

## **PART 1201—FEDERAL ACQUISITION REGULATION SYSTEM**

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AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40270, Aug. 8, 1994, unless otherwise noted.

### **Subpart 1201.1—Purpose, Authority, Issuance**

#### **1201.101 Purpose.**

The Department of Transportation Acquisition Regulation (TAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

#### **1201.103 Authority.**

The Secretary of Transportation has delegated the authority to issue Department of Transportation (DOT) procurement regulations (i.e., the TAR) to the Assistant Secretary for Administration who has redelegated this authority to the Senior Procurement Executive (SPE).

[59 FR 40270, Aug. 8, 1994. Redesignated at 61 FR 50249, Sept. 25, 1996]

#### **1201.104 Applicability.**

(a) Statute, the FAR, and (TAR) 48 CFR chapter 12 apply to all acquisitions within the Department unless otherwise excluded by statute, the FAR or (TAR) 48 CFR chapter 12.

(b) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within (TAR) 48 CFR chapter 12 or the Transportation Acquisition Manual (TAM):

- (1) Statute;
- (2) FAR or other applicable regulation;
- (3) TAR;
- (4) DOT Orders; and
- (5) TAM.

(c) The Maritime Administration may depart from the requirements of the FAR and (TAR) 48 CFR chapter 12 as authorized by 40 U.S.C. 474(16), but shall adhere to those regulations to the maximum extent practicable. Exceptions from the requirements of the FAR and/or TAR shall be documented according to Maritime Administration procedures or in each contract file, as appropriate.

[59 FR 40270, Aug. 8, 1994. Redesignated at 61 FR 50249, Sept. 25, 1996]

#### **1201.105 Issuance.**

##### **1201.105-1 Publication and code arrangement.**

(a) The TAR is published in: (1) The FEDERAL REGISTER; (2) cumulated form in the CFR; and (3) separate loose-leaf form.

(b) The TAR is issued as chapter 12 of Title 48 of the CFR.

[59 FR 40270, Aug. 8, 1994. Redesignated at 61 FR 50249, Sept. 25, 1996]

**1201.105-2 Arrangement of regulations.**

(a) *General.* The TAR, which encompasses both Departmentwide and operating administration-unique guidance (see (TAR) 48 CFR 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Guidance which is unique to an operating administration contains the operating administration acronym directly preceding the cite/page number. The following acronyms apply when regulatory coverage is written:

FAA—Federal Aviation Administration  
FHWA—Federal Highway Administration

FRA—Federal Railroad Administration

FTA—Federal Transit Administration

MARAD—Maritime Administration

NHTSA—National Highway Traffic Safety Administration

RSPA—Research and Special Programs Administration

SLSDC—Saint Lawrence Seaway Development Corporation

TASC—Transportation Administrative Service Center

USCG—United States Coast Guard

(b) *Numbering—(1) Departmentwide guidance.*

(i) The numbering illustrations at (FAR) 48 CFR 1.105-2 apply to the TAR.

(ii) Coverage within (TAR) 48 CFR chapter 12 is identified by the prefix “12” followed by the complete FAR cite which may be down to the subparagraph level (e.g., (TAR) 48 CFR 1201.201-1).

(iii) Coverage in this chapter 12 that supplements the FAR will use part, subpart, section and subsection numbers ending in “70” through “89”. A series of numbers beginning with “70” is used for provisions and clauses (e.g., (TAR) 48 CFR 1201.301-70).

(iv) Coverage in (TAR) 48 CFR chapter 12, other than that identified with a “70” or higher number, that implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may be down to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (TAR) 48 CFR 1201.201-1 contains subparagraphs (b) and (d) because only

these subparagraphs, correlating to FAR, are being supplemented by (TAR) 48 CFR chapter 12).

(2) *Operating administration-unique guidance.* Supplementary material for which there is no counterpart in the FAR or TAR shall be identified using chapter, part, subpart, section, or subsection numbers of “90” and up (e.g., the U.S. Coast Guard’s acronym is “USCG”; a USCG-unique clause pertaining to “Inspection and/or Acceptance” would be designated “USCG 1252.246-90”).

(c) *References and citations.* (TAR) 48 CFR chapter 12 may be referred to as the Department of Transportation Acquisition Regulation or the TAR. Cross references to the FAR in (TAR) 48 CFR chapter 12 will be cited by “FAR” followed by the FAR numbered cite, and cross reference to the TAM in (TAR) 48 CFR chapter 12 will be cited by “TAM” followed by the TAM numbered cite. References to specific cites within (TAR) 48 CFR chapter 12 will be by the numbered cite only.

[59 FR 40270, Aug. 8, 1994. Redesignated at 61 FR 50249, Sept. 25, 1996, as amended at 62 FR 67750, Dec. 30, 1997]

**1201.105-3 Copies.**

(a) Copies of the TAR in FEDERAL REGISTER, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC, 20402.

(b) The (TAR) 48 CFR chapter 12 and Transportation Acquisition Circulars (TACs) are available on the internet. See part 1202, appendix A, for the internet address.

[59 FR 40270, Aug. 8, 1994. Redesignated at 61 FR 50248, Sept. 25, 1996, as amended at 62 FR 67750, Dec. 30, 1997]

**1201.106 OMB Approval Under the Paperwork Reduction Act.**

(a) *Data collection by regulation.* The information collection and record-keeping requirements contained in (TAR) 48 CFR chapter 12 have been approved by the Office of Management and Budget (OMB). The OMB Control Number for the collection of the information under 48 CFR chapter 12 is 2105-0517 which expires on May 31, 2000.

(b) *Data collection under proposed contracts.* Under the regulations implementing the requirements of the Paperwork Reduction Act (5 CFR part 1320), OMB must approve, prior to obligation of funds, proposed contracts which require the collection of information from ten or more non-Federal persons or entities. Solicitations containing this type of information collection may be released prior to OMB approval provided:

(1) A statement is included in the solicitation to the effect that contract award will not be made until OMB approval of the information collection requirements of the proposed contract has been obtained; and

(2) Enough time is permitted to allow receipt of OMB approval prior to contract award.

[59 FR 40270, Aug. 8, 1994. Redesignated at 61 FR 50248, Sept. 25, 1996, as amended at 62 FR 67750, Dec. 30, 1997]

## Subpart 1201.2—Administration

### 1201.201 Maintenance of the FAR.

#### 1201.201-1 The two councils.

(b) The SPE is responsible for providing a DOT representative to the Civilian Agency Acquisition Council.

(d) The Office of Acquisition and Grant Management is responsible for Departmentwide review and coordination of cases containing proposed FAR revisions, as necessary, approval of DOT-generated cases, and submission of cases to the Civilian Agency Acquisition Council.

