.C. 637(d)(11), certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as subcontract awards to a small disadvantaged business for the purpose of determining whether the mentor firm attains a small disadvantaged business goal under any subcontracting plan entered into with any executive agency. However, the mentor-protégé agreement must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), DUSD (I&CP) SADBU, Room 2A338, 3061 Defense Pentagon, Washington, DC 20301-3061, (703) 697-9383, before developmental assistance costs may be credited against subcontract goals.

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern, small disadvantaged business concern or a woman-owned small business concern.

(1) To represent itself as a small business concern or a women-owned small business concern, a concern must meet the appropriate definition in 19.001.

(2) To represent itself as a small disadvantaged business concern, a concern must meet the definition in 19.001. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) may represent themselves as socially and economically disadvantaged. Individuals who are not members of named groups may also represent themselves, and participate in the program, as socially and economically disadvantaged if they are qualified by the SBA under the procedures in 13 CFR 124.105(c)). Concerns who certify that they are tribally-owned entities or Native Hawaiian Organizations may represent themselves as socially and economically disadvantaged if they qualify under the requirements of 13 CFR 124.112 or 13 CFR 124.113,

(1) A personal services contract is contemplated (see 37.104); or

(2) The contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, unless the acquisition is set aside or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I. When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, or its Alternate I.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required (see 19.702(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small, small disadvantaged and women-owned small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in paragraph (c)(2) of this section.

(2) Various approaches may be used in the development of small, small disadvantaged and women-owned small business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see paragraph (c)(3) of this section). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (c)(2) of this section, the contracting officer may include small, small disadvantaged and women-owned small business subcontracting as one of the factors to be considered in determining the award fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program.

SUBPART 19.8—CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

19.800 General.

(a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors."

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis.

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer's discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

19.801 [Reserved]

19.802 Selecting concerns for the 8(a) Program.

Selecting concerns for the 8(a) Program is the responsibility of the SBA and is based on the criteria established in 13 CFR 124.101-113.

19.803 Selecting acquisitions for the 8(a) Program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) concerns to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways—

(a) The SBA advises an agency contracting activity through a search letter of an 8(a) firm's capabilities and asks the agency to identify acquisitions to support the firm's business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm's capabilities.

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The firm's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) The concern's capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

(ii) The concern's capacity in each construction category in terms of estimated dollar value (*e.g.*, electrical, up to $100,000).

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency contracting activity to offer the acquisition to the 8(a) Program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; *e.g.*, project name or number;

(2) A statement as to how any additional needed facilities will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements;

(3) If construction, information as to the bonding capability of the firm(s); and

(4) Either—

(i) If sole source request—(A) the reasons why the firm is considered suitable for this particular acquisition; *e.g.*, previous contracts for the same or similar supply or service; and (B) a statement that the firm is eligible in terms of SIC code, business support levels, and business activity targets; or

(ii) If competitive, a statement that at least two 8(a) firms are considered capable of satisfying the agency's requirements and a statement that the firms are also eligible in terms of the SIC code, business support levels, and business activity targets. If requested by the contracting activity, SBA will identify at least two such firms and provide information concerning the firms' capabilities.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) firm, identify a requirement for the 8(a) Program, they may offer on behalf of a specific 8(a) firm, for the 8(a) Program in general, or for 8(a) competition.

19.804 Evaluation, offering, and acceptance.

19.804-1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) Program, the agency should evaluate—

(a) Its current and future plans to acquire the specific items or work that 8(a) contractors are seeking to provide, identified in terms of—

(1) Quantities required or the number of construction projects planned; and

(2) Performance or delivery requirements, including required monthly production rates, when applicable;

(b) Its current and future plans to acquire items or work similar in nature and complexity to that specified in the business plan;

(c) Problems encountered in previous acquisitions of the items or work from the 8(a) contractors and/or other contractors;

(d) The impact of any delay in delivery;

(e) Whether the items or work have previously been acquired using small business set-asides; and

(f) Any other pertinent information about known 8(a) contractors, the items, or the work. This includes any information concerning the firms' capabilities. When necessary, the contracting agency shall make an independent review of the factors in 19.803(a) and other aspects of the firms' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) Program.

19.804-2 Agency offering.

(a) After completing its evaluation, the agency shall notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification must identify the time frames within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The notification must also contain the following information applicable to each prospective contract:

(1) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(2) The estimated period of performance.

(3) The SIC code that applies to the principal nature of the acquisition.

(4) The anticipated dollar value of the requirement, including options, if any.

(5) Any special restrictions or geographical limitations on the requirement (for construction and services include the location of the work to be performed).

(6) Any special capabilities or disciplines needed for contract performance.

(7) The type of contract anticipated.

(8) The acquisition history, if any, of the requirement including the names and addresses of any small business contractors which have performed this requirement during the previous 24 months.

(9) A statement that no solicitation for this specific acquisition has been issued as a small business set-aside or a small disadvantaged business set-aside, and that no other public communication (such as a notice in the Commerce Business Daily) has been made evidencing the contracting agency's clear intention to set aside the acquisition for small business or small disadvantaged business.

(10) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as—

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) Program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all known 8(a) concerns which have expressed an interest in this specific requirement as a result of self-marketing, response to sources sought, or publication of advanced acquisition requirements.

(13) Identification of all SBA district or regional offices which have asked for the acquisition for the 8(a) Program.

(14) A recommendation, if appropriate, as to whether the acquisition should be competitive or sole source.

(15) Any other pertinent and reasonably available data.

(b)(1) An agency offering a construction requirement should submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be sent to SBA Headquarters, Office of Minority and Capital Ownership Development, 409 3rd Street, SW, Washington, DC 20416.

(c) In order to ensure consistency and uniformity, all requirements for 8(a) competition shall be offered to and processed by the Division of Business Development, SBA Headquarters. All requirements, including construction, shall be synopsized in the Commerce Business Daily by the cognizant procuring agency. For construction, the synopsis shall include the geographical area of the competition as determined by the Assistant Administrator, Division of Business Development, in consultation with the local SBA district office where the work is to be performed.

19.804-3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 15 working days of receipt of the offer, unless the SBA requests, and the contracting agency grants, an extension.

(b) If the acquisition is accepted as a sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, the SBA will accept a contracting activity's recommended source.

19.804-4 Repetitive acquisitions.

In order for repetitive acquisitions to be awarded through the 8(a) Program, there must be separate offers and acceptances. This allows the SBA to revalidate a firm's eligibility, to evaluate the suitability of each acquisition as a competitive 8(a), and to determine whether the requirement should continue under the 8(a) Program.

19.805 Competitive 8(a).

19.805-1 General.

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the SBA under the 8(a) Program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and

(2) The anticipated award price of the contract, including options, will exceed $5,000,000 for acquisitions assigned manufacturing standard industrial classification (SIC) codes and $3,000,000 for all other acquisitions.

(b) Where an acquisition exceeds the competitive threshold, the SBA may accept the requirement for a sole source 8(a) award if—

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or

(2) The SBA determines that an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe is eligible and responsible and needs the acquisition for its business development.

(c) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order to use 8(a) sole source procedures for award to a single firm.

(d) The SBA Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) may approve an agency recommendation for a competitive 8(a) award below the competitive thresholds. Such recommendations will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition. In determining whether a recommendation to compete below the threshold will be approved, AA/MSB&COD will, in part, consider the extent to which the requesting agency is supporting the 8(a) Program on a noncompetitive basis. Agency recommendations for competition below the threshold may be included in the offering letter or may be submitted by separate correspondence to the SBA Headquarters.

19.805-2 Procedures.

(a) Competitive 8(a) acquisitions shall be conducted by contracting agencies by using sealed bids (see Part 14) or competitive proposals (see Part 15).

(b) Offers shall be solicited from those sources identified in accordance with the SBA instructions provided under 19.804-3.

(c) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria.

(1) In sealed bid acquisitions, upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (i.e., first low, second low, etc.) with the total evaluated price for each offer, differentiating between basic requirements and any options. The SBA will consider the eligibility of the first low offeror. If the first low offeror is not determined to be eligible, the SBA will consider the eligibility of the next low offeror until an eligible offeror is identified. The SBA will determine the eligibility of the firms and advise the contracting officer within 5 working days after its receipt of the list of bidders. Once eligibility has been established by the SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.

(2) In negotiated acquisition, the SBA will determine eligibility when the successful offeror has been established by the agency and the contract transmitted for signature unless a referral has been made under 19.809, in which case the SBA will determine eligibility at that point.

(d) In any case in which a firm is determined to be ineligible, the SBA will notify the firm of that determination.

(e) The eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a solicitation or proposed contract award. Any party with information concerning the eligibility of an 8(a) firm to continue participation in the 8(a) Program may submit such information to the SBA in accordance with 13 CFR 124.111(c).

19.806 Pricing the 8(a) contract.

(a) The contracting officer shall price the 8(a) contract in accordance with Subpart 15.8. If required by Subpart 15.8, the SBA shall obtain certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

(b) An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.

(c) If requested by the SBA, the contracting officer shall make available the data used to estimate the fair market price.

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

19.807 Estimating fair market price.

(a) The contracting officer shall estimate the fair market price of the work to be performed by the 8(a) contractor.

(b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

(c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

19.808 Contract negotiation.

19.808-1 Sole source.

(a) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agen cy may, after notifying the SBA, proceed with the acquisition from other sources.

(b) The SBA should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award.

19.808-2 Competitive.

In competitive 8(a) acquisitions subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms.

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If

the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer should refer the matter to the SBA for its consideration in deciding whether SBA should certify that it is competent and responsible to perform. This is not a referral for Certificate of Competency consideration under Subpart 19.6. Within 15 working days of the receipt of the referral or a longer period agreed to by the SBA and the contracting activity, the SBA local district office that services the 8(a) firm will advise the contracting officer as to the SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected 8(a) offeror if the SBA has not certified its competency within 15 working days (or a longer mutually agreeable period).

19.810 SBA appeals.

(a) The following matters may be submitted by the SBA Administrator for determination to the agency head if the SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) Program.

(2) The terms and conditions of a particular sole source acquisition to be awarded under the 8(a) Program.

(3) The estimated fair market price.

(b) Notification of a proposed referral to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBA is formally notified of the contracting officer's decision. The SBA shall provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification. The SBA must provide the request for determination to the agency head within 20 working days of the SBA's receipt of the adverse decision. Pending issuance of a decision by the agency head, the contracting officer shall suspend action on the acquisition. Action on the acquisition need not be suspended if the contracting officer makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the agency head shall specify the reasons for the denial, including the reasons why the selected firm was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

19.811 Preparing the contracts.

19.811-1 Sole source.

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case the Standard Form 1442 shall be used as required in 36.701(b).

(b) The agency shall prepare the contract that the SBA will award to the 8(a) contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the 8(a) contractor, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.

(3) The following items shall be inserted by the SBA:

(i) The SBA contract number.

(ii) The effective date.

(iii) The typed name of the SBA's contracting officer.

(iv) The signature of the SBA's contracting officer.

(v) The date signed.

(4) The SBA will obtain the signature of the 8(a) contractor prior to signing and returning the prime contract to the contracting officer for signature. The SBA will make every effort to obtain signatures and return the contract, and any subsequent bilateral modification, to the contracting officer within a maximum of 10 working days.

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in 19.811-1(a) and (b), use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document shall contain the information in 19.811-1(b)(1), (2), (3), and (5). Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) Agency acquisition office, prime contract number, name of agency contracting officer and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA contract number, name of the SBA contracting officer, and lines for signature and date signed.

(3) Name and lines for the 8(a) subcontractor's signature and date signed.

(d) Prior to award of contract actions in excess of $100,000, the SBA shall provide the contracting activity with the competing contractor certifications required by 3.104-9 from its 8(a) contractor. The contracting activity's contracting officer shall maintain the list required by 3.104-9 and complete the contracting officer certification.

19.811-2 Competitive.

(a) The contract will be prepared in accordance with 14.408-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) The agency contracting activity, prime contract number, name of agency contracting officer, and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(b) For contract actions in excess of $100,000, the contracting activity's contracting officer shall obtain the competing contractor certifications as required by 3.104-9 directly from the 8(a) firm(s). The contracting activity's contracting officer shall maintain the list required by 3.104-9 and complete the contracting officer certification.

(c) The process for obtaining signatures shall be as specified in 19.811-1(b)(4).

19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(c) The contracting officer shall insert the clause at 52.219-17, Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805 and in sole source awards which utilize the alternative procedure in 19.811-1(c).

(d) The contracting officer shall insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805.

(1) The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to 19.804-2.

(2) The clause at 52.219-18 with its Alternate II will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in any solicitation and contract resulting from this subpart.

19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the 8(a) contractor (see DoD Directory of Contract Administration Services Components (DoD 4105.59-H)).

(b) The agency shall distribute copies of the contract(s) in accordance with Part 4. All contracts and modifications, 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 [RESERVED]

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, 1997. 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, 1997, 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 simplified acquisition 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 [Reserved]
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—
22.607 [Reserved]
22.608 Procedures.
22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.
22.610 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 [Reserved]
22.1006 Contract clauses.
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.
22.1022 Withholding of contract payments.
22.1023 Termination for default.
22.1024 Cooperation with the Department of Labor.
22.1025 Ineligibility of violators.
22.1026 Disputes concerning labor standards.

SUBPART 22.11—PROFESSIONAL EMPLOYEE COMPENSATION
22.1101 Applicability.

22.1102 Definition.
22.1103 Policy, procedures, and solicitation provisions.

SUBPART 22.12—[RESERVED]

SUBPART 22.13—SPECIAL DISABLED AND VIETNAM ERA VETERANS

22.1300 Scope of subpart.
22.1301 Policy.
22.1302 Applicability.
22.1303 Waivers.
22.1304 Department of Labor notices and reports.
22.1305 Collective bargaining agreements.
22.1306 Complaint procedures.
22.1307 Actions because of noncompliance.
22.1308 Contract clauses.

SUBPART 22.14—EMPLOYMENT OF THE HANDICAPPED

22.1400 Scope of subpart.
22.1401 Policy.
22.1402 Applicability.
22.1403 Waivers.
22.1404 Department of Labor notices.
22.1405 Collective bargaining agreements.
22.1406 Complaint procedures.
22.1407 Actions because of noncompliance.
22.1408 Contract clause.

(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 contracting 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

Comptroller General, Claims Division, or return them to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, funds withheld or collected for liquidated damages shall be disposed of in accordance with agency procedures.

22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include—

(1) Misclassification of workers;

(2) Hours of work;

(3) Wage rates and payment;

(4) Payment of overtime;

(5) Withholding practices; and

(6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from the Department of Labor.

(c) When requesting the contractor to take corrective action in labor violation cases, the contracting officer shall inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are handled under the contract clause at 52.222-14, Disputes Concerning Labor Standards, and not under the clause at 52.233-1, Disputes.

(2) The contractor may appeal the contracting officer's findings or part thereof by furnishing the contracting officer a complete statement of the reasons for the disagreement with the findings.

(d) The contracting officer shall promptly transmit the contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division.

(e) The Administrator, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the contracting agency. The contractor or subcontractor may appeal the Administrator's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR Part 6, and hearings before the Labor Department Wage Appeals Board are conducted in accordance with 29 CFR Part 7.

(f) The Administrator, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the Administrator finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under Section 3(a) of that Act.

22.406-11 Contract terminations.

If a contract or subcontract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division, and the Comptroller General. The report shall include—

(a) The number of the terminated contract;

(b) The name and address of the terminated contractor or subcontractor;

(c) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(d) The amount and number of the replacement contract, if any; and

(e) A description of the work.

22.406-12 Cooperation with the Department of Labor.

(a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, or the Copeland (Anti-Kickback) Act.

22.406-13 Semiannual enforcement reports.

A semiannual report on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act is required from each contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall only contain information as to the enforcement actions of the contracting agency and shall be prepared as prescribed in Department of Labor memoranda and submitted to the Department of Labor within 30 days after the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

22.407 Contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts in excess of $2,000 for construction within the United States:

(1) The clause at 52.222-6, Davis-Bacon Act.

(2) The clause at 52.222-7, Withholding of Funds.

(3) The clause at 52.222-8, Payrolls and Basic Records.

(4) The clause at 52.222-9, Apprentices and Trainees.

(5) The clause at 52.222-10, Compliance with Copeland Act Requirements.

(6) The clause at 52.222-11, Subcontracts (Labor Standards).

(7) The clause at 52.222-12, Contract Termination-Debarment.

(8) The clause at 52.222-13, Compliance with Davis-Bacon and Related Act Regulations.

(9) The clause at 52.222-14, Disputes Concerning Labor Standards.

(10) The clause at 52.222-15, Certification of Eligibility.

(b) The contracting officer shall insert the clause at 52.222-16, Approval of Wage Rates, in solicitations and contracts in excess of $2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.

(c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed in the United States. If under 22.402(b) the requirements of this subpart apply to the construction work, the contracting officer shall insert in such solicitations and contracts the applicable construction labor standards clauses required in this section and identify the item or items of construction work to which the clauses apply.

(d) The contracting officer shall insert the clause at 52.222-17, Labor Standards for Construction Work—Facilities Contracts, in solicitations and contracts, if a facilities contract (see 45.301) may require covered construction work (see 22.402(b)) to be performed in the United States.

SUBPART 22.5—[RESERVED]

SUBPART 22.6—WALSH-HEALEY PUBLIC CONTRACTS ACT

22.601 [Reserved]

22.602 Statutory requirements.

Except for the exemptions at 22.604, all contracts subject to the Walsh-Healey Public Contracts Act (the Act) (41 U.S.C. 35-45) and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this subpart as supplies) in any amount exceeding $10,000, shall include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed $10,000, unless exempted under 22.604.

22.604 Exemptions.

22.604-1 Statutory exemptions.

Contracts for acquisition of the following supplies are exempt from the Act:

(a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase "in the open market" generally (such as commercial items, see Part 12); or where a specific purchase is made under the conditions described in 6.302-2 in circumstances where immediate delivery is required by the public exigency.

(b) Perishables, including dairy, livestock, and nursery products.

(c) Agricultural or farm products processed for first sale by the original producers.

(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)(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—22.607 [Reserved]

22.608 Procedures.

(a) *Award.* When a contract subject to the Act is awarded, the contracting officer, in accordance with regulations or instructions issued by the Secretary of Labor and individual agency procedures, shall furnish to the contractor DOL publication WH-1313, Notice to Employees Working on Government Contracts.

(b) *Breach of stipulation.* In the event of a violation of a stipulation required under the Act, the contracting officer shall, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 22.609), and furnish any information available.

22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.

Geographic jurisdictions of the following regional offices of the DOL, Wage and Hour Division, are shown here, and are to be contacted by contracting officers in all situations required by this subpart, unless otherwise specified:

(a) The Region I office located in Boston, Massachusetts, has jurisdiction for Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

(b) The Region II office located in New York, New York, has jurisdiction for New York, New Jersey, Puerto Rico, and the Virgin Islands.

(c) The Region III office located in Philadelphia, Pennsylvania, has jurisdiction for Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia.

(d) The Region IV office located in Atlanta, Georgia, has jurisdiction for North Carolina, South Carolina, Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida.

(e) The Region V office located in Chicago, Illinois, has jurisdiction for Ohio, Indiana, Michigan, Illinois, Wisconsin, and Minnesota.

(f) The Region VI office located in Dallas, Texas, has jurisdiction for Louisiana, Arkansas, Oklahoma, Texas, and New Mexico.

(g) The Region VII office located in Kansas City, Missouri, has jurisdiction for Missouri, Iowa, Nebraska, and Kansas.

(h) The Region VIII office located in Denver, Colorado, has jurisdiction for North Dakota, South Dakota, Montana, Wyoming, Colorado, and Utah.

(i) The Region IX office located in San Francisco, California, has jurisdiction for Arizona, California, Nevada, Hawaii, and Guam.

(j) The Region X office located in Seattle, Washington, has jurisdiction for Washington, Oregon, Idaho, and Alaska.

22.610 Contract clause.

The contracting officer shall insert the clause at 52.222-20, Walsh-Healey Public Contracts Act, in solicitations and contracts covered by the Act (see 22.603, 22.604, and 22.605).

SUBPART 22.7—[RESERVED]

SUBPART 22.8—EQUAL EMPLOYMENT OPPORTUNITY

22.800 Scope of subpart.

This subpart prescribes policies and procedures pertaining to nondiscrimination in employment by Government contractors and subcontractors.

22.801 Definitions.

"Affirmative action program," as used in this subpart, means a contractor's program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

"Construction work," as used in this subpart, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contracting agency," as used in this subpart, means any department, agency, establishment, or instrumentality in the Executive Branch of the Government, including any wholly owned Government corporation that enters into contracts.

"Contractor," as used in this subpart, includes the terms "prime contractor" and "subcontractor."

"Director," as used in this subpart, means the Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor.

"Equal Opportunity clause," as used in this subpart, means the clause at 52.222-26, Equal Opportunity, prescribed in 22.810(e).

"EO 11246," as used in this subpart, means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive Order amending or superseding this Order (see 22.802). This term specifically includes the Equal Opportunity clause at 52.222-26, and the rules, regulations, and orders issued pursuant to EO 11246 by the Secretary of Labor or a designee.

"Government contract," as used in this subpart, means any agreement or modification thereof between a Government contracting agency and any person for the furnishing of supplies or services, or for the use of real or personal property including lease arrangements. The term does not include (a) agreements in which the parties stand in the relationship of employer and employee, and (b) contracts for the sale of real and personal property by the Government.

"Prime contractor," as used in this subpart, means any person who holds, or has held, a Government contract subject to EO 11246.

"Recruiting and training agency," as used in this subpart, means any person who refers workers to any contractor or subcontractor or provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

"Site of construction," as used in this subpart, means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

"Subcontract," as used in this subpart, means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee) (a) for the furnishing of supplies or services or for use of real or personal property, including lease arrangements that, in whole or in part, is necessary to the performance of any one or more Government contracts, or (b) under which any portion of the contractor's obligation under any one or more Government contracts is performed, undertaken, or assumed.

"Subcontractor," as used in this subpart, means any person who holds, or has held, a subcontract subject to EO 11246. The term "first-tier subcontractor" means a subcontractor holding a subcontract with a prime contractor.

"United States," as used in this subpart, means the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and the possessions of the United States.

22.802 General.

(a) Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that all Government contracting agencies (1) include this clause in all nonexempt Government prime contracts and subcontracts (see 22.807), and (2) act to ensure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

(b) No contract or modification involving new acquisition shall be entered into, and no subcontract shall be approved by a contracting officer, with a person who has been found ineligible by the Director for reasons of noncompliance with the requirements of EO 11246.

(c) No contracting officer or contractor shall contract for supplies or services in a manner so as to avoid applicability of the requirements of EO 11246.

(d) Contractor disputes related to compliance with its obligation shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR 60-1.1).

22.803 Responsibilities.

(a) The Secretary of Labor is responsible for the—

(1) Administration and enforcement of prescribed parts of EO 11246; and

(2) Adoption of rules and regulations and the issuance of orders necessary to achieve the purposes of EO 11246.

(b) The Secretary of Labor has delegated authority and assigned responsibility to the Director for carrying out the responsibilities assigned to the Secretary by EO 11246,

except for the issuance of rules and regulations of a general nature.

(c) The head of each agency is responsible for ensuring that the requirements of this subpart are carried out within the agency, and for cooperating with and assisting the OFCCP in fulfilling its responsibilities.

(d) In the event the applicability of EO 11246 and implementing regulations is questioned, the contracting officer shall forward the matter through agency channels for resolution.

22.804 Affirmative action programs.

22.804-1 Nonconstruction.

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and (a) a contract or subcontract of $50,000 or more or (b) Government bills of lading that in any 12-month period, total, or can reasonably be expected to total, $50,000 or more, is required to develop a written affirmative action program for each of its establishments within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

22.804-2 Construction.

(a) Construction contractors that hold a nonexempt (see 22.807) Government construction contract are required to meet (1) the contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects and (2) applicable requirements of 41 CFR 60-1 and 60-4.

(b) Each contracting agency shall maintain a listing of covered geographical areas that are subject to affirmative action requirements that specify goals for minorities and women in covered construction trades. Information concerning, and additions to, this listing will be provided to the principally affected contracting officers in accordance with agency procedures. Any contracting officer contemplating a construction project in excess of $10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the OFCCP regional office, or as otherwise specified in agency regulations, before issuing the solicitation.

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by the OFCCP regional office, the contracting officer shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities.

22.805 Procedures.

(a) *Preaward clearances for contracts and subcontracts of $1 million or more (excluding construction).* (1) Except as provided in 22.805(a)(7) below, if the estimated amount of the contract, subcontract, or basic ordering agreement is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more, the contracting officer shall request the appropriate OFCCP regional office to determine whether a contractor is awardable before (i) award of any contract, including any indefinite delivery contract or letter contract, (ii) modification of an existing contract for new effort that would constitute a contract award, or the (iii) issuance of any basic ordering agreement.

[The next page is 22-25.]

conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see 22.1003-4(b)(4)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.

22.1003-7 Questions concerning applicability of the Act.

If the contracting officer questions the applicability of the Act to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

22.1004 Department of Labor responsibilities and regulations.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

(a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);

(b) Wage determination procedures (29 CFR Part 4, Subpart B);

(c) Application of the Act (rulings and interpretations) (29 CFR Part 4, Subpart C);

(d) Compensation standards (29 CFR Part 4, Subpart D);

(e) Enforcement (29 CFR Part 4, Subpart E);

(f) Safe and sanitary working conditions (29 CFR Part 1925);

(g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and

(h) Practice before the Board of Service Contract Appeals (29 CFR Part 8).

22.1005 [Reserved]

22.1006 Contract clauses.

(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over $2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be $2,500 or less.

(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over $2,500 and the Act is applicable. (See 22.1016.)

(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (c)(1), (2) and (3)), or 52.222-44 (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The contractor actually paid $4.10. The new wage determination increases the minimum rate to $4.50. The contractor increases the rate actually paid to $4.75 per hour. The allowable price adjustment is $.40 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised mini-

mum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

(1) The clause at 52.222-41 applies;

(2) The contract resulting from the solicitation succeeds a contract for substantially the same services to be performed in the same locality;

(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and

(4) All applicable Department of Labor wage determinations have been requested but not received.

(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).

(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor wage determination if the contract exceeds $2,500.

(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.

22.1007 Requirement to submit Notice (SF 98/98a).

The contracting officer shall submit Standard Forms 98 and 98a (see 53.301-98 and 53.301-98a), "Notice of Intention to Make a Service Contract and Response to Notice" and "Attachment A" (both forms hereinafter referred to as "Notice"), together with any required supplemental information to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, for the following service contracts:

(a) Each new solicitation and contract in excess of $2,500.

(b) Each contract modification which brings the contract above $2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of $2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division (see 22.1008-5).

22.1008 Procedures for preparing and submitting Notice (SF 98/98a).

22.1008-1 Preparation of Notice (SF 98/98a).

The contracting officer shall complete and submit the Notice in accordance with the instructions on the SF 98 and shall supplement it with information required under this section. Care should be taken to ensure that all required information is provided to avert return without action by the Department of Labor. The contracting officer shall retain a copy of the completed Notice and any required supplementary information until the signed and dated response to the Notice is received from the Department of Labor and placed in the contract file.

22.1008-2 Preparation of SF 98a.

(a) The SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any known subcontractors in performing the contract:

(1) All classes of service employees to be utilized.

(i) If a wage determination is to be based on a collective bargaining agreement (CBA) (see 22.1002-3 and 22.1008-3), use the exact title shown in the CBA.

(ii) For other than subdivision (a)(1)(i) of this subsection—

(A) Use the exact title shown in the Wage and Hour Division's *Service Contract Act Directory of Occupations* (see paragraph (b) of this subsection);

(B) Provide an appropriate job title and job description if the Directory cannot be used.

(2) The estimated number of service employees in each class; and

(3) The wage rate that would be paid each class if 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.

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 52.222-41, 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 List of Parties Excluded from Federal Procurement and 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) shall not apply to 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

expiration date, until the period of performance is completed. The final expiration date shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) Until completion of any warranty period for performance bonds only.

(g) The ILC shall be issued or confirmed by a federally insured financial institution rated investment grade or higher.

(1) The offeror/contractor shall provide the contracting officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) If the contracting officer learns that a financial institution's rating has dropped below the required level, the contracting officer shall give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228-14.

(h) Additional information on credit rating services and investment grade ratings, and a copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, is contained within the Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit. This pamphlet may be obtained by calling the Office of Management and Budget's publications office at (202) 395-7332.

28.204-4 Contract clause.

Insert the clause at 52.228-14, Irrevocable Letter of Credit, in solicitations and contracts for services, supplies, or construction, when a bid guarantee, or performance bonds, or performance and payment bonds are required.

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.

(2) Government property is involved.

(3) The work is to be performed on a Government installation.

(4) The Government elects to assume risks for which the contractor ordinarily obtains commercial insurance.

(b) *Work on a Government installation.* (1) When the clause at 52.228-5, Insurance—Work on a Government Installation, is required to be included in a fixed-price contract by 28.310, the coverage specified in 28.307 is the minimum insurance required and shall be included in the contract Schedule or elsewhere in the contract. The contracting officer may require additional coverage and higher limits.

(2) When the clause at 52.228-5, Insurance—Work on a Government Installation, is not required by 28.310 but is included because the contracting officer considers it to be in the Government's interest to do so, any of the types of insurance specified in 28.307 may be omitted or the limits may be lowered, if appropriate.

28.307 Insurance under cost-reimbursement contracts.

Cost-reimbursement contracts (and subcontracts, if the terms of the prime contract are extended to the subcontract) ordinarily require the types of insurance listed in 28.307-2, with the minimum amounts of liability indicated. (See 28.308 for self-insurance.)

28.307-1 Group insurance plans.

(a) *Prior approval requirement.* Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor must submit the plan for approval, in accordance with agency regulations. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government requires similar approval.

(b) *Premium refunds or credits.* The plan shall provide for the Government to share in any premium refunds or credits paid or otherwise allowed to the contractor. In determining the extent of the Government's share in any premium refunds or credits, any special reserves and other refunds to which the contractor may be entitled in the future shall be taken into account.

28.307-2 Liability.

(a) *Workers' compensation and employer's liability.* Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease

most specifically deals with, or best captures the essential nature of, the cost at issue.

31.205 Selected costs.

31.205-1 Public relations and advertising costs.

(a) "Public relations" means all functions and activities dedicated to—

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts and that are exclusively for—

(i) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205-34);

(ii) Acquiring scarce items for contract performance; or

(iii) Disposing of scrap or surplus materials acquired for contract performance.

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding subparagraphs (f)(1) and (3), subdivision (f)(4)(ii), and subparagraph (f)(5) of this subsection, subject to the limits contained in 31.205-38(c)(2). However, such costs do not include the costs of memorabilia (e.g., models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities which are primarily used for entertainment rather than product promotion.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of—

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (*e.g.*, blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).

(4) Costs of plant tours and open houses (but see subparagraph (f)(5) of this subsection).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205-38(c)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies such as (i) corporate celebrations and (ii) new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

31.205-2 Automatic data processing equipment leasing costs.

(a) This subsection applies to all contractor-leased automatic data processing equipment (ADPE), as defined in

31.001 (except as components of an end item to be delivered to the Government), acquired under operating leases, as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, issued by the Financial Accounting Standards Board. Compliance with 31.205-11(m) requires that ADPE acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges as appropriate. Allowability of costs related to contractor-owned ADPE is governed by other requirements of this subpart.

(b)(1) If the contractor leases ADPE but cannot demonstrate, on the basis of facts existent at the time of the decision to lease or continue leasing and documented in accordance with paragraph (d) below, that leasing will result in less cost to the Government over the anticipated useful life (see paragraph (c) below), then rental costs are allowable only up to the amount that would be allowed had the contractor purchased the ADPE.

(2) The costs of leasing ADPE are allowable only to the extent that the contractor can annually demonstrate in accordance with paragraph (d) below (whether or not the term of lease is renewed or otherwise extended) that these costs meet the following criteria:

(i) The costs are reasonable and necessary for the conduct of the contractor's business in light of factors such as the contractor's requirements for ADPE, costs of comparable facilities, the various types of leases available, and the terms of the rental agreement.

(ii) The costs do not give rise to a material equity in the facilities (such as an option to renew or purchase at a bargain rental or price other than that normally given to industry at large) but represent charges only for the current use of the equipment, including incidental service costs such as maintenance, insurance, and applicable taxes.

(iii) The contracting officer's approval was obtained for the leasing arrangement (see subparagraph (d)(3) below) when the total cost of leasing—

(A) The ADPE is to be allocated to one or more Government contracts which require negotiating or determining costs, or

(B) ADPE in a single plant, division, or cost center exceeds $500,000 a year and 50 percent or more of the total leasing cost is to be allocated to one or more Government contracts which require negotiating or determining costs.

(3) Rental costs under a sale and leaseback arrangement are allowable only up to the amount that would have been allowed had the contractor retained title to the ADPE.

(4) Allowable rental costs of ADPE leased from any division, subsidiary, or organization under a common control are limited to the cost of ownership (excluding interest or other costs unallowable under this Subpart 31.2 and including the cost of money (see 31.205-10)). When there is an established practice of leasing the same or similar equipment to unaffiliated lessees, rental costs shall be allowed in accordance with subparagraphs (b)(1) and (2) of this subsection except that the purchase price and costs of ownership shall be determined under 31.205-26(e).

(c)(1) An estimate of the anticipated useful life of the ADPE may represent the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life (utility before wearing out) depending upon the facts and circumstances and the particular facilities involved. Each case must be evaluated individually. In estimating anticipated useful life, the contractor may use the application life if it can be demonstrated that the ADPE has utility only in a given function and the duration of the function can be determined. Technological life may be used if the contractor can demonstrate that existing ADPE must be replaced because of—

(i) Specific program objectives or contract requirements that cannot be accomplished with the existing ADPE;

(ii) Cost reductions that will produce identifiable savings in production or overhead costs;

(iii) Increase in workload volume that cannot be accomplished efficiently by modifying or augmenting existing ADPE; or

(iv) Consistent pattern of capacity operation (2 1/2-3 shifts) on existing ADPE.

(2) Technological advances will not justify replacing existing ADPE before the end of its physical life if it will be able to satisfy future requirements or demands.

(3) In estimating the least cost to the Government for useful life, the cumulative costs that would be allowed if the contractor owned the ADPE should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purpose of this comparison, the costs of ADPE exclude interest or other unallowable costs pursuant to this Subpart 31.2; they include but are not limited to the costs of operation, maintenance, insurance, depreciation, facilities capital cost of money, rental, and the cost of machine services, as applicable.