## Subpart 1201.3—Agency Acquisition Regulations

### 1201.301 Policy.

(a) (1) *Acquisition regulations*—(i) *Departmentwide acquisition regulations.* The authority of the agency head under (FAR) 48 CFR 1.301(a)(1) is delegated to the Assistant Secretary for Administration.

(ii) *Operating administration acquisition regulations.* Operating administration acquisition regulations, and any changes thereto, shall be reviewed and approved by the SPE for insertion into the TAR as a TAR supplemental regu-

lation before the SPE submits the proposed coverage for publication in the FEDERAL REGISTER in accordance with (FAR) 48 CFR 1.501. Operating administration regulations may be more restrictive or require higher approval levels than those permitted by (TAR) 48 CFR chapter 12 unless specified otherwise.

### 1201.301-70 Amendment of (TAR) 48 CFR chapter 12.

(a) Changes to the regulation may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. These changes are to be submitted in the following format to the Office of Acquisition and Grant Management, 400 7th Street, S.W., Washington, DC 20590:

(1) *Problem:* Succinctly state the problems created by current TAR language and describe the factual and/or legal reasons necessitating regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language and lining through the words being deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Point of contact:* Provide a point of contact for answering questions regarding the recommendation.

(b) The TAR will be maintained by the SPE through the TAR/TAM change process (i.e., representatives from DOT operating administrations specifically designated to formulate Departmental acquisition policies and procedures).

(1) *Transportation Acquisition Circular (TAC).* TACs containing loose-leaf replacement pages which revise parts, subparts, or paragraphs (also see (TAR) 48 CFR 1201.301-72 below) will be used to amend (TAR) 48 CFR chapter 12. Each replacement page will bear at the

top the TAC number and date. A vertical bar next to the coverage indicates that a change has been made.

(2) *TAR Notice (TN)*. (i) TNs shall be issued when interim guidance is necessary and as often as may be necessary, under any of the following circumstances:

(A) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a TAC issuance;

(B) To disseminate other acquisition related information; or

(C) To issue guidance which is expected to be effective for a period of 1 year or less.

(ii) Each TN will terminate upon its specified expiration date.

[59 FR 40270, Aug. 8, 1994, as amended at 62 FR 26419, May 14, 1997]

#### **1201.301-71 Effective date.**

Unless otherwise stated, the following applies—

(a) Statements in TACs or TNs to the effect that the material therein is “effective upon receipt,” “upon a specified date,” or that changes set forth in the document are “to be used upon receipt,” mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts or modifications issued thereafter; and

(b) Unless expressly directed by statute or regulation, if solicitations are already in process or negotiations complete when the TAC or TN is received, the new information (e.g., forms and clauses) need not be included if it is determined by the chief of the contracting office that its inclusion would not be in the best interest of the Government.

#### **1201.301-72 TAC or TN numbering.**

TACs and TNs will be numbered consecutively on a fiscal year basis beginning with number “01” prefixed by the last two digits of the fiscal year (e.g., TNs 94-01 and 94-02 indicate the first two TNs issued in fiscal year 1994).

#### **1201.304 Agency control and compliance procedures.**

(a) DOT shall control the proliferation of acquisition regulations and any revisions thereto (except as noted in

paragraph (b) of this section) by using an internal TAR change process that involves input from many DOT elements including operating administration representatives on the Procurement Management Council. The operating administration member shall represent their operating administration's viewpoint along with Departmentwide considerations in reaching a decision on TAR changes.

(b) Operating administration-unique regulations will not be processed through the TAR Council System, but shall be reviewed by operating administration legal counsel and submitted to M-60 for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

[59 FR 40270, Aug. 8, 1994, as amended at 62 FR 26420, May 14, 1997]

### **Subpart 1201.470—Deviations From the FAR and TAR**

#### **1201.403 Individual deviations.**

The authority of the agency head under (FAR) 48 CFR 1.403 and (TAR) 48 CFR chapter 12 is delegated to the Head of the Contracting Activity or designee no lower than Senior Executive Service (SES)/Flag Officer level. However, see Transportation Acquisition Manual (TAM) 1201.403. The TAM is available through the Government Printing Office.

[61 FR 50249, Sept. 25, 1996]

#### **1201.404 Class deviations.**

Class deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Senior Procurement Executive unless (FAR) 48 CFR 1.405(e) is applicable.

### **Subpart 1201.6—Career Development, Contracting Authority and Responsibilities**

#### **1201.602-3 Ratification of unauthorized commitments.**

(b) *Policy*. It is the policy of DOT that all procurements are to be made only by Government officials having authority to make such acquisitions. Procurements made by other than authorized

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personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Consideration will be given to initiating disciplinary action against an employee who makes an unauthorized commitment.

### 1201.603-1 General.

Each DOT operating administration is responsible for appointing its contracting officers.

## PART 1202—DEFINITIONS OF WORDS AND TERMS

### Subpart 1202.1—Definitions

Sec.

1202.1 Definitions.

### Subpart 1202.70—Internet Links

1202.7000 General.

APPENDIX A TO PART 1202—LIST OF INTERNET ADDRESSES FOR TAR DOCUMENTS

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1202.1—Definitions

#### 1202.1 Definitions.

(a) *Agency, Federal agency, or Executive agency* means the Department of Transportation.

(b) *Chief Information Officer (CIO)* means the Director of the Office of the CIO (S-80).

(c) *Chief of the contracting office (COCO)* means the individual(s) responsible for managing the contracting office(s) within an operating administration.

(d) *Contracting activity* includes all the contracting offices within an operating administration and is the same as the term “procuring activity.”

(e) *Contracting officer* means an individual authorized by virtue of his/her position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Transportation Acquisition Regulation.

(f) *Department of Transportation (DOT)* means all of the operating administrations included within the Department of Transportation.

(g) *Head of the agency or agency head* means the Deputy Secretary except for

acquisition actions that, by the terms of a statute or delegation, must be done specifically by the Secretary of Transportation.

(h) *Head of the contracting activity (HCA)* means the individual responsible for managing the contracting offices within an operating administration who is a member of the Senior Executive Service or a flag officer and is the same as the term “head of the procuring activity.”

(i) *Head of the operating administration (HOA)* means the individual appointed by the President to manage the operating administration. (For acquisition related matters, the Director, Transportation Administrative Service Center (TASC) is the HOA for TASC.)

(j) *Operating administration (OA)* means the following components of DOT:

(1) Federal Aviation Administration (FAA). (FAA is exempt from the TAR (48 CFR chapter 12) and TAM in accordance with the “Department of Transportation and Related Appropriations Act for FY 1996”);

(2) Federal Highway Administration (FHWA);

(3) Federal Railroad Administration (FRA);

(4) Federal Transit Administration (FTA);

(5) Maritime Administration (MARAD);

(6) National Highway Traffic Safety Administration (NHTSA);

(7) Transportation Administrative Service Center (TASC);

(8) Research and Special Programs Administration (RSPA);

(9) Saint Lawrence Seaway Development Corporation (SLSDC); and

(10) United States Coast Guard (USCG).