(d)(1) Except as provided in subparagraph (3) of this subsection, the contractor's justification, under paragraph (b) of this subsection, of the leasing decisions shall consist of the following supporting data, prepared before acquisition:

within a reasonable period after their implementation; and

(B) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(iii) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(iv) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.

(c) *Labor-management agreements.* If costs of compensation established under "arm's length" negotiated labor-management agreements are otherwise allowable, the costs are reasonable if, as applied to work in performing Government contracts, they are not determined to be unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (c) unless—

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(d) *Form of payment.* (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of cash, corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation), or other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Domestic and foreign differential pay.* (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(2) Although the additional taxes in subparagraph (1) of this subsection may be considered in establishing foreign overseas differential, any increased compensation calculated directly on the basis of an employee's specific increase in income taxes is unallowable. Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable.

(f) *Bonuses and incentive compensation.* (1) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance are allowable provided the awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment and the basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of subparagraph (f)(1) of this subsection and of paragraph (k) of this subsection.

(g) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(7).

(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) of this subsection, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply. In addition, paragraph (g)(3) of this subsection applies if the severance cost is for foreign nationals employed outside the United States.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law; (B) employer-employee agreement; (C) established poli-

cy that constitutes, in effect, an implied agreement on the contractor's part; or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed in the contractor's plant.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(3) Notwithstanding the reference to geographical area in 31.205-6(b)(1), under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency, or designee, to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237-8).

(h) *Backpay. (1) Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964.* Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) *Other backpay.* Backpay may also result from payments to employees (union and nonunion) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employees based upon results of union agreement negotiations is allowable only if (i) a formal agreement or understanding exists between management and the employees concerning these payments, or (ii) an established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(i) Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(1) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.

(j) *Pension costs.* (1) A pension plan is a deferred compensation plan that is established and maintained by one or more employers to provide systematically for paying benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employee. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. The cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Composition and Measurement of Pension Costs, and 48 CFR 9904.413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pen-

(1) Rental costs under a sale and leaseback arrangement shall be allowable up to the amount that would have been allowed had the contractor retained title to the property.

(2) Capital leases, as defined in FAS-13, for all real and personal property, between any related parties are subject to the requirements of this subparagraph 31.205-11(m). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(3) Assets acquired under leases that the contractor must capitalize under FAS-13 shall not be treated as purchased assets for contract purposes if the leases are covered by 31.205-36(b)(4).

(n) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205-52, which limit the allowability of depreciation, shall be observed.

(o) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets shall be limited to the amounts that would have been allowed had the assets not been written down (see 31.205-16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

31.205-12 Economic planning costs.

(a) This category includes costs of generalized long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business Economic planning costs do not include organization or reorganization costs covered by 31.205-27.

(b) Economic planning costs are allowable as indirect costs to be properly allocated.

(c) Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this principle.

31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b), (c), and (d) of this subsection. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) *Costs of gifts are unallowable.* (Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

31.205-14 Entertainment costs.

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the

same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

31.205-15 Fines, penalties, and mischarging costs.

(a) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations, are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as costs to rescreen and reconstruct records.

31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

(a) Gains and losses from the sale, retirement, or other disposition (but see 31.205-19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see 31.205-52).

(b) Gains and losses on disposition of tangible capital assets, including those acquired under capital leases (see 31.205-11(m)), shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance (except see subdivisions (c)(2)(i) or (ii) of this section).

(c) Special considerations apply to an involuntary conversion which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either—

(i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or

(ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in subparagraph (c)(1) of this subsection.

(d) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when—

(1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 31.205-11; or

(2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.

(f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

(g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (*e.g.*, environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

31.205-17 Idle facilities and idle capacity costs.

(a) "Costs of idle facilities or idle capacity," as used in this subsection, means costs such as maintenance, repair, housing, rent, and other related costs; *e.g.*, property taxes, insurance, and depreciation.

"Facilities," as used in this subsection, means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

"Idle capacity," as used in this subsection, means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable for contracts not subject to 48 CFR 9904.416 and when the contractor did not establish a self-insurance program. Such contracts are not subject to the self-insurance requirements of 48 CFR 9904.416. For contracts subject to 48 CFR 9904.416, and for those made subject to the self-insurance requirements of that Standard as a result of the contractor's having established a self-insurance program (see paragraph (a) above), actual losses may be used as a basis for charges under a self-insurance program when the actual amount of losses will not differ significantly from the projected average losses for the accounting period (see 48 CFR 9904.416.50(a)(2)(ii)). In those instances where an actual loss has occurred and the present value of the liability is determined under the provisions of 48 CFR 9904.416-50(a)(3)(ii), the allowable cost shall be limited to an amount computed using as a discount rate the interest rate determined by the Secretary of the Treasury pursuant to 50 U.S.C. App. 1215(b)(2) in effect at the time the loss is recognized. However, the full amount of a lump-sum settlement to be paid within a year of the date of settlement is allowable.

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of doing business and that are not covered by insurance are allowable.

(4) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(5) Premiums for retroactive or backdated insurance written to cover occurred and known losses are unallowable.

(b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.

(c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance, and charges for it must comply with the self-insurance provisions of 48 CFR 9904.416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had it insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable (see 28.308(e)).

(f) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (a)(3) above.

(g) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

31.205-20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights, and directly associated costs are unallowable except for interest assessed by State or local taxing authorities under the conditions specified in 31.205-41 (but see 31.205-28).

31.205-21 Labor relations costs.

Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

31.205-22 Lobbying and political activity costs.

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal, state, or local legislation, or (ii) the enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature

(including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal, state, or local legislation, or (ii) the enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or

(6) Costs incurred in attempting to improperly influence (see 3.401), either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.

(b) The following activities are excepted from the coverage of (a) above:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by paragraph (a)(3) of this subsection to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) When a contractor seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

(d) Contractors shall submit as part of their annual indirect cost rate proposals a certification that the requirements and standards of this subsection have been complied with.

(e) Contractors shall maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable pursuant to this subsection complies with the requirements of this subsection.

(f) Existing procedures should be utilized to resolve in advance any significant questions or disagreements concerning the interpretation or application of this subsection.

31.205-23 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.

31.205-24 Maintenance and repair costs.

(a) Costs necessary for the upkeep of property (including Government property, unless otherwise provided for) that neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 31.205-11):

(1) Normal maintenance and repair costs are allowable.

(2) Extraordinary maintenance and repair costs are allowable, provided those costs are allocated to the applicable periods for purposes of determining contract costs (but see 31.109).

(b) Expenditures for plant and equipment, including rehabilitation which should be capitalized and subject to depreciation, according to generally accepted accounting principles as applied under the contractor's established policy or, when applicable, according to 48 CFR 9904.404, Capitalization of Tangible Assets, are allowable only on a depreciation basis.

31.205-25 Manufacturing and production engineering costs.

(a) The costs of manufacturing and production engineering effort as described in (1) through (4) of this paragraph are all allowable:

(1) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools and techniques that are or are expected to be used in producing products or services;

PART 33

PROTESTS, DISPUTES, AND APPEALS

33.000 Scope of part.

This part prescribes policies and procedures for filing protests and for processing contract disputes and appeals.

SUBPART 33.1—PROTESTS

33.101 Definitions.

"Day," as used in this subpart, means a calendar day, unless otherwise specified. In the computation of any period—

(a) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(b) The last day after the act, event, or default is included unless—

(1) The last day is a Saturday, Sunday, or legal holiday; or

(2) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

(c) In the case of the 5-day period after a debriefing date and the 10-day period after contract award for filing a protest resulting in a suspension (as described at 33.104(c)), Saturdays, Sundays, and legal holidays shall be counted.

"Filed," as used in this subpart, means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

"Interested party for the purpose of filing a protest," as used in this subpart, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

"Protest," as used in this subpart, means a written objection by an interested party to any of the following:

(a) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(b) The cancellation of the solicitation or other request.

(c) An award or proposed award of the contract.

(d) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the General Accounting Office (GAO). (See 19.302 for protests of small business status.)

(b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the General Accounting Office; and

(2) Pay appropriate costs as stated in 33.104(h).

(3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee's negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee's actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the

debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under Subpart 9.4.

(c) In accordance with 31 U.S.C. 1558, with respect to any protest filed with the GAO, if the funds available to the agency for a contract at the time a protest is filed in connection with a solicitation for, proposed award of, or award of such a contract would otherwise expire, such funds shall remain available for obligation for 100 days after the date on which the final ruling is made on the protest. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in subparagraph 33.104(c)(1) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) An interested party wishing to protest is encouraged to seek resolution within the agency (see 33.103) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR Part 21).

33.103 Protests to the agency.

(a) *Reference.* Executive Order 12979, Agency Procurement Protests, establishes policy on agency procurement protests.

(b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(c) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate and permitted by law, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

(d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of subparagraph (d)(2) of this section may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

(i) Name, address, fax number, and telephone number of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.

(4) Interested parties may request an independent review at a level above the contracting officer, of any decision by the contracting officer that is alleged to have violated a statute or regulation and thereby caused prejudice to the offeror. This independent review need not be established within the contracting officer's supervisory chain.

(e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 14 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

(f) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to subparagraph (f)(1) of this section.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.1004, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is deter-

PART 46

QUALITY ASSURANCE

TABLE OF CONTENTS

46.000 Scope of part.

SUBPART 46.1—GENERAL
46.101 Definitions.
46.102 Policy.
46.103 Contracting office responsibilities.
46.104 Contract administration office responsibilities.
46.105 Contractor responsibilities.

SUBPART 46.2—CONTRACT QUALITY REQUIREMENTS
46.201 General.
46.202 Types of contract quality requirements.
46.202-1 Contracts for commercial items.
46.202-2 Government reliance on inspection by contractor.
46.202-3 Standard inspection requirements.
46.202-4 Higher-level contract quality requirements.
46.203 Criteria for use of contract quality requirements.
46.204 [Reserved]

SUBPART 46.3—CONTRACT CLAUSES
46.301 Contractor inspection requirements.
46.302 Fixed-price supply contracts.
46.303 Cost-reimbursement supply contracts.
46.304 Fixed-price service contracts.
46.305 Cost-reimbursement service contracts.
46.306 Time-and-material and labor-hour contracts.
46.307 Fixed-price research and development contracts.
46.308 Cost-reimbursement research and development contracts.
46.309 Research and development contracts (short form).
46.310 Facilities contracts.
46.311 Higher-level contract quality requirement.
46.312 Construction contracts.
46.313 Contracts for dismantling, demolition, or removal of improvements.
46.314 Transportation contracts.
46.315 Certificate of conformance.
46.316 Responsibility for supplies.

SUBPART 46.4—GOVERNMENT CONTRACT QUALITY ASSURANCE
46.401 General.
46.402 Government contract quality assurance at source.
46.403 Government contract quality assurance at destination.
46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.
46.405 Subcontracts.
46.406 Foreign governments.
46.407 Nonconforming supplies or services.
46.408 Single-agency assignments of Government contract quality assurance.

SUBPART 46.5—ACCEPTANCE
46.501 General.
46.502 Responsibility for acceptance.
46.503 Place of acceptance.
46.504 Certificate of conformance.
46.505 Transfer of title and risk of loss.

SUBPART 46.6—MATERIAL INSPECTION AND RECEIVING REPORTS

SUBPART 46.7—WARRANTIES
46.701 Definitions.
46.702 General.
46.703 Criteria for use of warranties.
46.704 Authority for use of warranties.
46.705 Limitations.
46.706 Warranty terms and conditions.
46.707 Pricing aspects of fixed-price incentive contract warranties.
46.708 Warranties of data.
46.709 Warranties of commercial items.
46.710 Contract clauses.

SUBPART 46.8—CONTRACTOR LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF THE GOVERNMENT
46.800 Scope of subpart.
46.801 Applicability.
46.802 Definition.
46.803 Policy.
46.804 Items priced at or based on catalog or market prices.
46.805 Contract clauses.

are returned to the contractor from other than the place of delivery specified in the contract, or when the Government exercises alternate remedies, the contractor's liability for transportation charges incurred shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the contractor's plant and subsequent return.

(3) *Duration of the warranty.* The time period or duration of the warranty must be clearly specified and shall be established after consideration of such factors as (i) the estimated useful life of the item, (ii) the nature of the item including storage or shelf-life, and (iii) trade practice. The period specified shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.

(4) *Notice.* The warranty shall specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. This notice period, which shall apply to all defects discovered during the warranty period, shall be long enough to assure that the Government has adequate time to give notice to the contractor. The contracting officer shall consider the following factors when establishing the notice period:

(i) The time necessary for the Government to discover the defects.

(ii) The time reasonably required for the Government to take necessary administrative steps and make a timely report of discovery of the defects to the contractor.

(iii) The time required to discover and report defective replacements.

(5) *Markings.* The packaging and preservation requirements of the contract shall require the contractor to stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the supplies that the supplies are under warranty. Markings may be brief but should include (i) a brief statement that a warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) who to notify if the supplies are found to be defective. For commercial items (see 46.709), the contractor's trade practice in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted supplies.

(6) *Consistency.* Contracting officers shall ensure that the warranty clause and any other warranty conditions in the contract (*e.g.*, in the specifications or an inspection clause) are consistent. To the extent practicable, all of the warranties to be contained in the contract should be expressed in the warranty clause.

46.707 Pricing aspects of fixed-price incentive contract warranties.

If a fixed-price incentive contract contains a warranty (see 46.708), the estimated cost of the warranty to the contractor should be considered in establishing the incentive target price and the ceiling price of the contract. All costs incurred, or estimated to be incurred, by the contractor in complying with the warranty shall be considered when establishing the total final price. Contractor compliance with the warranty after the establishment of the total final price shall be at no additional cost to the Government.

46.708 Warranties of data.

Warranties of data shall be developed and used in accordance with agency regulations.

46.709 Warranties of commercial items.

The contracting officer should take advantage of commercial warranties, including extended warranties, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of commercial items (see Part 12).

46.710 Contract clauses.

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of a warranty is appropriate (see 46.709 for warranties for commercial items). However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need.

(a)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-17, Warranty of Supplies of a Noncomplex Nature, in solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.

(3) If the supplies cannot be obtained from another source, the contracting officer may use the clause with its Alternate III.

(4) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate IV.

(5) If it is anticipated that recovery of the warranted items will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate V.

(b)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-18, Warranty of Supplies of a Complex Nature, in solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.

(3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate III.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate IV.

(c)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated; and the use of a warranty clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate I.

(3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate II.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate III.

(d) The contracting officer may insert a clause substantially the same as the clause at 52.246-20, Warranty of Services, in solicitations and contracts for services when a fixed-price contract for services is contemplated and the use of warranty clause has been approved under agency procedures; unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used.

(e)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-21, Warranty of Construction, in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If the Government specifies in the contract the use of any equipment by "brand name and model," the contracting officer may use the clause with its Alternate I.

SUBPART 46.8—CONTRACTOR LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF THE GOVERNMENT

46.800 Scope of subpart.

This subpart prescribes policies and procedures for limiting contractor liability for loss of or damage to property of the Government that (a) occurs after acceptance and (b) results from defects or deficiencies in the supplies delivered or services performed.

46.801 Applicability.

(a) This subpart applies to contracts other than those for (1) information technology, including telecommunications, (2) construction, (3) architect-engineer services, and (4) maintenance and rehabilitation of real property. This subpart does not apply to items priced at or based on catalog or market prices except as indicated in 46.804.

(b) See Subpart 46.7, Warranties, for policies and procedures concerning contractor liability caused by nonconforming technical data.

46.802 Definition.

"High-value item," as used in this subpart, means a contract end item that (a) has a high unit cost (normally exceeding $100,000 per unit), such as an aircraft, an aircraft engine, a communication system, a computer system, a missile, or a ship, and (b) is designated by the contracting officer as a high-value item.

46.803 Policy.

(a) *General.* The Government will generally act as a self-insurer by relieving contractors, as specified in this subpart, of liability for loss of or damage to property of the Government that (1) occurs after acceptance of supplies delivered or services performed under a contract and (2) results from defects or deficiencies in the supplies or services. However, the Government will not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.

(b) *High-value items.* In contracts requiring delivery of

high-value items, the Government will relieve contractors of contractual liability for loss of or damage to those items. However, this relief shall not limit the Government's rights arising under the contract to—

(1) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to a high-value item occurs; or

(2) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.

(c) *Exception.* The Government will not provide contractual relief under paragraphs (a) and (b) of this section when contractor liability can be preserved without increasing the contract price.

(d) *Limitations.* Subject to the specific terms of the limitation of liability clause included in the contract,the relief provided under paragraphs (a) and (b) of this section does not apply—

(1) To the extent that contractor liability is expressly provided under a contract clause authorized by this regulation;

(2) When a defect or deficiency in, or Government's acceptance of, the supplies or services results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel; or

(3) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the Government through purchase or use of the supplies delivered or services performed under the contract.

46.804 Items priced at or based on catalog or market prices.

Contractors generally (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices (see 15.804-1(b)(2)), contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability.

46.805 Contract clauses.

(a) *Contracts that exceed the simplified acquisition threshold.* The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the simplified acquisition threshold and the contract is subject to the requirements of this subpart as indicated in 46.801:

(1) In contracts requiring delivery of end items that are not high-value items, insert the clause at 52.246-23, Limitation of Liability.

(2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High Value Items.

(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (a)(1) and (a)(2) of this section, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.

(4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability—Services.

(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (a)(4) of this section and the appropriate clause or clauses prescribed in subparagraph (a)(1), (2), or (3) of this section, and identify clearly in the contract schedule any high-value line items.