(k) *Senior Procurement Executive (SPE)* means the Director of the Office of Acquisition and Grant Management (M-60).

[59 FR 40272, Aug. 8, 1994, as amended at 61 FR 50249, Sept. 25, 1996; 62 FR 26420, May 14, 1997; 62 FR 67750, Dec. 30, 1997]

### Subpart 1202.70—Internet Links

#### § 1202.7000 General.

Throughout the (TAR) 48 CFR chapter 12, referenced documents which can

be found on the internet will cite the applicable internet address. These ad-

resses are located in Appendix A of this part.

[62 FR 67750, Dec. 30, 1997]

APPENDIX A TO PART 1202.—LIST OF INTERNET ADDRESSES FOR TAR DOCUMENTS

TAR part	Document name	Internet address
1201 .....	TAR .....	<a href="http://www.dot.gov/ost/m60/tamtar/part1201.htm">http://www.dot.gov/ost/m60/tamtar/part1201.htm</a>
1205 .....	TAC .....	<a href="http://www.dot.gov/ost/m60/tamtar/part1201.htm">http://www.dot.gov/ost/m60/tamtar/part1201.htm</a>
1234 .....	DOT Procurement Forecast .....	<a href="http://osdbuweb.dot.gov/consolic.htm">http://osdbuweb.dot.gov/consolic.htm</a>
	Major Acquisition Policies and Procedures.	<a href="http://www.dot.gov/ost/m60/tamtar/chap1234.htm">http://www.dot.gov/ost/m60/tamtar/chap1234.htm</a>

[62 FR 67750, Dec. 30, 1997]

**PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**Subpart 1203.1—Safeguards**

1203.101–3 Agency regulations.

1203.104–11 Criminal and civil penalties, and further administrative remedies.

**Subpart 1203.2—Contractor Gratuities to Government Personnel**

1203.203 Reporting suspected violations of the Gratuities clause.

1203.204 Treatment of violations.

**Subpart 1203.3—Reports of Suspected Antitrust Violations**

1203.301 General.

**Subpart 1203.4—Contingent Fees**

1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

**Subpart 1203.5—Other Improper Business Practices**

1203.502 Subcontractor kickbacks.

1203.502–2 General.

**Subpart 1203.8—Limitation on the Payment of Funds to Influence Federal Transactions**

1203.806 Processing suspected violations.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40273, Aug. 8, 1994, unless otherwise noted.

**Subpart 1203.1—Safeguards**

**1203.101–3 Agency regulations.**

(b) 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Ex-

ecutive Branch, supersedes the DOT regulation at 49 CFR part 99.

**1203.104–11 Criminal and civil penalties, and further administrative remedies.**

(a) The COCO is the reviewing official for processing violations.

(1) When the contracting officer receives information of a violation or possible violation, and concludes that the reported violation or possible violation of the statutory prohibitions has no impact on the pending procurement, the contracting officer shall forward the information required by (FAR) 48 CFR 3.104–11(a)(1) to the COCO for concurrence with the contracting officer's conclusion. If the COCO concurs with the conclusion, the contracting officer shall proceed with the award, and the COCO shall submit the information and conclusion to the HCA.

(2) When the COCO does not concur with the conclusion of the contracting officer, the COCO shall advise the contracting officer to withhold award, and the COCO shall promptly forward the information and documentation to the HCA.

(3) When the contracting officer determines that the information concerning a violation or possible violation will impact the pending procurement, the contracting officer shall promptly forward the information and documentation to the HCA.

(b) The HCA shall review the information transmitted in accordance with subparagraph (a)(1) through (a)(3) of this section and take appropriate action, as required by (FAR) 48 CFR 3.104–11(b).

(c) If the HCA believes that a violation has occurred and the information should be disclosed to a criminal investigative agency (e.g., the Department of Justice) or that there may be a possible violation, and an investigation should be conducted, the HCA shall obtain guidance from legal counsel and the OIG prior to taking any action. If the HCA, pursuant to (FAR) 48 CFR 3.104-11(f), determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, a memorandum of the facts and circumstances shall be signed by the HCA and placed in the contract file.

#### **Subpart 1203.2—Contractor Gratuities to Government Personnel**

##### **1203.203 Reporting suspected violations of the Gratuities clause.**

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(b) The person reporting the violation and witnesses (if any) should be requested to sign and date the information certifying that the information furnished is true and correct.

(c) The COCO shall report suspected violations to the Office of the Inspector General (OIG) (J-1), 400 7th Street, S.W., Washington, DC, 20590, with a copy to General Counsel (C-1) and the OA's Chief Counsel.

##### **1203.204 Treatment of violations.**

(a) The authority of the agency head established in (FAR) 48 CFR 3.204(a), to determine whether a gratuities clause violation has occurred, has been delegated to the HCA. If the decision maker pursuant to this delegation has been personally and substantially involved in the procurement, the advice of Government legal counsel should be sought to determine whether an alternate decision maker should be designated.

(b) The COCO shall ensure that the hearing procedures required by FAR 3.204 are afforded to the contractor. Government legal counsel should be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the alleged gratuities violation occurs during the "conduct of an agency procurement" as defined by (FAR) 48 CFR 3.104-4(c)(1), the COCO shall consult with Government legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation and/or the Gratuities violation.

#### **Subpart 1203.3—Reports of Suspected Antitrust Violations**

##### **1203.301 General.**

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except suspected antitrust violations shall be reported through legal counsel in accordance with (FAR) 48 CFR 3.303.

#### **Subpart 1203.4—Contingent Fees**

##### **1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for misrepresentation or violations of the covenant against contingent fees.

[59 FR 40273, Aug. 8, 1994. Redesignated at 62 FR 26420, May 14, 1997]

### Subpart 1203.5—Other Improper Business Practices

#### 1203.502 Subcontractor kickbacks.

##### 1203.502-2 General.

(g) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for subcontractor kickbacks.

### Subpart 1203.8—Limitation on the Payment of Funds to Influence Federal Transactions

#### 1203.806 Processing suspected violations.

Contracting officers shall report, in accordance with OA procedures, suspected violations of the requirements of 31 U.S.C. 1352 to the Assistant Inspector General for Investigations (JI-1), 400 Seventh Street, S.W., Washington, DC, 20590.

## PART 1204—ADMINISTRATIVE MATTERS

### Subpart 1204.1—Contract Execution

#### 1204.103 Contract clause.

#### Subpart 1204.8—Contract Files

##### 1204.804 Closeout of contract files.

##### 1204.804-1 Closeout by the office administering the contract.

##### 1204.804-5 Detailed procedures for closing out contract files.

##### 1204.804-570 Supporting closeout documents.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40274, Aug. 8, 1994, unless otherwise noted.

### Subpart 1204.1—Contract Execution

#### 1204.103 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.204-1, Approval of Contract, filled in as appropriate, in solicitations when approval to award the resulting contract must be obtained from an official at a level above the contracting officer.

### Subpart 1204.8—Contract Files

#### 1204.804 Closeout of contract files.

##### 1204.804-1 Closeout by the office administering the contract.

(b) If the contracting officer determines appropriate, the quick closeout procedures under (FAR) 48 CFR 42.708 may be used for the settlement of indirect costs under contracts when the estimated amount (excluding any fixed fee) of the contract is \$3 million or less.

##### 1204.804-5 Detailed procedures for closing out contract files.

##### 1204.804-570 Supporting closeout documents.

(a) When applicable (see parenthetical examples in this paragraph) and prior to contract closure, the contracting officer shall obtain the listed DOT and Department of Defense (DOD) forms from the contractor to facilitate contract closeout.

(1) Form DOT F 4220.4, Contractor's Release (e.g., see (FAR) 48 CFR 52.216-7);

(2) Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (e.g., see (FAR) 48 CFR 52.216-7);

(3) Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804-5(a)(13); and

(4) DD Form 882, Report of Inventions and Subcontracts (e.g., see (FAR) 48 CFR 52.227-14).

(b) The forms (See (TAR) 48 CFR part 1253) are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. However, the forms may also be used for closeout of other contract types or when necessary to protect the Government's interest.

## PART 1205—PUBLICIZING CONTRACT ACTIONS

### Subpart 1205.1—Dissemination of Information

Sec.

1205.101 Methods of disseminating information.



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### Subpart 1205.4—Release of Information

1205.402 General public.

### Subpart 1205.90—Publicizing Contract Actions For Personal Services Contracting

1205.9000 Applicability. (USCG)

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1205.1—Dissemination of Information

#### 1205.101 Methods of disseminating information.

(a)(2)(iii) Contracting officers shall post solicitations expected to exceed \$25,000, if required in OA procedures.

(b) DOT publishes a Procurement Forecast of planned procurements each fiscal year, which is available from the DOT Office of Small and Disadvantaged Business Utilization (S-40), 400 Seventh Street, S.W., Washington, DC, 20590.

[59 FR 40274, Aug. 8, 1994, as amended at 61 FR 50249, Sept. 25, 1996]

### Subpart 1205.4—Release of Information

#### 1205.402 General public.

It is DOT policy to furnish to the general public, upon request, the following information on proposed contracts and contract awards:

(a) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms invited to submit sealed bids or proposals;

(b) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms which attended pre-proposal or pre-bid conferences, when held;

(c) After the opening of sealed bids, names of firms which submitted bids; and

(d) After contract award, the names of firms which submitted proposals.

Requests for other specific information shall be processed in accordance with the DOT Freedom of Information Act rules and regulations ((TAR) 48 CFR 1224.202).

[59 FR 40274, Aug. 8, 1994]

1206.9000

### Subpart 1205.90—Publicizing Contract Actions For Personal Services Contracting

#### 1205.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104-91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104-106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the requirements of (FAR) 48 CFR part 5.

[62 FR 67750, Dec. 30, 1997]

## PART 1206—COMPETITION REQUIREMENTS

### Subpart 1206.5—Competition Advocates

Sec.

1206.501 Requirement.

### Subpart 1206.90—Competition Requirements for Personal Services Contracting

1206.9000 Applicability. (USCG)

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1206.5—Competition Advocates

#### 1206.501 Requirement.

The DOT Senior Competition Advocate (SCA) is located in the Office of the Assistant Secretary for Administration. Correspondence may be sent directly to M-60.

[59 FR 40274, Aug. 8, 1994]

### Subpart 1206.90—Competition Requirements for Personal Services Contracting

#### 1206.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104-91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104-106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR part 6.

[62 FR 67751, Dec. 30, 1997]

## PART 1207—ACQUISITION PLANNING

### Subpart 1207.3—Contractor Versus Government Performance

Sec.

1207.302 General.

1207.307 Appeals.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1207.3—Contractor Versus Government Performance

#### 1207.302 General.

Procedures for DOT's implementation of OMB Circular A-76, Performance of Commercial Activities, and (FAR) 48 CFR 7.3 are found in DOT Order 4400.2 series, Performance of Commercial Activities.

[59 FR 40275, Aug. 8, 1994]

#### 1207.307 Appeals.

DOT appeal procedures for informal administrative review of initial cost-comparison results are contained in DOT Order 4400.2 series.

[59 FR 40275, Aug. 8, 1994]

## PART 1209—CONTRACTOR QUALIFICATIONS

### Subpart 1209.4—Debarment, Suspension, and Ineligibility

Sec.

1209.408–70 Denial of funds.

### Subpart 1209.5—Organizational Conflicts of Interest

1209.507 Solicitation provisions.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40275, Aug. 8, 1994, unless otherwise noted.

### Subpart 1209.4—Debarment, Suspension, and Ineligibility

#### 1209.408–70 Denial of funds.

(a) In accordance with Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and Section 206 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), no funds available under appropriations acts for any fiscal year for DOT may (with respect to recruiting) be provided by contract to any institution of higher education that has a policy or practice, regardless of when implemented, that either prohibits or in effect prevents the Secretary of Defense from obtaining for military recruiting purposes:

(1) Entry to campuses or access to students on campuses; or

(2) Access to directory information on students.

(b) Directory information means the student's name, address, telephone listing, date and place of birth, level of education, academic major, degrees received, and the most recent educational institution in which the student was enrolled.

(c) Students referred to in paragraph (a)(1) of this section are individuals who are 17 years of age or older and are enrolled at a covered school.

(d) Covered school means an institution of higher education, or a subelement of an institution of higher education.

[62 FR 67751, Dec. 30, 1997]

### Subpart 1209.5—Organizational Conflicts of Interest

#### 1209.507 Solicitation provisions.

The contracting officer may insert the provision at (TAR) 48 CFR 1252.209–70, “Disclosure of Conflicts of Interest” in all solicitations for negotiated acquisitions, when simplified acquisitions procedures in (FAR) 48 CFR Part

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1211.204-90

13, are not used and when the contracting officer believes the conditions enumerated in (FAR) 48 CFR 9.507-2 warrant inclusion.

[61 FR 50249, Sept. 25, 1996]

### **PART 1210—MARKET RESEARCH [RESERVED]**

### **PART 1211—DESCRIBING AGENCY NEEDS**

Sec.