(b) *Acquisitions at or below the simplified acquisition threshold.* The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold and may obtain any price reduction that is appropriate.

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 [Reserved]
52.203-2 Certificate of Independent Price Determination.
52.203-3 Gratuities.
52.203-4 [Reserved]
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.
52.204-4 Printing/Copying Double-Sided on Recycled Paper.
52.204-5 Women-Owned Business.
52.204-6 Contractor Identification Number—Data Universal Numbering System (DUNS) Number.
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 [Reserved]
52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.211-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).
52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.211-5 New Material.
52.211-6 Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property.
52.211-7 Other Than New Material, Residual Inventory, and Former Government Surplus Property.
52.211-8 Time of Delivery.
52.211-9 Desired and Required Time of Delivery.
52.211-10 Commencement, Prosecution, and Completion of Work.
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.
52.211-12 Liquidated Damages—Construction.
52.211-13 Time Extensions.
52.211-14 Notice of Priority Rating for National Defense Use.
52.211-15 Defense Priority and Allocation Requirements.
52.211-16 Variation in Quantity.
52.211-17 Delivery of Excess Quantities.
52.211-18 Variation in Estimated Quantity.
52.212-1 Instructions to Offerors—Commercial Items.
52.212-2 Evaluation—Commercial Items.
52.212-3 Offeror Representations and Certifications—Commercial Items.
52.212-4 Contract Terms and Conditions—Commercial Items.
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.
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 and Records—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 [Reserved]
52.215-2 Audit and Records—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.
52.215-41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.
52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.
52.215-43 Audit—Commercial Items.
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 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.
52.216-27 Single or Multiple Awards.
52.216-28 Multiple Awards for Advisory and Assistance Services.
52.217-1 [Reserved]
52.217-2 Cancellation Under Multiyear Contracts.
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 Program Representations.
52.219-2 Equal Low Bids.
52.219-3—
52.219-5 [Reserved]
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, Small Disadvantaged and Women-Owned Small Business Concerns.
52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.
52.219-10 Incentive Subcontracting Program.
52.219-11 Special 8(a) Contract Conditions.
52.219-12 Special 8(a) Subcontract Conditions.
52.219-13 [Reserved]
52.219-14 Limitations on Subcontracting.
52.219-15 Notice of Participation by Organizations for the Handicapped.
52.219-16 Liquidated Damages—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.
52.220—
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—52.222-19 [Reserved]
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 [Reserved]
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 Information Technology, 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.
52.223-8 Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.
52.223-9 Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.
52.223-10 Waste Reduction Program.
52.223-11 Ozone-Depleting Substances.
52.223-12 Refrigeration Equipment and Air Conditioners.
52.223-13 Certification of Toxic Chemical Release Reporting.
52.223-14 Toxic Chemical Release Reporting.
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 Evaluation of Foreign Currency Offers.
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 Trade Agreements Act and North American Free Trade Agreement.
52.225-16—52.225-17 [Reserved]
52.225-18 European Union Sanction for End Products.
52.225-19 European Union Sanction for Services.

cation or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

Alternate II (APR 1984). If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

52.204-3 Taxpayer Identification.

As prescribed in 4.904, insert the following provision:

TAXPAYER IDENTIFICATION (MAR 1994)

(a) *Definitions.*

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

"Corporate status," as used in this solicitation provision, 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 solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) *Taxpayer Identification Number (TIN).*

☐ TIN:_____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis._____

(d) *Corporate Status.*

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) *Common Parent.*

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name_____

TIN_____

(End of provision)

52.204-4 Printing/Copying Double-Sided on Recycled Paper.

As prescribed in 4.304, insert the following clause:

PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and

office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

(End of clause)

52.204-5 Women-Owned Business.

As prescribed in 4.603(b), insert the following provision:

WOMEN-OWNED BUSINESS (OCT 1995)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(b) *Definition.* "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(End of provision)

52.204-6 Contractor Identification Number—Data Universal Numbering System (DUNS) Number.

As prescribed in 4.603(a), insert the following provision:

CONTRACTOR IDENTIFICATION NUMBER—DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (DEC 1996)

(a) "Contractor Identification Number," as used in this provision, means "Data Universal Numbering System (DUNS) number," which is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

(1) Company name.
(2) Company address.
(3) Company telephone number.
(4) Line of business.
(5) Chief executive officer/key manager.
(6) Date the company was started.
(7) Number of people employed by the company.
(8) Company affiliation.

(d) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at http://www.dbisna.com/dbis/customer/custlist.htm. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@dbisma.com.

(End of provision)

52.205—52.206 [Reserved]

52.207-1 Notice of Cost Comparison (Sealed-Bid).

As prescribed in 7.305(a), insert the following provision:

NOTICE OF COST COMPARISON (SEALED-BID) (FEB 1993)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the public bid opening, the Contracting Officer will open the bids and the envelope containing the cost estimate for Government performance and announce the result. This announcement will be based on an initial comparison of the cost of Government performance with the cost of contract performance, as indicated on the cost comparison form.

(c) The abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review for a period of _____ *[insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv))]* working days, beginning with the date the documents are available to interested parties. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected 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 procedures. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

(d) After evaluation of bids and resolution of any requests under the appeals procedure, the Contracting Officer will either award a contract or cancel this solicitation. The completed cost comparison analysis will be made available to interested parties.

(e) A cost estimate for Government performance is considered a bid for purposes of this solicitation's Late Modifications of Bids or Withdrawal of Bids provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), insert the following provision:

NOTICE OF COST COMPARISON
(NEGOTIATED) (FEB 1993)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remain-ing the more economical alternative after (i) completion of a public review period of _____[*insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))*] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of _____ [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) During the public review period, directly affectedparties 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 dif-

ferent 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)

"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)

52.208-9 Contractor Use of Mandatory Sources of Supply.

As prescribed in 8.003, insert the following clause:

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY (MAR 1996)

(a) Certain supplies to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies by the time required, or if the quality of supplies provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies from other sources until the Contracting Officer has notified the Contractor that the mandatory source has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

(1) National Industries for the Blind (NIB)
1901 North Beauregard Street, Suite 200
Alexandria, VA 22311-1705
(703) 998-0770

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

(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

The request should identify the solicitation number and the specification requested by date, title, and number, as cited in the solicitation.

(End of provision)

52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 11.204(d), insert a provision substantially the same as the following:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUN 1988)

(Activity) _____

(Complete address) _____

_____

_____

(Telephone number) _____

(Person to be contacted) _____

(Time(s) for viewing) _____

(End of provision)

52.211-5 New Material.

As prescribed in 11.302(a), insert the following clause:

NEW MATERIAL (MAY 1995)

(a) *Definitions.*

"Material", as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

"New", as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

"Other than new", as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) Unless this contract specifies otherwise, the Contractor represents that the supplies, including any residual inventory and former Government surplus property identified under the Other Than New Material, Residual Inventory, and Former Government Surplus Property clause of this contract, are new and are not of such age or so deteriorated as to impair their usefulness or safety.

(c) If the Contractor believes that furnishing other than new material will be in the Government's interest, the Contractor shall so notify the Contracting Officer in writing and request authority to use such material. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration due the Government if the Contracting Officer authorizes the use of other than new material.

(End of clause)

52.211-6 Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 11.302(b), insert the following provision:

LISTING OF OTHER THAN NEW MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (MAY 1995)

(a) *Definitions.*

"Material," as used in this provision, includes, but is not limited to, raw material, parts, items, components, and end products.

"New", as used in this provision, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

"Other than new", as used in this provision, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) If the offeror proposes to furnish other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, the offeror shall provide the following information as an attachment to the offer:

(1) A complete description of the materials.
(2) Quantity.
(3) Name of Government agency from which acquired.
(4) Date of acquisition, if applicable.

No other than new material, residual inventory or former Government surplus property other than that listed on the attachment shall be furnished under the resulting contract unless authorized in writing by the Contracting Officer.

(c) All material to be furnished under the resultant contract must comply with the terms and specifications contained in the contract.

(End of provision)

52.211-7 Other Than New Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 11.302(c), insert the following clause:

OTHER THAN NEW MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (MAY 1995)

(a) *Definitions.*

"Material", as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

"New", as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

"Other than new", as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) The Contractor shall not furnish any other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, unless such materials were listed in the applicable attachment to the offer and approved by the Contracting Officer or unless otherwise authorized in writing by the Contracting Officer.

(c) All materials furnished under this contract shall comply with the terms and specifications contained in the contract.

(End of clause)

52.211-8 Time of Delivery.

As prescribed in 11.404(a)(2), insert the following clause:

TIME OF DELIVERY (JUL 1995)

(a) The Government requires delivery to be made according to the following schedule:

REQUIRED DELIVERY SCHEDULE

[*Contracting Officer insert specific details*]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

The Government will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. The Government reserves the right to award under either the required delivery schedule or the proposed delivery schedule, when an offeror offers an earlier delivery schedule than required above. If the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

OFFEROR'S PROPOSED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)

Alternate I (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting "on or before"; "during the months _"; or "not sooner than __ or later than _" as headings for the third column of paragraph (a) the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the Government will make award by _____ [Contracting Officer insert date]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

Alternate II (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting "within days after the date of receipt of a written notice of award" as the heading for the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by _____ [*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; provided, that the Contractor promptly acknowledges receipt of notice of award.

Alternate III (APR 1984). If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete para-

52.211-13 Time Extensions.

As prescribed in 11.504(c), insert the following clause:

TIME EXTENSIONS (APR 1984)

Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

52.211-14 Notice of Priority Rating for National Defense Use.

As prescribed in 11.604(a), insert the following provision:

NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (SEP 1990)

Any contract awarded as a result of this solicitation will be ☐ DX rated order; ☐ DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [*Contracting Officer check appropriate box.*]

(End of provision)

52.211-15 Defense Priority and Allocation Requirements.

As prescribed in 11.604(b), insert the following clause:

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(End of clause)

52.211-16 Variation in Quantity.

As prescribed in 11.703(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies, and for services that involve the furnishing of supplies:

VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) below.

(b) The permissible variation shall be limited to:

_____ Percent increase [*Contracting Officer insert percentage*]

_____ Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease shall apply to_____.*

(End of clause)

*Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as (1) the total contract quantity, (2) item 1 only, (3) each quantity specified in the delivery schedule, (4) the total item quantity for each destination, or (5) the total quantity of each item without regard to destination.

52.211-17 Delivery of Excess Quantities.

As prescribed in 11.703(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (SEP 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

52.211-18 Variation in Estimated Quantity.

As prescribed in 11.703(c), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for

extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)

52.212-1 Instructions to Offerors—Commercial Items.

As prescribed in 12.301(b)(1), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (OCT 1995)

(a) *Standard industrial classification (SIC) code and small business size standard.* The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

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

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3;

(9) Acknowledgment of Solicitation Amendments;

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

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(g) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation.* (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407 ((202) 755-0325/0326).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094 (telephone (215) 697-2569).

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Individual documents may be ordered from the Telespecs ordering system by touch-tone telephone. A customer number is required to use this service and can be obtained from the Standardization

clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215-24 Subcontractor Cost or Pricing Data.

As prescribed in 15.804-8(c), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA (OCT 1995)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-25, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)

52.215-25 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.804-8(d), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 1995)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1); and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.804-4 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

52.215-26 Integrity of Unit Prices.

As prescribed in 15.812-2, insert the following clause:

INTEGRITY OF UNIT PRICES (FEB 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public or to an item qualifying for a commercial item exception to cost or pricing data. A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Officer. The information shall not be required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

(End of clause)

Alternate I (APR 1991). As prescribed in 15.812-2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Offeror/Contractor shall also identify those supplies

which it will not manufacture or to which it will not contribute significant value. This information is not required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

52.215-27 Termination of Defined Benefit Pension Plans.

As prescribed in 15.804-8(e), insert the following clause:

TERMINATION OF DEFINED BENEFIT PENSION PLANS (MAR 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. 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(e).

(End of clause)

52.215-28—52.215-29 [Reserved]

52.215-30 Facilities Capital Cost of Money.

As prescribed in 15.904(a), insert the following provision:

FACILITIES CAPITAL COST OF MONEY (SEP 1987)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

52.215-31 Waiver of Facilities Capital Cost of Money.

As prescribed in 15.904(b), insert the following clause:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (SEP 1987)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

52.215-32 [Reserved]

52.215-33 Order of Precedence.

As prescribed in 15.406-3(b), insert the following clause:

ORDER OF PRECEDENCE (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

52.215-34 Evaluation of Offers for Multiple Awards.

As prescribed in 15.407(h), insert the following provision:

EVALUATION OF OFFERS FOR MULTIPLE AWARDS (MAR 1990)

In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation and 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.

(End of provision)

52.215-35 Annual Representations and Certifications—Negotiation.

As prescribed in 15.407(i), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATION (DEC 1989)

The offeror certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated _____ (*insert date of signature on submission*) which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as 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) (AUG 1996)

(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;

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by

(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)

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 (OCT 1995)

(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 15.804-1 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)

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 the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for (i) supplies or services for which the production cost is not affected by such changes, (ii) changes in rates or unit prices other than those shown in the Schedule, or (iii) changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of 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)

52.216-5 Price Redetermination—Prospective.

As prescribed in 16.205-4, insert the following clause:

PRICE REDETERMINATION—PROSPECTIVE (FEB 1997)

(a) *General.* The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that (1) the prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed and (2) in no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Price redetermination periods.* For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to _____, [see Note (1)]

and the second and each succeeding period shall extend for _____ [*insert appropriate number*] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) *Data submission.* (1) Not more than _____ nor less than _____ [see Note (2)] days before the end of each redetermination period, except the last, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the _____ month [see Note (3)] before the submission of proposed prices, on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) of this section, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (f) of this section), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) *Quarterly limitation on payments statement.* This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for

which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits affected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) *Termination.* If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

NOTES:

(1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.

(2) Insert the numbers of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert "first," except that "second" may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

52.216-6 Price Redetermination—Retroactive.

As prescribed in 16.206-4, insert the following clause:

PRICE REDETERMINATION—RETROACTIVE
(FEB 1997)

(a) *General.* The unit price and the total price stated in this contract shall be redetermined in accordance with this clause, but in no event shall the total amount paid under this contract exceed _____ [*insert dollar amount of ceiling price*].

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within _____ [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—

(i) Proposed prices;

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) of this section within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess

shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price determination.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause:

ALLOWABLE COST AND PAYMENT (FEB 1997)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but

(except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. 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 performing this contract.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) of this section, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress and other payments that have been paid by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension or other postretirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *Provided*, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (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 cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost 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 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.

(e) *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.

(f) *Quick-closeout procedures.* Quick-closeout proce-

dures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *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.

(h) *Final payment.* (1) The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) 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 whose assignment is in effect at the time of final payment shall execute and deliver—

(i) 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

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided,* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

Alternate I (FEB 1997). As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled "Prompt Payment for Construction Contracts." Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

52.216-8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

FIXED FEE (APR 1984)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; *provided,* that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the total fixed fee or $100,000, whichever is less.

(End of clause)

52.216-9 Fixed Fee—Construction.

As prescribed in 16.307(c), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee construction contract in contemplated:

FIXED FEE—CONSTRUCTION (APR 1984)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) of this section.

(c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the total fixed fee or $100,000, whichever is less.

(End of clause)

52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated:

INCENTIVE FEE (APR 1984)

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) below.

(1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the applicable fee or $100,000, whichever is less.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.* (1) The fee payable under this contract shall be the target fee increased by _____ [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by _____ [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ [*Contracting Officer insert percentage*] percent or less than _____ [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(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)

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)

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.

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)

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.

52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause:

ALLOWABLE COST AND PAYMENT—FACILITIES (DEC 1996)

(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 reimbursable 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.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(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—

(i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of performance of this contract; *provided* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(iii) Claims for reimbursement of costs, including related expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

Alternate I (APR 1984). If the contract is for facilities acquisition, and the Contracting Officer considers it appropriate, add the following paragraphs (g) and (h) to the basic clause, and redesignate paragraph (g) of the basic clause as paragraph (i):

(g) *Withholding.* After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold payment of allowable costs 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.

(h) *Final payment.* The Contractor shall submit a completion invoice or voucher, designated as such, no later

than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of the invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

52.216-14 Allowable Cost and Payment—Facilities Use.

As prescribed in 16.307(h), insert the following clause in solicitations and contracts when a facilities use contract is contemplated:

ALLOWABLE COST AND PAYMENT—FACILITIES USE (APR 1984)

(a) For the performance of any work, duty, or obligations 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.

(b) 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 reimbursed under it.

(End of clause)

52.216-15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(i), insert the following clause:

PREDETERMINED INDIRECT COST RATES (AUG 1996)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b) Not later than 90 days after the expiration of the Contractor's fiscal year (or other period specified in the Schedule), the Contractor shall submit to the cognizant Contracting Officer under Subpart 42.7 of the Federal Acquisition Regulation (FAR) and, if required by agency procedures, to the cognizant Government audit activity, proposed predetermined indirect cost rates and supporting cost data. The proposed rates shall be based on the Contractor's actual cost experience during that fiscal year or other period specified in the Schedule. Negotiation of predetermined indirect cost rates shall begin as soon as practical after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.405(a), insert the following clause:

INCENTIVE PRICE REVISION—FIRM TARGET (FEB 1997)

(a) *General.* The supplies or services identified in the Schedule as Items _____ [*Contracting Officer insert Schedule line item numbers*] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of _____ dollars ($ _____). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within _____ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has delivered the

last unit of supplies and completed the services specified by item number in paragraph (a) of this section, the Contractor shall submit on Standard Form 1411 or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) of this section within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) of this section by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) of this section, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less _____ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus _____ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) *Contract modification.* The total final price of the items specified in paragraph (a) of this section shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) *Adjusting billing prices.* (1) Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) of this section. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in

establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established —increased or decreased in accordance with subparagraph (d)(2) of this section, when the amount stated under subdivision (ii) of this section, differs from the aggregate target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

Alternate I (APR 1984). If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision described in the basic clause, add the following paragraph (o) to the basic clause:

(o) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-17 Incentive Price Revision—Successive Targets.

As prescribed in 16.405(b), insert the following clause:

INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS (FEB 1997)

(a) *General.* The supplies or services identified in the

Schedule as Items _____ *[Contracting Officer insert line item numbers]* are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of . _____ dollars ($ _____). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of _____ *[Contracting Officer insert percent of]* percent of the the initial target cost. Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with this clause shall be identified as such in a modification to this contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Submitting data for establishing the firm fixed price or a final profit adjustment formula.* (1) Within _____ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has completed _____ [see Note 1], the Contractor shall submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on Standard Form 1411 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on Standard Form 1411 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in subparagraph (1) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) of this section within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Establishing firm fixed price or final profit adjustment formula.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) of this section.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by _____ percent [see Note 2] of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; *provided,* that in no event shall the total firm target profit be less than _____ percent or more than _____ percent [*Contracting Officer insert percents*] of the total initial cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less _____ percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus _____ percent of the amount by which the total final negotiated cost is less than the total firm target cost.

(iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph (d) of this section within _____ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this section, the Contractor shall submit on Standard Form 1411 (or in any other form on which the parties agree)—

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision.* Unless a firm fixed price has been agreed to in accordance with paragraph (d) of this section, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) of this section, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) of this section, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under subparagraph (d)(4) of this section.

(g) *Contract modification.* The total final price of the items specified in paragraph (a) of this section shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) *Adjustment of billing prices.* (1) Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) of this section. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under subparagraph (i)(1) of this section that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) of this section. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(i) *Quarterly limitation on payments statement.* This paragraph (i) shall apply until a firm fixed price or a total final price is established under subparagraph (d)(3) or (f)(2).

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in

establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with subparagraph (d)(4) of this section when the amount stated under subdivision (ii) of this section, differs from the aggregate firm target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(l) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(m) *Equitable adjustments under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(n) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

NOTES:

(1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (APR 1984). If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision described in the basic clause, add the following paragraph (q) to the basic clause:

(q) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices cov-

ering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-18 Ordering.

As prescribed in 16.506(a), insert the following clause:

ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from _____ through _____ [*insert dates*].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

52.216-19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than _____ *[insert dollar figure or quantity]*, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of _____[*insert dollar figure or quantity*];

(2) Any order for a combination of items in excess of _____ [*insert dollar figure or quantity*]; or

(3) A series of orders from the same ordering office within _____ days that together call for quantities exceeding the limitation in subparagraph (1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within _____ days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-20 Definite Quantity.

As prescribed in 16.506(c), insert the following clause:

DEFINITE QUANTITY (OCT 1995)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after _____ [*insert date*].

(End of clause)

52.216-21 Requirements.

As prescribed in 16.506(d), insert the following clause:

REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any

quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided,* that the Contractor shall not be required to make any deliveries under this contract after _____ *[insert date].*

(End of clause)

Alternate I (APR 1984). If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may furnish within its own capabilities.

Alternate II (APR 1984). If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, add the following paragraph (g) to the basic clause:

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 Program Representations.

As prescribed in 19.304(a), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (DEC 1996)

(a)(1) The standard industrial classification (SIC) code for this acquisition is _____ *(insert SIC code).*

(2) The small business size standard is _____ *(insert size standard).*

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.

(c) *Definitions.* "Joint venture," for purposes of a small disadvantaged business (SDB) set-aside or price evaluation preference (as prescribed at 13 CFR 124.321), is a concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more business concerns and is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract. The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture. The percentage of the ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

"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 in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

"Woman-owned small business concern," as used in this provision, means a small business concern—

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *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 or small disadvantaged 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 Equal Low Bids.

As prescribed in 19.304(b), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

_____ _____

_____ _____

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise

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)

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:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. ___ [*insert number of contract*] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the _____ [*insert name of contracting agency*] with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the _____ [*insert name of contracting agency*].

(4) That it will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the _____ [*insert name of contracting agency*].

(End of clause)

52.219-13 [Reserved]

52.219-14 Limitations on Subcontracting.

As prescribed in 19.508(e), insert the following clause:

LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors.* The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

52.219-15 Notice of Participation by Organizations for the Handicapped.

As prescribed in 19.508(f), insert the following clause:

NOTICE OF PARTICIPATION BY ORGANIZATIONS FOR THE HANDICAPPED (APR 1991)

(a) *Definitions.*

"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.

"Public or private organization for the handicapped" means one (1) which 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; (2) which complies with any applicable

occupational health and safety standard prescribed by the Secretary of Labor; and (3) which 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.

(b) *Certification.*

The Offeror certifies that it is ☐, is not ☐ a public or private organization for the handicapped. An offeror certifying in the affirmative is eligible to participate in any resultant contract as if it were a small business concern.

(c) *Agreement.*

An Offeror certifying as a public or private organization for the handicapped agrees that at least 75 percent of the direct labor required in the performance of the contract will be performed by handicapped individuals.

(End of clause)

52.219-16 Liquidated Damages—Subcontracting Plan.

As prescribed in 19.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (OCT 1995)

(a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial product plans; *i.e.*, company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

52.219-17 Section 8(a) Award.

As prescribed in 19.811-3(c), insert the following clause:

SECTION 8(a) AWARD (DEC 1996)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Except for novation agreements and advance payments, delegates to the _____ *(insert name of contracting activity)* the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided*, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) 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.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the _____ [insert *name of contracting agency*].

(End of clause)

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 19.811-3(d), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS (JUL 1996)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) SIC code_____*_____ is specifically included in the Offeror's approved business plan;

(2) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(3) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror certifies that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.

(2) The _____ [*insert name of SBA's contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

(*Insert SIC code assigned to the acquisition by the contracting activity.)

Alternate I (NOV 1989). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subparagraph (a)(4) to paragraph (a) of the clause:

(4) The offeror's approved business plan is on the file and serviced by_____*_____(**Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA*).

Alternate II (DEC 1996). 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(c), delete subparagraph (d)(1).

52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

As prescribed in 19.1007(a), insert the following provision:

SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JUL 1991)

(a) *Definition.*

"Emerging small business" as used in this solicitation, 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.

(b) (Complete only if the Offeror has certified itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.)

The Offeror represents and certifies as part of its offer that it ☐ is, ☐ is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). *(Check one of the following.)*

No. of Employees	Avg. Annual Gross Revenues
____ 50 or fewer	____ $1 million or less
____ 51 - 100	____ $1,000,001 - $2 million
____ 101 - 250	____ $2,000,001 - $3.5 million
____ 251 - 500	____ $3,500,001 - $5 million
____ 501 - 750	____ $5,000,001 - $10 million
____ 751 - 1,000	____ $10,000,001 - $17 million
____ Over 1,000	____ Over $17 million

(End of provision)

52.219-20 Notice of Emerging Small Business Set-Aside.

As prescribed in 19.1007(b), insert the following provision:

NOTICE OF EMERGING SMALL BUSINESS SET-ASIDE (JAN 1991)

Offers or quotations under this acquisition are solicited from emerging small business concerns only. Offers that

are not from an emerging small business shall not be considered and shall be rejected.

(End of provision)

52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.

As prescribed in 19.1007(c), insert the following provision:

SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JUL 1991)

(Complete only if the Offeror has certified itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.)

Offeror represents and certifies as follows:

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). *(Check one of the following.)*

No. of Employees	Avg. Annual Gross Revenues
____ 50 or fewer	____ $1 million or less
____ 51 - 100	____ $1,000,001 - $2 million
____ 101 - 250	____ $2,000,001 - $3.5 million
____ 251 - 500	____ $3,500,001 - $5 million
____ 501 - 750	____ $5,000,001 - $10 million
____ 751 - 1,000	____ $10,000,001 - $17 million
____ Over 1,000	____ Over $17 million

(End of provision)

52.220—52.221 [Reserved]

52.222-1 Notice to the Government of Labor Disputes.

As prescribed in 22.103-5(a), insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)

52.222-2 Payment for Overtime Premiums.

As prescribed in 22.103-5(b), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed *_____or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

scribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

52.222-16 Approval of Wage Rates.

As prescribed in 22.407(b), insert the following clause:

APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

52.222-17 Labor Standards for Construction Work—Facilities Contracts.

As prescribed in 22.407(d), insert the following clause:

LABOR STANDARDS FOR CONSTRUCTION WORK—FACILITIES CONTRACTS (FEB 1988)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:

(1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.

(2) Davis-Bacon Act at 52.222-6.

(3) Withholding of Funds at 52.222-7.

(4) Payrolls and Basic Records at 52.222-8.

(5) Apprentices and Trainees at 52.222-9.

(6) Compliance With Copeland Act Requirements at 52.222-10.

(7) Subcontracts (Labor Standards) at 52.222-11.

(8) Contract Termination—Debarment at 52.222-12.

(9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.

(10) Disputes Concerning Labor Standards at 52.222-14.

(11) Certification of Eligibility at 52.222-15.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

(End of clause)

52.222-18—52.222-19 [Reserved]

52.222-20 Walsh-Healey Public Contracts Act.

As prescribed in 22.610, insert the following clause in solicitations and contracts covered by the Act:

WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

(End of clause)

52.222-21 Certification of Nonsegregated Facilities.

As prescribed in 22.810(a)(1), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the contract amount is expected to exceed $10,000:

CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984)

(a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its

employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will—

(1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain the certifications in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (*i.e.*, quarterly, semiannually, or annually). NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)

52.222-22 Previous Contracts and Compliance Reports.

As prescribed in 22.810(a)(2), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984)

The offeror represents that—

(a) It ☐ has ☐ has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It ☐ has ☐ has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.

As prescribed in 22.810(b), insert the following provision in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be in excess of $10,000:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (APR 1984)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
_____	_____
[Contracting Officer shall insert goals]	*[Contracting Officer shall insert goals]*

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4

with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (APR 1984). As prescribed in 22.1308(b), 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), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: [*List term(s)*].

52.222-36 Affirmative Action for Handicapped Workers.

As prescribed in 22.1408, insert the following clause:

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as—

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.* (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (APR 1984). As prescribed in 22.1408(b), when 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), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: [*List term(s)*].

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(b), insert the following clause:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)

(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by para-

graph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

52.222-38 —52.222-40 [Reserved]

52.222-41 Service Contract Act of 1965, as Amended.

As prescribed in 22.1006(a), insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED
(MAY 1989)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. 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' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent informa-

(2) A complete duplicate certified copy of any renewal policy to _____[*insert name of contracting agency*] not less than 15 days prior to the expiration of any current policy on file with _____ [*insert name of contracting agency*].

(End of clause)

52.228-10 Vehicular and General Public Liability Insurance.

As prescribed in 28.313(b), insert a clause substantially the same as the following in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient:

VEHICULAR AND GENERAL PUBLIC LIABILITY INSURANCE (APR 1984)

(a) The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for (1) bodily injury of not less than $_____ for each person and $_____ for each occurrence, and (2) property damage of not less than $_____ for each accident and $_____ in the aggregate.

(b) The Contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(End of clause)

52.228-11 Pledges of Assets.

As prescribed in 28.203-6, insert the following clause:

PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide—

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52.228-12 Prospective Subcontractor Requests for Bonds.

As prescribed in 28.106-4(b), use the following clause:

PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

52.228-13 Alternative Payment Protections.

As prescribed in 28.102-3(b), insert the following clause:

ALTERNATIVE PAYMENT PROTECTIONS (JUN 1996)

(a) The Contractor shall submit one of the following payment protections:

_____

_____

_____

(b) The penal sum of the payment protection shall be in the amount of $ _____.

(c) The submission of the payment protection is required by _____.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material who signed the escrow agreement.

(End of clause)

52.228-14 Irrevocable Letter of Credit.

As prescribed in 28.204-4, insert the following clause:

IRREVOCABLE LETTER OF CREDIT
(DEC 1996)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay a stated amount of money on demand to the Government (the beneficiary), until the expiration date of the letter. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to support other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, unconditional, issued by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used to secure a performance or payment bond, the offeror/Contractor may submit an ILC to cover the entire period of performance or may submit an ILC with an initial expiration date which is a minimum period of one year from the date of issuance, with a provision which states that the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of performance is completed. The final expiration date shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) Until completion of any warranty period for performance bonds only.

(d) The ILC shall be issued or confirmed by a federally insured financial institution rated investment grade or higher. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[*Issuing Financial Institution's Letterhead or Name and Address*]

Issue Date _____

IRREVOCABLE LETTER OF CREDIT NO. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ *(for reference only)*

TO: [*U.S. Government agency*]

[*U.S. Government agency's address*]

1. We hereby establish this irrevocable, unconditional, and transferable Letter of Credit in your favor for one or more drawings up to United States $_____. This Letter of Credit is payable at [*issuing financial institution's and, if any, confirming financial institution's*] office at [*issuing financial institution's address and, if any, confirming financial institution's address*] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or transferee's sight draft(s) drawn on issuing and, if any, confirming financial institution, for all or any part of this credit that is presented at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [*This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.*] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [*state of confirming financial institution, if any, otherwise state of issuing financial institution*].

6. If this credit expires during an interruption of business of this financial institution as described in Article 19 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

_____

[*Issuing financial institution*]

(f) The following format shall be used by the financial institution to confirm an ILC:

_____

[*Confirming Financial Institution's Letterhead or Name and Address*]

_____, 19 ___

Our Letter of Credit Advice Number _____

Beneficiary: _____ [*U.S. Government agency*]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [*name of issuing financial institution*] for drawings of up to United States dollars _____/U.S. $_____ and expiring with our close of business on _____ [*the expiration date*], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under the Letter of Credit and this Confirmation if presented at our offices as specified herein.

4. [*This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.*] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least sixty (60) days prior to any such expiration date we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [*state of confirming financial institution*].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 19 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

_____

[*Confirming financial institution*]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

_____

[*City, State*]

_____, 19 ____

[*Name and address of financial institution*]

Pay to the order of _____ [*Beneficiary Agency*] _____ the sum of United States $_____. This draft is drawn under Irrevocable Letter of Credit No. _____.

_____

[*Beneficiary Agency*]

By: _____

(End of clause)

52.228-15 Performance and Payment Bonds—Construction.

As prescribed in 28.102-3(a), insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION (SEP 1996)

(a) *Definitions.* As used in this clause—

"Contract price" means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) Unless the resulting contract price is $100,000 or less, the successful offeror shall be required to furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance Bonds* (Standard Form 25): (i) The penal amount of performance bonds shall be 100 percent of the original contract price.

(ii) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(2) *Payment Bonds* (Standard Form 25-A):

(i) The penal amount of payment bonds shall equal—

(A) 50 percent of the contract price if the contract price is not more than $1 million;

(B) 40 percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(C) $2.5 million if the contract price is more than $5 million.

(ii) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection shall meet the requirement of subparagraph (b)(2)(i) of this clause.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

(End of clause)

52.228-16 Performance and Payment Bonds—Other Than Construction.

As prescribed in 28.103-4, insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS—OTHER THAN CONSTRUCTION (SEP 1996)

(a) *Definitions*. As used in this clause—

"Contract price" means the total amount of the contract for the term of the contract (excluding options, if any) or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the contract price and a payment bond (Standard Form 1416) in an amount equal to _____ percent of the contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____ days, but in any event, before starting work.

(d) The Government may require additional performance bond protection when the contract price is increased. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

(End of clause)

Alternate I (SEP 1996). As prescribed in 28.103-4, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the contract price.

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause in solicitations and contracts for leased equipment, when a fixed-price indefinite-delivery contract is contemplated, the contract will be performed wholly or partly within the United States, its possessions, or Puerto Rico, and the place or places of delivery are not known at the time of contracting:

STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) "Materials", as used in this clause, means building

bility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

52.232-6 Payment under Communication Service Contracts with Common Carriers.

As prescribed in 32.111(a)(6), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of CSAs issued under this contract, the rates and charges for the services and facilities as set forth in the clause entitled "Rates, Charges and Services."

(End of clause)

52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 32.111(b), insert the following clause:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 1997)

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) of this section, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and subcontracts.* (1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent

they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) The cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause; *provided,* that the costs are consistent with subparagraph (b)(3) of this section. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (a)(1) of this section.

(3) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(c) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) *Ceiling price.* The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) *Audit.* At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) of this section), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) *Assignment.* The Contractor, and each assignee under an assignment entered into under this contract and in

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 when the contracting officer decides (a) that the existing utility system 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.

AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

52.236-15 Schedules for Construction Contracts.

As prescribed in 36.515, insert the following clause:

SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

52.236-16 Quantity Surveys.

As prescribed in 36.516, the contracting officer may insert the following clause 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:

QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

Alternate I (APR 1984). If it is determined at a level above that of the Contracting Officer that it is impractica-

ble for Government personnel to perform the original and final surveys, and the Government wishes the Contractor to perform these surveys, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

52.236-17 Layout of Work.

As prescribed in 36.517, insert the following clause 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:

LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.