#### **Subpart 1211.1—Selecting and Developing Requirements Documents**

1211.104 Items peculiar to one manufacturer.

1211.104-70 Offer evaluation and award, brand name or equal descriptions.

#### **Subpart 1211.2—Using and Maintaining Requirements Documents**

1211.204-70 Solicitation provisions and contract clauses.

1211.204-90 Solicitation provision and contract clause (USCG).

#### **Subpart 1211.6—Priorities and Allocations**

1211.602 General.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 61 FR 50249, Sept. 25, 1996, unless otherwise noted.

#### **Subpart 1211.1—Selecting and Developing Requirements Documents**

SOURCE: 62 FR 26420, May 14, 1997, unless otherwise noted.

##### **1211.104 Items peculiar to one manufacturer.**

##### **1211.104-70 Offer evaluation and award, brand name or equal descriptions.**

(a) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation may be defective and need to be

amended or the requirement resolicited.

(b) The contracting officer shall insert in the solicitation an entry substantially as follows for completion by the offeror in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies:

Offering on:

Manufacturer's Name:

Brand:

No:

(c) Except when bid samples are requested for brand name or equal procurements, the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this note:

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to the equality of the product(s) offered (see the provision at (TAR) 48 CFR 1252.211-70, Brand Name or Equal).

#### **Subpart 1211.2—Using and Main- taining Requirements Docu- ments**

##### **1211.204-70 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.211-70, Brand Name or Equal, in solicitations using a brand name or equal purchase description whenever practicable.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.211.71, Index for Specifications, when an index or table of contents may be furnished with the specification.

[62 FR 26420, May 14, 1997]

##### **1211.204-90 Solicitation provision and contract clause (USCG).**

(a) The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.211-90, Bar Coding Requirement

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(also see (TAR) 48 CFR 1213.507-90(a)) when the bar coding of supplies is necessary for the USCG.

(b) See (TAR) 48 CFR 1213.507-90 for a provision which is required when the USCG clause at (TAR) 48 CFR 1252.211-90, Bar Coding Requirement, is used with simplified acquisition procedures.

### Subpart 1211.6—Priorities and Allocations

#### 1211.602 General.

(c) The USCG is the only DOT OA delegated authority under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700) to assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services in support of USCG certified national defense related programs.

## PART 1212—ACQUISITION OF COMMERCIAL ITEMS [RESERVED]

## PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

### Subpart 1213.1—General

1213.107-90 Solicitation provision (supplies). (USCG)

### Subpart 1213.5—Purchase Orders

1213.507-90 Clauses. (USCG)

### Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

1213.7100 Applicability.

1213.7101 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1213.1—General

#### 1213.107-90 Solicitation provision (supplies). (USCG)

The contracting officer shall insert the USCG provision at (TAR) 48 CFR 1252.213-90, Evaluation Factor for Coast Guard Performance of Bar Coding Requirement, in requests for quotations when the USCG clause at (TAR) 48 CFR 1252.211-90, Bar Coding Requirement, is

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used with simplified acquisition procedures.

[59 FR 40276, Aug. 8, 1994, as amended at 61 FR 50249, Sept. 25, 1996]

### Subpart 1213.5—Purchase Orders

#### 1213.507-90 Clauses. (USCG)

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.211-90, Bar Coding Requirement, in requests for quotations and purchase orders issued by the Inventory Control Points when bar coding of supplies is necessary.

[59 FR 40276, Aug. 8, 1994, as amended at 61 FR 50249, Sept. 25, 1996]

### Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

SOURCE: 61 FR 391, Jan. 5, 1996, unless otherwise noted.

#### 1213.7100 Applicability.

(a) DOT policy at (TAR) 48 CFR 1237.7000 also applies to the Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by the Government purchase/credit card. The Government purchase/credit card can only be used to acquire training services valued at \$2,500 or less.

(b) As reflected in (TAR) 48 CFR 1237.7002, this policy does not apply to training attended by DOT employees which is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one week course at a university or other private entity, the policy does not apply. DOT does not control this course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

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(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course; therefore, no soliciting or advertising of private, non-Government training while conducting the contracted-for training is permitted.

### **1213.7101 Solicitation provision and contract clause.**

(a) Contracting officers shall insert the provision at (TAR) 48 CFR 1252.237-71, Certification of Data, in all solicitations and requests for quotations, and the clause at (TAR) 48 CFR 1252.237-72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (e.g., purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as résumés, company and/or personnel qualifications) to reliably describe the certified data submitted.

## **PART 1214—SEALED BIDDING**

### **Subpart 1214.2—Solicitation of Bids**

1214.205 Solicitation mailing lists.  
1214.205-1 Establishment of lists.

### **Subpart 1214.3—Submission of Bids**

1214.302 Bid submission.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40276, Aug. 8, 1994, unless otherwise noted.

### **Subpart 1214.2—Solicitation of Bids**

#### **1214.205 Solicitation mailing lists.**

##### **1214.205-1 Establishment of lists.**

(b) The issuance of a solicitation within a reasonable time (i.e., normally 45 days) after receipt of a SF 129, Solicitation Mailing List Application, constitutes the notification required

under (FAR) 48 CFR 14.205-1. If a solicitation is not anticipated for release within a reasonable time after receipt of the SF 129 or if an applicant does not meet the criteria for placement on the list, the contracting officer shall provide a written notification of acceptance or non-acceptance to the applicant within 45 days of application receipt.

(d) Requests for supplemental information shall normally be attached to the SF 129 and forwarded to potential suppliers for completion.

### **Subpart 1214.3—Submission of Bids**

#### **1214.302 Bid submission.**

(b) Contracting officers may permit telegraphic bids to be communicated by means of a telephone call from the telegraph office to the designated office provided that procedures and controls have been established by the COCO for receiving and safeguarding these incoming bids.

## **PART 1215—CONTRACTING BY NEGOTIATION**

### **Subpart 1215.1—General Requirements for Negotiation**

1215.106 Contract clauses.

### **Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations**

1215.413 Disclosure and use of information before award.

1215.413-1 Alternate I.

1215.413-2 Alternate II.

### **Subpart 1215.6—Source Selection**

1215.612 Formal source selection.

### **Subpart 1215.8—Price Negotiation**

1215.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

### **Subpart 1215.9—Profit**

1215.970 Payment of profit or fee under contracts.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40276, Aug. 8, 1994, unless otherwise noted.

### Subpart 1215.1—General Requirements for Negotiation

#### 1215.106 Contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.215–70, Key Personnel and/or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel and/or facilities.

### Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

#### 1215.413 Disclosure and use of information before award.

##### 1215.413–1 Alternate I.

The alternate procedures at (FAR) 48 CFR 15.413–2 shall be used in lieu of the alternate procedures prescribed at (FAR) 48 CFR 15.413–1.

##### 1215.413–2 Alternate II.

(e) The notice at (FAR) 48 CFR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. The cite(s) under the first paragraph of the notice shall include, as a minimum, (TAR) 48 CFR 1215.413–2(f) and the cite of any OA implementing procedures.

(f) Proposals may be released outside of the Government if it is necessary to receive competent technical and/or management evaluation as long as the requirements of (FAR) 48 CFR 15.413–2(f) are met.

[59 FR 40276, Aug. 8, 1994, as amended at 60 FR 55802, Nov. 3, 1995]

### Subpart 1215.6—Source Selection

#### 1215.612 Formal source selection.

DOT's formal source selection procedures are contained in TAM (Transportation Acquisition Manual which is stocked by the Government Printing Office), Chapter 1215, Appendix A.

### Subpart 1215.8—Price Negotiation

#### 1215.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

The contracting officer may require the submission of DOT Form 4220.44, Contract Pricing Summary, when submitting a proposal that requires a SF 1411.

[59 FR 40276, Aug. 8, 1994, as amended at 61 FR 50249, Sept. 25, 1996]

### Subpart 1215.9—Profit

#### 1215.970 Payment of profit or fee under contracts.

Profit or fee shall only be paid on definitized contracts and modifications. Any profit or fee earned during the undefinitized period shall be paid once the contract and/or modification, as applicable, is definitized.

## PART 1216—TYPES OF CONTRACTS

### Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203–4 Contract clauses.

1216.203–470 Solicitation provision.

### Subpart 1216.4—Incentive Contracts

1216.406 Contract clauses.

### Subpart 1216.5—Indefinite-Delivery Contracts

1216.505 Ordering.

### Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–4 Contract clauses.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40277, Aug. 8, 1994, unless otherwise noted.

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**Subpart 1216.2—Fixed-Price  
Contracts**

**1216.203 Fixed-price contracts with  
economic price adjustment.**

**1216.203-4 Contract clauses.**

**1216.203-470 Solicitation provision.**

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.216-70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

**Subpart 1216.4—Incentive  
Contracts**

**1216.406 Contract clauses.**

(e)(1)(i) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-71, Determination of Award Fee, in all cost-plus-award-fee solicitations and contracts.

(ii) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-72, Performance Evaluation Plan, in all cost-plus-award-fee solicitations and contracts.

(iii) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-73, Distribution of Award Fee, in all cost-plus-award-fee solicitations and contracts.

[59 FR 40277, Aug. 8, 1994. Redesignated and amended at 62 FR 67751, Dec. 30, 1997]

**Subpart 1216.5—Indefinite-  
Delivery Contracts**

**1216.505 Ordering.**

(b)(4) Unless otherwise provided in OA procedures, the OA Competition Advocate is designated as the OA Task and Delivery Order Ombudsman.

(i) If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the OA Ombudsman shall provide a written determination of such action to the contracting officer.

(ii) Issues that cannot be resolved within the OA, are to be forwarded to the DOT Task and Delivery Order Ombudsman for review and resolution.

[61 FR 50249, Sept. 25, 1996]

**Subpart 1216.6—Time-and-Mate-  
rials, Labor-Hour, and Letter  
Contracts**

**1216.603 Letter contracts.**

**1216.603-4 Contract clause.**

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216-74, Settlement of Letter Contract, in all definitized letter contracts.

**PART 1217—SPECIAL  
CONTRACTING METHODS**

**Subpart 1217.70—Fixed Price Contracts for  
Vessel Repair, Alteration or Conversion**

1217.7000 Clauses.

**Subpart 1217.71—Energy Savings  
Performance Contracts**

1217.7100 Policy.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40277, Aug. 8, 1994, unless otherwise noted.

**Subpart 1217.70—Fixed Price Con-  
tracts for Vessel Repair, Alter-  
ation or Conversion**

**1217.7000 Clauses.**

The following clauses are to be used in specific solicitations and contracts:

(a) The clauses set forth in (TAR) 48 CFR 1252.217-71 through (TAR) 48 CFR 1252.217-74 and (TAR) 48 CFR 1252.217-76 through (TAR) 48 CFR 1252.217-80 shall be included and clause (TAR) 48 CFR 1252.217-75 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico.

(b) Unless inappropriate, the clauses set forth in (TAR) 48 CFR 1252.217-71 through (TAR) 48 CFR 1252.217-74 and (TAR) 48 CFR 1252.217-76 through (TAR) 48 CFR 1252.217-80 should be included and (TAR) 48 CFR 1252.217-75 may be included in negotiated solicitations and contracts to be performed outside the United States.

(c) The clause at (TAR) 48 CFR 1252.217-81, Guarantee, shall be used where general guarantee provisions are

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deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (TAR) 48 CFR 1252.217-81, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (TAR) 48 CFR 1252.217-81, Guarantee.

### **Subpart 1217.71—Energy Savings Performance Contracts**

#### **1217.7100 Policy.**

Federal agencies may enter into multi-year contracts for a period of up to 25 years under Title VIII of the National Energy Conservation Policy Act, 42 U.S.C. 8287, as amended. Energy savings performance arrangements are appropriate where a contractor makes improvements and/or operating changes to Federally-owned buildings and facilities to improve energy efficiency, at no cost to the Federal Government in exchange for a share of energy savings directly resulting from the changes. Proposed actions under this section shall be coordinated with M-60.

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### **PART 1219—SMALL BUSINESS PROGRAMS**

#### **Subpart 1219.2—Policies**

1219.201 General policy.

#### **Subpart 1219.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns**

1219.708 Solicitation provisions and contract clauses.

1219.708-70 DOT solicitation and contract clause.

#### **Subpart 1219.10—Small Business Competitiveness Demonstration Program**

1219.1005 Applicability.

1219.1006 Procedures.

Appendix A to Subpart 1219.10

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40278, Aug. 8, 1994, unless otherwise noted.

#### **Subpart 1219.2—Policies**

##### **1219.201 General policy.**

(c) The Director, Office of Small and Disadvantaged Business Utilization (S-40), is responsible for the implementation and execution of the small and small disadvantaged business programs required by sections 8 and 15 of the Small Business Act.

[59 FR 40278, Aug. 8, 1994, as amended at 61 FR 50249, Sept. 25, 1996]

#### **Subpart 1219.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns**

**1219.708 Solicitation provisions and contract clauses.**

**1219.708-70 DOT solicitation and contract clause.**

The contracting officer shall insert the clause at 1252.219-70, Small Business and Small Disadvantaged Business Subcontracting Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219-9.