As prescribed in 36.518, insert the following clause in solicitations and contracts when cost-reimbursement construction contracts are contemplated:

WORK OVERSIGHT IN COST-REIMBURSEMENT-CONSTRUCTION CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

52.236-19 Organization and Direction of the Work.

As prescribed in 36.519, insert the following clause in solicitations and contracts when a cost-reimbursement construction contract is contemplated:

ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)

(a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this contract shall be under the full-time resident direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

(End of clause)

52.236-20 [Reserved]

52.236-21 Specifications and Drawings for Construction.

As prescribed in 36.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement",

"order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

Alternate I (APR 1984). When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

Alternate II (APR 1984). When record shop drawings are required and reproducible shop drawings are not needed, the following sentences shall be added to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish _____ [*Contracting Officer complete by inserting desired amount*] sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

52.236-22 Design Within Funding Limitations.

As prescribed in 36.609-1(c), insert the following clause:

DESIGN WITHIN FUNDING LIMITATIONS
(APR 1984)

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) below. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such informa-

tion, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) below, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is $ _____.

(End of clause)

52.236-23 Responsibility of the Architect-Engineer Contractor.

As prescribed in 36.609-2(b), insert the following clause:

RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

52.236-24 Work Oversight in Architect-Engineer Contracts.

As prescribed in 36.609-3, insert the following clause:

WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause in fixed-price architect-engineer contracts, except that it may be omitted when the design is to be performed (a) outside the United States, its possessions, and Puerto Rico or (b) in a State or possession that does not have registration requirements for the particular field involved.

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)

52.236-26 Preconstruction Conference.

As prescribed in 36.522, insert the following clause:

PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

52.236-27 Site Visit (Construction).

As prescribed in 36.523, insert a provision substantially the same as the following:

SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters 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 37.110(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)

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)

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)

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.

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)

(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*]

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 1997)

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either $25,000 or 5 percent of the total estimated cost of this contract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $25,000 or of any items of facilities.

(b)(1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed $25,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (b)(2) of this clause.

(2)(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Contractor's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or

Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The 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) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(End of clause)

Alternate I (AUG 1996). If the contracting office is in DoD, the Coast Guard, or NASA, substitute the following subparagraph (a)(2) for subparagraph (a)(2) of the basic clause:

(a)(2) The proposed subcontract is fixed-price and exceeds the greater of (i) the simplified acquisition threshold, or (ii) 5 percent of the total estimated cost of this contract.

52.244-3 Subcontracts (Time-and-Materials and Labor-Hour Contracts).

As prescribed in 44.204(c), insert the following clause:

SUBCONTRACTS (TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS) (APR 1985)

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for furnishing any of the work called for in this contract, except for purchase of raw material or commercial stock items.

(b) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.903(d) of the Federal Acquisition Regulation (FAR).

(c) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(d) 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.

(End of clause)

52.244-4 Subcontractors and Outside Associates and Consultants.

As prescribed in 44.204(d), insert the following clause in fixed-price architect-engineer contracts:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (APR 1984)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(e), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

52.244-6 Subcontracts for Commercial Items and Commercial Components.

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)

(a) *Definitions.*

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

52.245-1 Property Records.

As prescribed in 45.106(a), insert the following clause in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records:

PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)

52.245-2 Government Property (Fixed-Price Contracts).

As prescribed in 45.106(b)(1), insert the following clause:

GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably

required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon—

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise—

(i) Obtain detailed recommendations for corrective action and either—

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(End of clause)

Alternate I (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(9) for paragraph (b)(9) of the basic clause:

(9) If correction or replacement is required, and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate II (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

(7) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate III (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause. Redesignate the additional paragraph as "(c)(8)" if Alternate II is also being used:

(7) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-20 Warranty of Services.

As prescribed in 46.710(d), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price contract for services is contemplated and the use of a warranty clause has been approved under agency procedures, unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used:

WARRANTY OF SERVICES (APR 1984)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor _____ [*Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "within 30 days from the date of acceptance by the Government,"; within 1000 hours of use by the Government;" or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time*]. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the

Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

52.246-21 Warranty of Construction.

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated, and the use of a warranty clause has been approved under agency procedures:

WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

Alternate I (APR 1984). If the Government specifies in the contract the use of any equipment by "brand name and model," the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

52.246-22 [Reserved]

52.246-23 Limitation of Liability.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract, and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and

any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(End of clause)

52.246-24 Limitation of Liability—High-Value Items.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY
HIGH-VALUE ITEMS (FEB 1997)

(a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract, and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives wb ho have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d)(1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred;

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

(1) Warranty of technical data;

(2) Ground and flight risks or aircraft flight risks; or

(3) Government property.

(End of clause)

Alternate I (APR 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a): (*This clause shall apply only to those items identified in this contract as being subject to this clause.*)

52.246-25 Limitation of Liability—Services.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—SERVICES
(FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract, and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial per-

sonnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)

52.247-1 Commercial Bill of Lading Notations.

As prescribed in 47.104-4, insert the following clause:

COMMERCIAL BILL OF LADING NOTATIONS
(APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be: "Transportation is for the _____ *[name the specific agency]* and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the _____ *[name the specific agency]* and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. _____ This may be confirmed by contacting _____ *[name and address of the contract administration office listed in the contract]*."

(End of clause)

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	SAP	UTL SVC	CI
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	
52.204-4 Printing/Copying Double-Sided on Recycled Paper.	4.304	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
52.204-5 Women-Owned Business	√ 4.603(b)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.204-6 Contractor Identification Number—Data Universal Numbering System (DUNS) Number	4.603(a)	P	Yes	L	A	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/ Jewel Bearings & 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		

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	SAP	UTL SVC	CI
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		
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	
52.208-9 Contractor Use of Mandatory Sources of Supply.	8.003	C	Yes	I	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		

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	SAP	UTL SVC	CI
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	
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	
52.209-7 Organizational Conflicts of Interest Certificate—Marketing Consultants.	9.507-1(b)	P	No	K	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	No	K					A	A									A				
52.210 [Reserved]																							
52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	√ 11.204(a)	P	No	L	A	A	A	A	A	A	A			A	A			A	A		A		
52.211-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).	√ 11.204(b)	P	No	L	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	SAP	UTL SVC	CI
52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	√ 11.204(c)	P	No	L	A	A	A	A	A	A	A			A	A			A	A		A		
52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	√ 11.204(d)	P	No	L	A	A	A	A	A	A	A			A	A			A	A	A	A		
52.211-5 New Material.	√ 11.302(a)	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	SAP	UTL SVC	CI
52.211-6 Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property.	√ 11.302(b)	P	Yes	K	O	O	O	O	O	O			O	O	O			O	O		O		
52.211-7 Other Than New Material, Residual Inventory, and Former Government Surplus Property.	√ 11.302(c)	C	Yes	I	O	O	O	O	O	O			O	O	O			O	O		O		
52.211-8 Time of Delivery.	11.404(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	11.404(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	11.404(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	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
52.211-9 Desired and Required Time of Delivery.	11.404(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	11.404(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	11.404(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	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
52.211-10 Commencement, Prosecution, and Completion of Work.	11.404(b)	C	Yes								R												
Alternate I	11.404(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	SAP	UTL SVC	√ CI
√ 52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.	√ 11.504(a)	C	Yes	F	O		O		O					O							O	O	
√ 52.211-12 Liquidated Damages—Construction.	√ 11.504(b)	C	Yes				√ Yes				O	O									O		
Alternate I	√ 11.504(b)	C	Yes								O	O									O		
√ 52.211-13 Time Extensions.	√ 11.504(c)	C	Yes								A	A									A		
√ 52.211-14 Notice of Priority Rating for National Defense Use.	√ 11.604(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
√ 52.211-15 Defense Priority and Allocation Requirements.	√ 11.604(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
√ 52.211-16 Variation in Quantity.	√ 11.703(a)	C	Yes	F	A				A					A					A		A		
√ 52.211-17 Delivery of Excess Quantities.	√ 11.703(b)	C	Yes	F	O									O					O		O		
√ 52.211-18 Variation in Estimated Quantity.	√ 11.703(c)	C	Yes	—							A										A		
52.212-1 Instructions to Offerors - Commercial Items.	12.301(b)(1)	P	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	R
52.212-2 Evaluation - Commercial Items.	12.301(c)(1)	P	No	NA	O		O		O		O			O	O	O	O	O	O	O	O	O	O
52.212-3 Offerors Representations and Certifications Commercial Items.	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	R
52.212-4 Contract Terms and Conditions - Commercial Items.	12.301(b)(3)	C	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	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	SAP	UTL SVC	CI
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items	12.301(b)(4)	C	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	R
52.213-1 Fast Payment Procedure.	13.305	C	Yes		A									A					A		A		
52.213-2 Invoices.	13.506(b)	C	Yes																		A		
52.213-3 Notice to Supplier.	13.506(c)	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	SAP	UTL SVC	CI
52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).	14.201-6 (c)(4)	P	Yes	L	A				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(l) √ 25.407(c)	P	Yes		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.214-35 Submission of Offers in U.S. Currency.	14.201-6(y) 15.407(m) √ 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 [Reserved]																							
52.215-2 Audit and Records—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	SAP	UTL SVC	CI
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)(i)	P	Yes	L							R	R											
Alternate II	15.407 √ (d)(4)(ii)	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	SAP	UTL SVC	CI
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			
Alternate I	16.307(a)(2)	C	Yes	I								A											
52.216-8 Fixed Fee.	16.307(b)	C	Yes	I		A		A		A			A	A	A	A	A	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	SAP	UTL SVC	CI
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.	√ 16.506(a)	C	Yes	I															A				
√ 52.216-19 Order Limitations.	√ 16.506(b)	C	Yes	I															A				
52.216-20 Definite Quantity.	√ 16.506(c)	C	Yes	I															A				
52.216-21 Requirements.	16.506(d)(1)	C	Yes	I															A				
Alternate I	16.506(d)(2)	C	Yes	I															A				
Alternate II	16.506(d)(3)	C	Yes	I															A				
Alternate III	16.506(d)(4)	C	Yes	I															A				
Alternate IV	16.506(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	SAP	UTL SVC	CI
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 , Small Disadvantaged and Women Owned Small Business Concerns.	19.708(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.219-9 Small, Small Disadvantaged and Women Owned Small Business Subcontracting Plan.	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate I	19.708(b)(1)	C	Yes	I	A		A		A		A			A		A			A	A		A	
Alternate II	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.219-10 Incentive Subcontracting Program	19.708(c)(1)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	0	O	O	O	O		O	
52.219-11 Special 8(a) Contract Conditions. (See Note 2.) √	19.811-3(a)	C	Yes	I																			
52.219-12 Special 8(a) Subcontract Conditions. (See Note 2.) √	19.811-3(b)	C	No	I																			
52.219-13 [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	SAP	UTL SVC	√ CI
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	A	
52.219-16 Liquidated Damages—Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.219-17 Section 8(a) Award. (See Note 2.)	19.811-3(c)	C	No	I																			
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns. (See Note 2.)	19.811-3(d)	C	No	I																			
Alternate I (See Note 2.)	19.811-3 (d)(1)	C	No	I																			
√ Alternate II√ (See Note 2.)	19.811-3 (d)(2)√	C	No	I																			
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.	19.1007(a)	P	No	K	A	A			A	A	A	A	A				A		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	SAP	UTL SVC	CI
52.222-19 [Reserved]																							
52.222-20 Walsh-Healey Public Contracts Act.	22.610√	C	Yes	I	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	SAP	UTL SVC	CI
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—52.222-40 [Reserved]																							
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	SAP	UTL SVC	CI
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 Information √ Technology, 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	SAP	UTL SVC	CI
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	
Alternate I	23.303(b)	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(b)	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		
52.223-8 Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.	23.405(b)(1)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-9 Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.	23.405(c)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-10 Waste Reduction Program.	23.706	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A	A													A		A		
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					A	A			A			A			A		A		
52.223-13 Certification of Toxic Chemical Release Reporting.	23.907(a)	P	No	K	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	SAP	UTL SVC	CI
52.223-14 Toxic Chemical Release Reporting.	23.907(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
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		
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		
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 Evaluation of Foreign Offers.	25.502	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
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)(1)	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				

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	SAP	UTL SVC	CI
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.	√ 25.702	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A				A		A		
52.225-12—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 Trade Agreements Act and North American Free Trade Agreement.	25.205(b)	C	Yes	I							A	A											
Alternate I	25.205(b)(2)	C	Yes	I							A	A											
52.225-16—52.225-17 [Reserved]																							
52.225-18 European Union Sanction for End Products.	25.1003(a)	C	Yes	I	A	A	A	A					A						A				
52.225-19 European Union 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 Provision.	25.408(a)(3)	P	No	K	A	A							A	A							A		
Alternate I	25.408(a)(3)	P	No	K	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	SAP	UTL SVC	CI
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		
Alternate I	25.408(a)(4)	C	Yes	I	A	A							A	A							A		
52.225-22 Balance of Payments Program—Construction Materials—NAFTA.	25.305(c)(2)	C	Yes	I							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												
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.202-2	C	Yes	I	A	A																	
52.227-3 Patent Indemnity.	27.203-1(b) 27.203-2(a) 27.203-4 (a)(2)	C	Yes	I	A	A			A	A									A				
Alternate I	27.203-2(b)	C	Yes	I	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	SAP	UTL SVC	CI
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		
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		
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		
52.228-1 Bid Guarantee.	√ 28.101-2	√ P	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	SAP	UTL SVC	CI
52.228-6 [Reserved]																							
52.228-7 Insurance—Liability to Third Persons.	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	
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I							A	A	A			A							
52.228-13 Alternative Payment Protections.	28.102-3(b)	C	Yes	I							A	A	A			A							
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-15 Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I							A	A				A							
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A		A	A	A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF 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	SAP	UTL SVC	CI
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										
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	√ 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		√ 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			

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	SAP	UTL SVC	CI
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			
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	
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		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						

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	SAP	UTL SVC	CI
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.	√ 37.304(a)	C	Yes	I												A					A		
Alternate I	√ 37.304(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	SAP	UTL SVC	CI
52.237-5 Payment by Contractor to Government.	√ 37.304(b)	C	Yes	I												A					A		
52.237-6 Incremental Payment by Contractor to Government.	√ 37.304(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 Restriction on Severance Payments to Foreign Nationals.	37.113-2(a)	C	Yes	I		A		A		A		A	A	A	A	A	A		A	A			
52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.	37.113-2(b)	C	Yes	I		A		A		A		A	A	A	A	A	A		A	A			
52.238—52.240 [Reserved]																							
52.239-1 Privacy or Security Safeguards (See Note 4.)	39.106	C	Y	I	A	A	A	A	A	A			A					A	A		A		A
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	

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	SAP	UTL SVC	√ CI
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	SAP	UTL SVC	CI
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	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		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		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	A	
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	49.502(d)	C	Yes	I			A	A													A		

53.301-1421 SF 1421, Performance Evaluation (Architect-Engineer).
53.301-1423 SF 1423, Inventory Verification Survey.
53.301-1424 SF 1424, Inventory Disposal Report.
53.301-1426 SF 1426, Inventory Schedule A (Metals in Mill Product Form).
53.301-1427 SF 1427, Inventory Schedule A - Continuation Sheet (Metals in Mill Product Form).
53.301-1428 SF 1428, Inventory Schedule B.
53.301-1429 SF 1429, Inventory Schedule B - Continuation Sheet.
53.301-1430 SF 1430, Inventory Schedule C (Work-in-Process).
53.301-1431 SF 1431, Inventory Schedule C - Continuation Sheet (Work-in-Process).
53.301-1432 SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).
53.301-1433 SF 1433, Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).
53.301-1434 SF 1434, Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).
53.301-1435 SF 1435, Settlement Proposal (Inventory Basis).
53.301-1436 SF 1436, Settlement Proposal (Total Cost Basis).
53.301-1437 SF 1437, Settlement Proposal for Cost-Reimbursement Type Contracts.
53.301-1438 SF 1438, Settlement Proposal (Short Form).
53.301-1439 SF 1439, Schedule of Accounting Information.
53.301-1440 SF 1440, Application for Partial Payment.
53.301-1442 SF 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair).
53.301-1443 SF 1443, Contractor's Request for Progress Payment.
53.301-1444 SF 1444, Request for Authorization of Additional Classification and Rate.
53.301-1445 SF 1445, Labor Standards Interview.
53.301-1446 SF 1446, Labor Standards Investigation Summary Sheet.
53.301-1447 SF 1447, Solicitation/Contract.
53.301-1448 SF 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required)
53.301-1449 SF 1449, Solicitation/Contract/Order for Commercial Items
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.
53.302-347 Optional Form 347, Order for Supplies or Services.
53.302-348 Optional Form 348, Order for Supplies or Services Schedule—Continuation.
53.302-1419 Optional Form 1419, Abstract of Offers—Construction.
53.302-1419A Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet.
53.303-DD-254 Department of Defense DD Form 254, Contract Security Classification Specification.
53.303-DD-441 Department of Defense DD Form 441, Security Agreement.
53.303-WH-347 Department of Labor Form WH-347, Payroll (For Contractor's Optional Use).

FORMS AUTHORIZED FOR LOCAL REPRODUCTION

SF LLL Disclosure of Lobbying Activities
SF LLL-A Continuation Sheet
SF 34 Annual Bid Bond
SF 35 Annual Performance Bond
SF 279 Federal Procurement Data System (FPDS) Individual Contract Action Report
SF 281 Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less)
SF 294 Subcontracting Report for Individual Contracts
SF 295 Summary Subcontract Report
SF 1403 Preaward Survey of Prospective Contractor (General)
SF 1404 Preaward Survey of Prospective Contractor - Technical
SF 1405 Preaward Survey of Prospective Contractor - Production
SF 1406 Preaward Survey of Prospective Contractor - Quality Assurance
SF 1407 Preaward Survey of Prospective Contractor - Financial Capability
SF 1408 Preaward Survey of Prospective Contractor - Accounting System
SF 1411 Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required)
SF 1415 Consent of Surety and Increase of Penalty
SF 1416 Payment Bond for Other than Construction Contracts
SF 1418 Performance 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
SF 1448	Proposal Cover Sheet (Cost or Pricing Data Not Required)
SF 1449	Solicitation/Contract/Order for Commercial Items.
OF 90	Release of Lien on Real Property
OF 91	Release of Personal Property from Escrow
OF 333	Procurement Integrity Certification for Procurement Officials.

PART 53—FORMS

53.000 Scope of part.

This part (a) prescribes standard forms (SF's) and references optional forms (OF's) and agency-prescribed forms for use in acquisition, (b) contains requirements and information generally applicable to the forms, and (c) illustrates the forms.

53.001 Definitions.

"Exception," as used in this part, means an approved departure from the established design, content, printing specifications, or conditions for use of any standard form.

SUBPART 53.1—GENERAL

53.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

53.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 53.2 and under "Forms" in the FAR Index.

53.102 Current editions.

The form prescriptions in Subpart 53.2 and the illustrations in Subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.

Agencies shall not (a) alter a standard form prescribed by this regulation, or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form (see 41 CFR 201-45.510).

53.104 Overprinting.

Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

53.105 Computer generation.

(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided—

(1) The form is in an electronic format that complies with Federal Information Processing Standard Number 161; or

(2) There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this Part may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall either comply with Federal Information Processing Standard Number 161 or shall retain the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

53.106 Special construction and printing.

Contracting offices may request exceptions (see 53.103) to standard forms for special construction and printing. Examples of common exceptions are as follows:

53.107 Obtaining forms.

(a) Executive agencies shall obtain standard and optional forms from the General Services Administration (GSA) by using GSA Supply Catalog - Office Products (see 41 CFR 101-26.302). Standard forms adapted for computer preparation (see 53.105) or with special construction and printing (see 53.106) that are not available from GSA may be ordered directly from the Government Printing Office (GPO).

(b) Contractors and other parties may obtain standard and optional forms from the Superintendent of Documents, GPO, Washington, DC 20402. Standard and optional forms not available from the Superintendent of Documents may be obtained from the prescribing agency.

(c) Agency forms may be obtained from the prescribing agency.

53.108 Recommendations concerning forms.

Users of this regulation may recommend new forms or the revision, elimination, or consolidation of the forms prescribed or referenced in this regulation. Recommendations from within an executive agency shall be submitted to the cognizant council in accordance with agency procedures.

Recommendations from other than executive agencies should be submitted directly to the FAR Secretariat.

53.109 Forms prescribed by other regulations.

Certain forms referred to in Subpart 53.2 are prescribed in other regulations and are specified by the FAR for use in acquisition. For each of these forms, the prescribing agency is identified by means of a parenthetical notation after the form number. For example, SF 1165, which is prescribed by the General Accounting Office (GAO), is identified as SF 1165 (GAO).

53.110 Continuation sheets.

Except as may be otherwise indicated in the FAR, all standard forms prescribed by the FAR may be continued on (a) plain paper of similar specification, or (b) specially constructed continuation sheets (e.g., OF 336). Continuation sheets shall be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number.

53.111 Contract clause.

Contracting officers shall insert the clause at 52.253-1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit data on Standard or Optional Forms prescribed by this regulation; and, unless prohibited by agency regulations, forms prescribed by agency supplements.

SUBPART 53.2—PRESCRIPTION OF FORMS

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR Part 14, Sealed Bidding, are treated in this subpart in section 53.214, Sealed Bidding; forms addressed in FAR Part 43, Contract Modifications, are treated in this subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:

53.243 Contract Modifications (SF 30).

SECTION (KEYED TO FAR PART CONTAINING SUBJECT MATTER: USAGE REQUIREMENTS FOR SF 30 ARE ADDRESSED IN PART 43, CONTRACT MODIFICATIONS)

PART AND SUBPART (INVARIABLE)

53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

SF 1402 (10/83), Certificate of Appointment. SF 1402 is prescribed for use in appointing contracting officers, as specified in 1.603-3.

53.202 Reserved

53.203 Improper business practices and personal conflicts of interest.

OF 333 (REV. 10/92), Procurement Integrity Certification for Procurement Officials. OF 333 is prescribed for use, as specified in 3.104-12(a)(3). OF 333 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in Subpart 4.4 and the clause at 52.204-2:

(a) *DD Form 254 (Department of Defense (DOD)), Contract Security Classification Specification.* (See 4.403(c)(1).)

(b) *DD Form 441 (DOD), Security Agreement.* (See paragraph (b) of the clause at 52.204-2.)

53.204-2 Contract reporting.

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.602(c):

(a) *SF 279 (REV. 5/96), Federal Procurement Data System (FPDS) - Individual Contract Action Report.* (See 4.602(c).)

(b) *SF 281 (REV. 5/96), Federal Procurement Data System (FPDS) - Summary Contract Action Report ($25,000 or Less).* (See 4.602(c).)

53.205 Publicizing contract actions.

53.205-1 Paid advertisements.

SF 1449, prescribed in 53.212, shall be used to place orders for paid advertisements as specified in 5.503.

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 —53.211 [Reserved]

53.212 Acquisition of commercial items.

SF 1449 (10/95), Solicitation/Contract/Order for Commercial Items. SF 1449 is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18 (REV. 6/95), Request for Quotations, or SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items.* SF 18 prescribed in 53.215-1(a) or SF 1449 prescribed in 53.212 (or approved agency forms/automated formats) shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107.

(b) *SF 30 (REV. 10/83), 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 simplified acquisition procedures, as specified in 13.505(b).

(d) *SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher.* SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.404(e).

(e) *OF 336 (4/86 Ed.), Continuation Sheet.* OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 13.107(c).

(f) *SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items prescribed in 53.212, OF 347 (REV. 6/95), Order for Supplies or Services, and OF 348 (10/83 Ed.), Order for Supplies or Services—Schedule Continuation.* SF 1449, OF's 347 and 348 (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505.

(2) To establish blanket purchase agreements (BPA's), as specified in 13.202, and to make purchases under BPA's, as specified in 13.204(e).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this chapter (*e.g.*, see 5.503(a)(2), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) *SF 26, 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 14.408-1(d)(1). Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700".

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used in amending invitations for bids, as specified in 14.208(a).

(c) *SF 33 (REV. 4/85), Solicitation, Offer and Award.* SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201-2(a)(1), unless award is accomplished by SF 26. Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700".

(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 acquisitions made using simplified acquisition procedures):

(a) *SF 18 (REV. 6/95), 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 and 1448).

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data or information other than cost or pricing data from offerors or contractors, as specified in 15.804:

(a) SF 1411 (REV. 10/95), *Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).* (See 15.804-6(b)(1).) SF 1411 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

(b) SF 1448 (10/95), *Proposal Cover Sheet (Cost or Pricing Data Not Required).* (See 15.804-6(b)(2).) SF 1448 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

53.216 Types of contracts.

53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(f), (or an approved agency form) may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in 16.703(d)(2)(i).

53.217 — 53.218 [Reserved]

53.219 Small business programs.

The following standard forms are prescribed for use in reporting small, small disadvantaged and women-owned small business subcontracting data, as specified in Part 19:

(a) *SF 294 (REV 10/96), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV 10/96), Summary Subcontract Report.* (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

53.220 — 53.221 [Reserved]

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) Reserved.

(b) *SF 99 (DOL), Notice of Award of Contract.*

(c) *SF 308 (DOL) (5/85), 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.)

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
INDIVIDUAL CONTRACT ACTION REPORT

INTERAGENCY REPORT CONTROL NUMBER 0206-GSA-QU

1. REPORTING AGENCY CODE *(FIPS 95)(Pos. 1-4)*
2. CONTRACT NUMBER *(Left justified with no special characters) (Pos. 6-19)*
3. MODIFICATION NUMBER *(Left justified; cannot exceed 4 characters) (Pos. 20-23)*
4. CONTRACTING OFFICE ORDER NUMBER *(Left justified; cannot exceed 15 characters) (Pos. 24-38)*
5. CONTRACTING OFFICE CODE *(5 alpha-numeric character code) (Pos. 39-43)*
6. ACTION DATE *(2 digit calendar year and 2 digit month, e.g., 9512) (Pos. 44-47)*
7. TYPE OF DATA ENTRY *(Pos. 48)*
   A. Original
   B. Deleting
   C. Correcting
8. REPORT PERIOD *(2 digit fiscal year and 1 digit quarter, e.g., 961) (Pos. 49-51)*
9. KIND OF CONTRACT ACTION *(Pos. 52)*
   A. Initial Letter Contract
   B. Definitive Contract Superseding Letter Contract
   C. New Definitive Contract
   D. Purchases Using Simplified Acquisition Procedures
   E. Order Under Single Award Indefinite Delivery Contract
   F. Order Under BOA
   G. Order/Modification Under Federal Schedule
   H. Modification
   J. Termination for Default
   K. Termination for Convenience
   L. Order Under Multiple Award Contract
   Z. Initial Load of Federal Schedule Contract
10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION *(Right justified; round to nearest 1000; use lead zeros) (Pos. 53-60)*
11. TYPE OF OBLIGATION *(Pos. 61)*
   A. Obligated
   B. Deobligated
12. PRINCIPAL PRODUCT OR SERVICE *(FPDS Product Service Code Manual) (Pos. 62-65)*
13. PRINCIPAL STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE *(OMB SIC Manual) (Pos. 66-69)*
14. COMMERCIAL ITEM ACQUISITION *(Pos. 70)*
   Y - Yes
   N - No
15. CONTRACTOR NAME *(Pos. 71-100)*
16. CONTRACTOR IDENTIFICATION NUMBER *(Pos. 101-109)*
17a. PRINCIPAL PLACE OF PERFORMANCE *(State and City Code FIPS 55) (Pos. 110-116)*
   STATE
   CITY
17b. FOREIGN COUNTRY *(FIPS 10-3) (Pos. 117 & 118)*
18. CONTRACT FOR FOREIGN GOVT. OR INTERNATIONAL ORGANIZATION *(Pos. 119)*
   Y - Yes
   N - No
19. TARIFF OR REGULATED *(Pre-CICA) (Pos. 120)*
   Y - Yes
   N - No
20. MULTI-YEAR CONTRACT *(Pos. 121)*
   Y - Yes
   N - No
21. RESERVED FOR FPDS *(Pos. 122-123)*
22. COUNTRY OF MANUFACTURE *(FIPS 10-3) (Pos. 124-125)*
23. SYNOPSIS OF PROCUREMENT PRIOR TO AWARD *(Pos. 126)*
   A. Synopsized prior to award
   B. Not synopsized due to urgency
   C. Not synopsized for other reason
24. TYPE OF CONTRACT OR MODIFICATION *(Pos. 127)*
   A. Fixed-Price Redetermination
   J. Fixed-Price
   K. Fixed-Price with Economic Price Adjustment
   L. Fixed-Price Incentive
   R. Cost-Plus-Award-Fee
   S. Cost - No Fee
   T. Cost-Sharing
   U. Cost-Plus-Fixed-Fee
   V. Cost-Plus-Incentive
   Y. Time and Materials
   Z. Labor Hour
25. CICA APPLICABILITY *(Pos. 128)*
   A. CICA Applicable
   B. Purchases Using Simplified Acquisition Procedures
   C. Subject to Statute Other Than CICA
   D. Pre-CICA
26. SOLICITATION PROCEDURES *(Complete only if Item 25 = A) (Pos. 129)*
   A. Full and Open Competition - Sealed Bid
   B. Full and Open Competition - Competitive Proposal
   C. Full and Open Competition - Combination
   D. Architect - Engineer
   E. Basic Research
   F. Multiple Award Schedule
   G. Alternative Sources
   H. Reserved
   J. Reserved
   K. Set-Aside
   L. Other Than Full and Open Competition
27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION *(Complete only if Item 26 = L) (Pos. 130)*
   A. Unique Source
   B. Follow-on Contract
   C. Unsolicited Research Proposal
   D. Patent/Data Rights
   E. Utilities
   F. Standardization
   G. Only One Source - Other
   H. Urgency
   J. Mobilization, Essential R&D Capability, or Expert Services
   K. Reserved
   L. International Agreement
   M. Authorized by Statute
   N. Authorized for Resale
   P. National Security
   Q. Public Interest
28. NUMBER OF OFFERS RECEIVED *(Complete only if Item 25 = A) (Pos. 131)*
   A. 1
   B. 2-5
   C. 6-10
   D. 11-15
   E. 16-20
   F. 21-50
   G. Over 50
29. EXTENT COMPETED *(Pos. 132)*
   A. Competed Action
   B. Not Available for Competition
   C. Follow-on to Competed Action
   D. Not Competed
30. TYPE OF CONTRACTOR *(Pos. 133)*
   A. Small Disadvantaged Business
   B. Other Small Business
   C. Large Business
   D. JWOD Nonprofit Agency
   E. Nonprofit Educational Organization
   F. Nonprofit Hospital
   G. Other Nonprofit Organization
   H. State/Local Govt - Educational
   J. State/Local Govt - Hospital
   K. Other State/Local Government
   L. Foreign Contractor
   M. Domestic Contractor Performing Outside U.S.
   U. Historically Black College/University or Minority Institution (HBCU/MI)
31. WOMEN-OWNED BUSINESS *(Pos. 134)*
   Y - Yes
   N - No
32. PREFERENCE PROGRAM *(Pos. 135)*
   A. Directed to JWOD Nonprofit Agency
   B. 8(a) Contract Award
   C. Reserved
   D. Small Business Set-Aside
   E. Reserved
   F. Reserved
   G. Buy Indian/Self-Determination
   H. No Preference Program or Not Listed
   J. Small Disadvantaged Business Set-Aside
33. SUBCONTRACTING PLAN *(Small, Small Disadvantaged, and Women-Owned Small Business) (Pos. 136)*
   A. Required
   B. Not Required
34. SUBJECT TO LABOR STATUTES *(Pos. 137)*
   A. Walsh-Healey Act
   B. Reserved
   C. Service Contract Act
   D. Davis-Bacon Act
   E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon
35. ESTIMATED CONTRACT COMPLETION DATE *(2 digit calendar year and 2 digit month, e.g., 9512) (Pos. 138-141)*
36. CONTRACTOR'S TIN *(Pos. 142-150)*
37. COMMON PARENT'S NAME *(Pos. 151-180)*
38. COMMON PARENT'S TIN *(Pos. 181-189)*
39 RESERVED FOR FPDS *(Pos. 190-193)*
40. RESERVED FOR FPDS *(Pos. 194)*
41. RESERVED FOR FPDS *(Pos. 195-199)*

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM *(Applicable to AGR, DOD, DOE, DOI, DOT, EPA, GSA, HHS, NASA, and VA)*

42 DEMONSTRATION TEST PROGRAM *(Pos. 200)*
   Y - Yes
   N - No
43. EMERGING SMALL BUSINESS *(Pos. 201)*
   Y - Yes
   N - No
44. EMERGING SMALL BUSINESS RESERVE AWARD *(Pos. 202)*
   Y - Yes
   N - No
45. SIZE OF SMALL BUSINESS *(Pos. 203)*
   NUMBER OF EMPLOYEES OR AVERAGE ANNUAL GROSS REVENUE
   A. 50 or Less
   B. 51 - 100
   C. 101 - 250
   D. 251 - 500
   E. 501-750
   F. 751 - 1,000
   G. Over 1,000
   M. 1,000,000 or Less
   N. 1,000,001 - 2,000,000
   P. 2,000,001 - 3,500,000
   R. 3,500,001 - 5,000,000
   S. 5,000,001 - 10,000,000
   T. 10,000,001 - 17,000,000
   Z. Over 17,000,000
46. RESERVED FOR FPDS *(Pos. 204-213)*
47. OPTIONAL REPORTED DATA ELEMENTS *(Pos. 214-)*
48. FOR AGENCY INTERNAL USE

49. CONTRACTING OFFICER OR REPRESENTATIVE

a. TYPED NAME	b. SIGNATURE	c. TELEPHONE (AREA CODE / NUMBER)	d. DATE SUBMITTED *(YYMMDD)*

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 279 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.204-2(a)

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
SUMMARY CONTRACT ACTION REPORT ($25,000 OR LESS)
(Dollars in thousands, rounded to the nearest thousand)

INTERAGENCY REPORT CONTROL NUMBER
0208-GSA-QU

CIVILIAN AGENCIES	DEPARTMENT OF DEFENSE
Net dollars and number of actions where anticipated value of instrument is $25,000 or less.	Net dollars and number of actions where amount obligated on action is $25,000 or less.