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### Subpart 1219.10—Small Business Competitiveness Demonstration Program

#### 1219.1005 Applicability.

(b) *Targeted industry categories.* DOT's targeted industry categories are shown in appendix A.

#### 1219.1006 Procedures.

(c) *Emerging small business set-aside.* The Office of Federal Procurement Policy published a notice in the FEDERAL REGISTER, dated September 13, 1991, that increased the emerging small business reserve amount for Architect-Engineer (A-E) services from \$25,000 to \$50,000. Therefore, A-E services below \$50,000 are reserved for emerging small businesses, if the conditions of (FAR) 48 CFR 19.1006(c)(1) are met.

#### APPENDIX A TO SUBPART 1219.10

Targeted industry categories <sup>1</sup>	FPDS product and service code
(1) Engineering Development .....	AT94
(2) Systems Engineering Services (Only) ....	R414
(3) Radio/TV Communication Equipment (except airborne).	5820
(4) Maintenance, Repair, and Rebuilding of engines, turbines, components and weapons equipment.	J028/J010
(5) ADP Central Processing Units:	
Analog .....	7020
Digital .....	7021
Hybrid .....	7022
(6) ADP Support Equipment .....	7035
(7) ADP Components .....	7050
(8) ADP Development Services and ADP Teleprocessing and Timesharing Services.	D302/D305
(9) Gas Turbines and Jet Engines, Aircraft; and Components.	2840
(10) Radar Equipment (except airborne) and Navigation and Navigational Aids (basic research).	5840/AT31

<sup>1</sup>The industry categories were derived from Federal Procurement Data System Product and Service Codes Manual.

[59 FR 40278, Aug. 8, 1994. Redesignated and amended at 61 FR 50250, Sept. 25, 1996]

## PART 1220—LABOR SURPLUS AREA CONTRACTING

### Subpart 1220.90—Local Hire

#### 1220.9000 Policy. (USCG)

#### 1220.9001 Solicitation provision and contract clause. (USCG)

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1220.90—Local Hire

#### 1220.9000 Policy. (USCG)

Pub. L. 101-225, Coast Guard Authorization Act of 1989, Section 206, added Section 666 to Title 14 of the United States Code, which requires the U.S. Coast Guard to include a provision for local hire in each contract for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor). The Secretary of Transportation may waive this requirement in the interest of national security or economic efficiency.

[59 FR 40278, Aug. 8, 1994]

#### 1220.9001 Solicitation provision and contract clause. (USCG)

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.220-90, Local Hire Provision, in all solicitations and contracts as required by (TAR) 48 CFR 1220.9000.

[59 FR 40278, Aug. 8, 1994]

## PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 1222.1—Basic Labor Policies

#### 1222.101 Labor relations.

1222.101-70 Admittance of union representatives to DOT installations.

1222.101-71 Contract clauses.

### Subpart 1222.4—Labor Standards for Contracts Involving Construction

#### 1222.406 Administration and enforcement.

1222.406-9 Withholding from or suspension of contract payments.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40279, Aug. 8, 1994, unless otherwise noted.

1222.101

**Subpart 1222.1—Basic Labor Policies**

**1222.101 Labor relations.**

**1222.101-70 Admittance of union representatives to DOT installations.**

(a) It is the policy of DOT to admit labor union representatives of contractor employees to DOT installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DOT contract nor violate the safety or security regulations that may be applicable to persons visiting the installation. The union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DOT labor coordinator (i.e., Director, Office of Economics (P-35), Office of the Secretary) or OA labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

**1222.101-71 Contract clauses.**

(a) The contracting officer, may, when applicable, insert the clause at (TAR) 48 CFR 1252.222-70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (TAR) 48 CFR 1252.222-71, Strikes or Picketing Affecting Access to a DOT Facility, in solicitations and contracts.

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**Subpart 1222.4—Labor Standards for Contracts Involving Construction**

**1222.406 Administration and enforcement.**

**1222.406-9 Withholding from or suspension of contract payments.**

(c) *Disposition of contract payments withheld or suspended.* (1) *Forwarding wage underpayments to the Comptroller General.* The contracting officer shall ensure that a completed Form DOT F 4220.7, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) must receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

**PART 1223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**Subpart 1223.3—Hazardous Material Identification and Material Safety Data**

1223.303 Contract clause.

**Subpart 1223.70—Safety Requirements for Selected DOT Contracts**

1223.7000 Contract clauses.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

**Subpart 1223.3—Hazardous Material Identification and Material Safety Data**

**1223.303 Contract clause.**

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.223-70,

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1224.203

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

[59 FR 40279, Aug. 8, 1994]

### Subpart 1223.70—Safety Requirements for Selected DOT Contracts

#### 1223.7000 Contract clauses.

(a) Where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223-71, Accident and Fire Reporting.

(b) For all solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223-72, Protection of Human Subjects. Copies of NHTSA Orders 700-1, 700-3 and 700-4 may be obtained in writing from NHTSA, Office of Administrative Operations, Distribution Services, NAD-51, 400 Seventh Street SW., Washington, DC 20590.

[59 FR 40279, Aug. 8, 1994]

## PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 1224.1—Protection of Individual Privacy

1224.102-70 Applicability.

1224.103 Procedures.

### Subpart 1224.2—Freedom of Information Act

1224.203 Policy.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40279, Aug. 8, 1994, unless otherwise noted.

#### Subpart 1224.1—Protection of Individual Privacy

##### 1224.102-70 Applicability.

(a) Illustrations of systems of records to which the Privacy Act applies and which shall not be released irrespective of whether the Government or a con-

tractor acting on behalf of the Government is maintaining the records include the following:

(1) Personnel, payroll and background records personal to any officer or employee of DOT, or other person, including his or her residential address;

(2) Medical histories and medical records concerning individuals, including applicants for licenses; and

(3) Any other detailed record containing information identifiable with a particular person.

(b) Illustrations of systems of records to which the Privacy Act does not apply include:

(1) Records that are maintained by a contractor on individuals employed by the contractor in the process of providing goods and services to the Federal government; and

(2) The records generated, when contracting with an educational institution, on contract students pursuant to their attendance (e.g., admission forms, grade reports), provided that they are similar to those maintained under contracts with educational institutions to provide training, generated on students working under the contract relative to their attendance (e.g., admission forms, grade reports), similar to those maintained on other students and are commingled with records of other students.

#### 1224.103 Procedures.

DOT's rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR part 10.

[61 FR 50250, Sept. 25, 1996]

### Subpart 1224.2—Freedom of Information Act

#### 1224.203 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) and the names and addresses of the OA FOIA offices are located in 49 CFR part 7. Specific contract award information shall be requested from the FOIA office of the OA making the contract award.