a. REPORT PERIOD		b. REPORT TYPE *(X one)*	c. REPORTING AGENCY CODE *(FIPS 95)*
FY	QTR	☐ ORIGINAL ☐ REVISION	

d. REPORTING AGENCY NAME	e. CONTRACTING OFFICE CODE	f. CONTRACTING OFFICE NAME

PART I - PRIME CONTRACT ACTIONS OF $25,000 OR LESS

	PROCUREMENT METHOD	Number of Actions (a)	NET DOLLAR AMOUNTS: Small Business Concerns (b)	Large Business Concerns (c)	Domestic Outside U.S./ Foreign (d)	Other Entities (e)	Total Dollars (f)
NEW AWARDS AND MODIFICATIONS	1. Tariff or Regulated Acquisitions						
	2. Contract for Foreign Government or International Organization						
	3. Purchases Using Simplified Acquisition Procedures						
	4. Orders - GSA Schedules Only						
	5. Orders - Other Federal Schedules						
	6. All Other Orders						
	7. Other Procurement Methods						
	8. TOTAL NEW AWARDS AND MODIFICATIONS						
COMPETITION	9. Competed						
	10. Not Competed						
	11. Not Available for Competition						
MODIFICATIONS	12. TOTAL MODIFICATIONS *(Excluding Line 3)*						

PART II - SELECTED SOCIOECONOMIC STATISTICS
(Includes both new awards and modifications)

PREFERENCE PROGRAMS: CATEGORY	Number of Actions (a)	Total Net Dollars (b)	TYPE OF CONTRACTOR: CATEGORY	Number of Actions (a)	Total Net Dollars (b)
13. Small Business Set-Aside			16. Small Business		
			17. Small Disadvantaged Business		
14. Small Disadvantaged Business Set-Aside			18. Women-Owned Small Business		
15. 8(a) Contract Award			19. JWOD Nonprofit Agency		
			20. HBCU/MI		

g. PERSON SUBMITTING REPORT

NAME	SIGNATURE	TELEPHONE: AREA CODE	TELEPHONE: NUMBER	DATE SUBMITTED

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 281 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.204-2(b)

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:

☐ MAR 31 ☐ SEPT 30 YEAR

5. TYPE OF REPORT

☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY
☐ NAVY
☐ AIR FORCE
☐ GSA
☐ DOE
☐ DEFENSE LOGISTICS AGENCY
☐ NASA
☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*

☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER

☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT

a. AGENCY'S OR CONTRACTOR'S NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:

☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*				
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

14b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 10-96)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. **This report is not required from small businesses.**

2. This report is not required for commercial products for which a company-wide annual plan (i.e., a **Commercial Products Plan**) has been approved, nor from large businesses in the Department of Defense (DOD) **Test Program for Negotiation of Comprehensive Subcontracting Plans.** The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. **A separate report is required for each contract at contract completion.** Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. **Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.**

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. **Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.**

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. **Credit cannot be taken for awards made to lower tier subcontractors.**

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. **A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7.** A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. **To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.**

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and, WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) **Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4.** In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. **For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.**

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. **Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).**

BLOCK 11: Report all subcontracts awarded to SDBs **(including women-owned SDBs).** For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms **(including SDBs owned by women).**

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. **It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.**

STANDARD FORM 294 (REV. 10-96) BACK

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD:
☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ DEFENSE LOGISTICS AGENCY ☐ NASA ☐ GSA ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one)*
☐ PRIME CONTRACTOR ☐ BOTH ☐ SUBCONTRACTOR

8. TYPE OF PLAN
☐ INDIVIDUAL ☐ COMMERCIAL PRODUCTS

IF PLAN IS A COMMERCIAL PRODUCT PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a		c	
b		d	

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI)* *(Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*		

14. REMARKS

15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM
a. NAME | b. TITLE | c. TELEPHONE NUMBER: AREA CODE | NUMBER

16. CHIEF EXECUTIVE OFFICER
a. NAME | c. SIGNATURE
b. TITLE | d. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV. 10-96)
Prescribed by GSA - FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Products Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10. See special instructions in right-hand column for Commercial Products Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period, (i.e., Mar

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Products Plan" only if this report is under an approved Commercial Products Plan. For a Commercial Products Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commerical Products" is checked in Block 8 (see Special Instructions for Commercial products Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 13: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall include all subcontracting activity under commercial products plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial products, if any.

3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Products Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial products covered by an approved Commercial Products Plan were received.

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HC), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 10-96) BACK

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
INDIVIDUAL CONTRACT ACTION REPORT

INTERAGENCY REPORT CONTROL NUMBER
0206-GSA-QU

1. REPORTING AGENCY CODE *(FIPS 95)(Pos. 1-4)*

2. CONTRACT NUMBER *(Left justified with no special characters) (Pos. 5-19)*

3. MODIFICATION NUMBER *(Left justified; cannot exceed 4 characters) (Pos. 20-23)*

4. CONTRACTING OFFICE ORDER NUMBER *(Left justified; cannot exceed 15 characters) (Pos. 24-38)*

5. CONTRACTING OFFICE CODE *(5 alpha-numeric character code) (Pos. 39-43)*

6. ACTION DATE *(2 digit calendar year and 2 digit month, e.g., 9512) (Pos. 44-47)*

7. TYPE OF DATA ENTRY *(Pos. 48)*
- A. Original
- B. Deleting
- C. Correcting

8. REPORT PERIOD *(2 digit fiscal year and 1 digit quarter, e.g., 961) (Pos. 49-51)*

9. KIND OF CONTRACT ACTION *(Pos. 52)*
- A. Initial Letter Contract
- B. Definitive Contract Superseding Letter Contract
- C. New Definitive Contract
- D. Purchases Using Simplified Acquisition Procedures
- E. Order Under Single Award Indefinite Delivery Contract
- F. Order Under BOA
- G. Order/Modification Under Federal Schedule
- H. Modification
- J. Termination for Default
- K. Termination for Convenience
- L. Order Under Multiple Award Contract
- Z. Initial Load of Federal Schedule Contract

10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION *(Right justified; round to nearest 1000; use lead zeros) (Pos. 53-60)*

11. TYPE OF OBLIGATION *(Pos. 61)*
- A. Obligated
- B. Deobligated

12. PRINCIPAL PRODUCT OR SERVICE *(FPDS Product Service Code Manual) (Pos. 62-65)*

13. PRINCIPAL STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE *(OMB SIC Manual) (Pos. 66-69)*

14. COMMERCIAL ITEM ACQUISITION *(Pos. 70)*
- Y - Yes
- N - No

15. CONTRACTOR NAME *(Pos. 71-100)*

16. CONTRACTOR IDENTIFICATION NUMBER *(Pos. 101-109)*

17a. PRINCIPAL PLACE OF PERFORMANCE *(State and City Code FIPS 55) (Pos. 110-116)*
STATE CITY

17b. FOREIGN COUNTRY *(FIPS 10-3) (Pos. 117 & 118)*

18. CONTRACT FOR FOREIGN GOVT. OR INTERNATIONAL ORGANIZATION *(Pos. 119)*
- Y - Yes
- N - No

19. TARIFF OR REGULATED *(Pre-CICA) (Pos. 120)*
- Y - Yes
- N - No

20. MULTI-YEAR CONTRACT *(Pos. 121)*
- Y - Yes
- N - No

21. RESERVED FOR FPDS *(Pos. 122-123)*

22. COUNTRY OF MANUFACTURE *(FIPS 10-3) (Pos. 124-125)*

23. SYNOPSIS OF PROCUREMENT PRIOR TO AWARD *(Pos. 126)*
- A. Synopsized prior to award
- B. Not synopsized due to urgency
- C. Not synopsized for other reason

24. TYPE OF CONTRACT OR MODIFICATION *(Pos. 127)*
- A. Fixed-Price Redetermination
- J. Fixed-Price
- K. Fixed-Price with Economic Price Adjustment
- L. Fixed-Price Incentive
- R. Cost-Plus-Award-Fee
- S. Cost - No Fee
- T. Cost-Sharing
- U. Cost-Plus-Fixed-Fee
- V. Cost-Plus-Incentive
- Y. Time and Materials
- Z. Labor Hour

25. CICA APPLICABILITY *(Pos. 128)*
- A. CICA Applicable
- B. Purchases Using Simplified Acquisition Procedures
- C. Subject to Statute Other Than CICA
- D. Pre-CICA

26. SOLICITATION PROCEDURES *(Complete only if Item 25 = A) (Pos. 129)*
- A. Full and Open Competition - Sealed Bid
- B. Full and Open Competition - Competitive Proposal
- C. Full and Open Competition - Combination
- D. Architect - Engineer
- E. Basic Research
- F. Multiple Award Schedule
- G. Alternative Sources
- H. Reserved
- J. Reserved
- K. Set-Aside
- L. Other Than Full and Open Competition

27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION *(Complete only if Item 26 = L) (Pos. 130)*
- A. Unique Source
- B. Follow-on Contract
- C. Unsolicited Research Proposal
- D. Patent/Data Rights
- E. Utilities
- F. Standardization
- G. Only One Source - Other
- H. Urgency
- J. Mobilization, Essential R&D Capability, or Expert Services
- K. Reserved
- L. International Agreement
- M. Authorized by Statute
- N. Authorized for Resale
- P. National Security
- Q. Public Interest

28. NUMBER OF OFFERS RECEIVED *(Complete only if Item 26 = A) (Pos. 131)*
- A. 1
- B. 2-5
- C. 6-10
- D. 11-15
- E. 16-20
- F. 21-50
- G. Over 50

29. EXTENT COMPETED *(Pos. 132)*
- A. Competed Action
- B. Not Available for Competition
- C. Follow-on to Competed Action
- D. Not Competed

30. TYPE OF CONTRACTOR *(Pos. 133)*
- A. Small Disadvantaged Business
- B. Other Small Business
- C. Large Business
- D. JWOD Nonprofit Agency
- E. Nonprofit Educational Organization
- F. Nonprofit Hospital
- G. Other Nonprofit Organization
- H. State/Local Govt - Educational
- J. State/Local Govt - Hospital
- K. Other State/Local Government
- L. Foreign Contractor
- M. Domestic Contractor Performing Outside U.S.
- U. Historically Black College/University or Minority Institution (HBCU/MI)

31. WOMEN-OWNED BUSINESS *(Pos. 134)*
- Y - Yes
- N - No

32. PREFERENCE PROGRAM *(Pos. 135)*
- A. Directed to JWOD Nonprofit Agency
- B. 8(a) Contract Award
- C. Reserved
- D. Small Business Set-Aside
- E. Reserved
- F. Reserved
- G. Buy Indian/Self-Determination
- H. No Preference Program or Not Listed
- J. Small Disadvantaged Business Set-Aside

33. SUBCONTRACTING PLAN *(Small, Small Disadvantaged, and Women-Owned Small Business) (Pos. 136)*
- A. Required
- B. Not Required

34. SUBJECT TO LABOR STATUTES *(Pos. 137)*
- A. Walsh-Healey Act
- B. Reserved
- C. Service Contract Act
- D. Davis-Bacon Act
- E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon

35. ESTIMATED CONTRACT COMPLETION DATE *(2 digit calendar year and 2 digit month, e.g., 9512) (Pos. 138-141)*

36. CONTRACTOR'S TIN *(Pos. 142-150)*

37. COMMON PARENT'S NAME *(Pos. 151-180)*

38. COMMON PARENT'S TIN *(Pos. 181-189)*

39 RESERVED FOR FPDS *(Pos. 190-193)*

40. RESERVED FOR FPDS *(Pos. 194)*

41. RESERVED FOR FPDS *(Pos. 195-199)*

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM *(Applicable to AGR, DOD, DOE, DOI, DOT, EPA, GSA, HHS, NASA, and VA)*

42. DEMONSTRATION TEST PROGRAM *(Pos. 200)*
- Y - Yes
- N - No

43. EMERGING SMALL BUSINESS *(Pos. 201)*
- Y - Yes
- N - No

44. EMERGING SMALL BUSINESS RESERVE AWARD *(Pos. 202)*
- Y - Yes
- N - No

45. SIZE OF SMALL BUSINESS *(Pos. 203)*
NUMBER OF EMPLOYEES OR AVERAGE ANNUAL GROSS REVENUE
- A. 50 or Less
- B. 51 - 100
- C. 101 - 250
- D. 251 - 500
- E. 501-750
- F. 751 - 1,000
- G. Over 1,000
- M. 1,000,000 or Less
- N. 1,000,001 - 2,000,000
- P. 2,000,001 - 3,500,000
- R. 3,500,001 - 5,000,000
- S. 5,000,001 - 10,000,000
- T. 10,000,001 - 17,000,000
- Z. Over 17,000,000

46. RESERVED FOR FPDS *(Pos. 204-213)*

47. OPTIONAL REPORTED DATA ELEMENTS *(Pos. 214-)*

48. FOR AGENCY INTERNAL USE

49. CONTRACTING OFFICER OR REPRESENTATIVE

a. TYPED NAME	b. SIGNATURE	c. TELEPHONE (AREA CODE / NUMBER)	d. DATE SUBMITTED *(YYMMDD)*

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 279 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.204-2(a)

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
SUMMARY CONTRACT ACTION REPORT ($25,000 OR LESS)
(Dollars in thousands, rounded to the nearest thousand)

INTERAGENCY REPORT CONTROL NUMBER

0208-GSA-QU

CIVILIAN AGENCIES	DEPARTMENT OF DEFENSE
Net dollars and number of actions where anticipated value of instrument is $25,000 or less.	Net dollars and number of actions where amount obligated on action is $25,000 or less.

a. REPORT PERIOD		b. REPORT TYPE *(X one)*	c. REPORTING AGENCY CODE *(FIPS 95)*
FY	QTR	☐ ORIGINAL ☐ REVISION	

d. REPORTING AGENCY NAME	e. CONTRACTING OFFICE CODE	f. CONTRACTING OFFICE NAME

PART I - PRIME CONTRACT ACTIONS OF $25,000 OR LESS

	PROCUREMENT METHOD	Number of Actions (a)	NET DOLLAR AMOUNTS: Small Business Concerns (b)	Large Business Concerns (c)	Domestic Outside U.S./ Foreign (d)	Other Entities (e)	Total Dollars (f)
NEW AWARDS AND MODIFICATIONS	1. Tariff or Regulated Acquisitions						
	2. Contract for Foreign Government or International Organization						
	3. Purchases Using Simplified Acquisition Procedures						
	4. Orders - GSA Schedules Only						
	5. Orders - Other Federal Schedules						
	6. All Other Orders						
	7. Other Procurement Methods						
	8. **TOTAL NEW AWARDS AND MODIFICATIONS**						
COMPETITION	9. Competed						
	10. Not Competed						
	11. Not Available for Competition						
MODIFICATIONS	12. **TOTAL MODIFICATIONS** *(Excluding Line 3)*						

PART II - SELECTED SOCIOECONOMIC STATISTICS
(Includes both new awards and modifications)

PREFERENCE PROGRAMS: CATEGORY	Number of Actions (a)	Total Net Dollars (b)	TYPE OF CONTRACTOR: CATEGORY	Number of Actions (a)	Total Net Dollars (b)
13. Small Business Set-Aside			16. Small Business		
			17. Small Disadvantaged Business		
14. Small Disadvantaged Business Set-Aside			18. Women-Owned Small Business		
15. 8(a) Contract Award			19. JWOD Nonprofit Agency		
			20. HBCU/MI		

g. PERSON SUBMITTING REPORT

NAME	SIGNATURE	TELEPHONE: AREA CODE	TELEPHONE: NUMBER	DATE SUBMITTED

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:

☐ MAR 31 ☐ SEPT 30 YEAR

5. TYPE OF REPORT

☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY
☐ NAVY
☐ AIR FORCE
☐ GSA
☐ DOE
☐ DEFENSE LOGISTICS AGENCY
☐ NASA
☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*

☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER

☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT

a. AGENCY'S OR CONTRACTOR'S NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:

☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*				
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

14b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 10-96)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. **This report is not required from small businesses.**

2. This report is not required for commercial products for which a company-wide annual plan (i.e., **a Commercial Products Plan**) has been approved, nor from large businesses in the Department of Defense (DOD) **Test Program for Negotiation of Comprehensive Subcontracting Plans.** The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. **A separate report is required for each contract at contract completion.** Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. **Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.**

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. **Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.**

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. **Credit cannot be taken for awards made to lower tier subcontractors.**

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. To ensure comparability between the goal and actual columns, the contractor **may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.**

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and, WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) **Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4.** In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. **For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.**

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. **Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).**

BLOCK 11: Report all subcontracts awarded to SDBs **(including women-owned SDBs).** For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms **(including SDBs owned by women).**

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. **It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.**

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD:

☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR

5. TYPE OF REPORT

☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY
☐ NAVY
☐ AIR FORCE
☐ DEFENSE LOGISTICS AGENCY
☐ NASA
☐ GSA
☐ DOE
☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one)*

☐ PRIME CONTRACTOR ☐ BOTH
☐ SUBCONTRACTOR

8. TYPE OF PLAN

☐ INDIVIDUAL ☐ COMMERCIAL PRODUCTS

IF PLAN IS A COMMERCIAL PRODUCT PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a		c	
b		d	

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI)* *(Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable)* *(Dollar Amount and Percent of 10c.)*		

14. REMARKS

15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM

a. NAME | b. TITLE | c. TELEPHONE NUMBER: AREA CODE | NUMBER

16. CHIEF EXECUTIVE OFFICER

a. NAME | c. SIGNATURE

b. TITLE | d. DATE

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Products Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10. See special instructions in right-hand column for Commercial Products Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period, (i.e., Mar

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Products Plan" only if this report is under an approved Commercial Products Plan. For a Commercial Products Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commerical Products" is checked in Block 8 (see Special Instructions for Commercial products Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 13: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall include all subcontracting activity under commercial products plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial products, if any.

3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Products Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial products covered by an approved Commercial Products Plan were received.

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HC), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

★ U.S. GOVERNMENT PRINTING OFFICE: 1997-405-747/40006