[59 FR 40279, Aug. 8, 1994. Redesignated at 62 FR 67751, Dec. 30, 1997]

**PART 1225 [RESERVED]****PART 1227—PATENTS, DATA, AND  
COPYRIGHTS****Subpart 1227.3—Patent Rights Under  
Government Contracts**

1227.305 Administration of patent rights clauses.

1227.305-4 Conveyance of invention rights acquired by the Government.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

**Subpart 1227.3—Patent Rights  
Under Government Contracts****1227.305 Administration of patent  
rights clauses.****1227.305-4 Conveyance of invention  
rights acquired by the Government.**

The contracting officer shall ensure that solicitations and contracts which include a patent rights clause include a means for the contractor to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts.

[59 FR 40281, Aug. 8, 1994]

**PART 1228—BONDS AND  
INSURANCE****Subpart 1228.1—Bonds**

1228.106 Administration.

1228.106-1 Bonds and bond-related forms.

1228.106-6 Furnishing of information.

1228.106-70 Execution and administration of bonds.

1228-106-490 Contract clause. (USCG)

**Subpart 1228.3—Insurance**

1228.306 Insurance under fixed-price contracts.

1228.306-70 Contracts for lease of aircraft.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40281, Aug. 8, 1994, unless otherwise noted.

**Subpart 1228.1—Bonds****1228.106 Administration.****1228.106-1 Bonds and bond-related  
forms.**

(c) SF 25, Performance Bond, prescribed at (FAR) 48 CFR 28.106-1(c), must provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor. Forms other than the SF 25 (e.g., a commercial form) shall not be used by contractors when a performance bond is required.

**1228.106-6 Furnishing of information.**

(b) The contracting officer shall, upon request, furnish the name and address of the prime contractor's surety or sureties to employees, suppliers, and subcontractors having a contractual or employment relationship with prime contractors, subcontractors or suppliers. When furnishing surety information, the inquirer may also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding \$2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act for assuring proper payment to such employees.

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106-6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by his/her signature, title and name of the OA. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, 49 CFR part 7, ((TAR) 48 CFR 1224.202).

**1228.106-70 Execution and administration of bonds.**

(a) The surety shall be notified, as soon as feasible, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(d) Bonds shall be filed with the original contract to which they apply, or all bonds shall be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

**1228.106-490 Contract clause. (USCG)**

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.228-90, Notification of Miller Act Payment Bond Protection, in solicitations and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

**Subpart 1228.3—Insurance**

**1228.306 Insurance under fixed-price contracts.**

**1228.306-70 Contracts for lease of aircraft.**

(a) The contracting officer shall insert the clauses at (TAR) 48 CFR 1252.228-70 through 1252.228-72, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228-70, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

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

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

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

(c) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228-71, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) Section 504 of the Federal Aviation Act of 1958, as amended, provides that no lessor of an aircraft under a bona fide lease of 30 days or more shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of

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this coverage, the Risks and Indemnities clause at (TAR) 48 CFR 1252.228-72 prescribed in paragraph (d)(1) of this section shall be used.

(1) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228-72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft, and that at no time shall other personnel be permitted to take command of the aircraft.

**PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES**

**Subpart 1231.2—Contracts With Commercial Organizations**

1231.205 Selected costs.

1231.205-32 Precontract costs.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

**Subpart 1231.2—Contracts With Commercial Organizations**

**1231.205 Selected costs.**

**1231.205-32 Precontract costs.**

(a) The decision to incur precontract costs is that of the contractor. No DOT employee can authorize, demand, or require a contractor to incur precontract costs. The contracting officer may advise the prospective contractor that any costs incurred before contract award are at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs may not be made by the Government.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (TAR) 48 CFR 1252.231-70,

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Date of Incurrence of Costs, may be inserted in the resultant contract.

[59 FR 40282, Aug. 8, 1994]

**PART 1232—CONTRACT FINANCING**

**Subpart 1232.70—Contract Payments**

1232.7002 Invoice and voucher review and approval.

APPENDIX A TO SUBPART 1232.70—INSTRUCTIONS FOR COMPLETING THE SF 1034

APPENDIX B TO SUBPART 1232.70—INSTRUCTIONS FOR COMPLETING THE SF 1035

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40282, Aug. 8, 1994, unless otherwise noted.

**Subpart 1232.70—Contract Payments**

**1232.7002 Invoice and voucher review and approval.**

(a) Under fixed-price contracts, the contracting officer shall require the contractor to submit an invoice or voucher in order to receive payment under the contract. The invoice or voucher may be on a form or company letterhead as long as it meets the requirements of the Prompt Payment Act as implemented by OMB Circular A-125—Prompt Payment, (FAR) 48 CFR subpart 32.9, and the contract.

(b) Under other than fixed-price contracts, the contracting office shall require the contractor to submit the SF 1034, Public Voucher for Purchases and Services Other Than Personal, and the SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), to request payments. The forms must be completed as required by Appendix A, Instructions for Completing the SF 1034, and Appendix B, Instructions for Completing the SF 1035.

APPENDIX A TO SUBPART 1232.70—INSTRUCTIONS FOR COMPLETING THE SF 1034

The SF 1034, Public Voucher for Purchases and Services Other Than Personal, shall be completed in accordance with the below instructions. The lettered items correspond to the entries on the form.

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Caption on the SF 1034	Data to be Inserted in the Block
1. U.S. Department, Bureau, or establishment and location.	Name and address of the contracting office which issued the contract.
2. Date voucher prepared .....	Date voucher submitted to the designated billing office cited under the contract or order.
3. Contract no. and date .....	Contract No. and, when applicable, the Order No. and date as shown on the award document.
4. Requisition no. and date .....	Leave blank or fill-in in accordance with the instructions in the contract.
5. Voucher no. ....	Start with "1" and number consecutively. A separate series of consecutive numbers must be used beginning with "1" for each contract number or order number (when applicable). Note: Insert the word "FINAL" if this is the last voucher.
6. Schedule No.; paid by; date invoice received; discount terms; payee's account no.; shipped from/to; weight; government B/L.	Leave all these blocks blank.
7. Payee's name and address .....	Name and address of contractor as it appears on the contract. If the contract is assigned to a bank, also show "CONTRACT ASSIGNED" below the name and address of the contractor.
8. Number and date of order .....	Leave blank. (See #3 above.)
9. Date of delivery or service .....	The period for which the incurred costs are being claimed (e.g., month and year; beginning and ending date of services, etc.).
10. Articles or services .....	Insert the following: "For detail, see the total amount of the claim transferred from the attached SF 1035, page X of X." One space below this line, insert the following: "COST REIMBURSABLE-PROVISIONAL PAYMENT."
11. Quantity; unit price; (cost; per) .....	Leave blank.
12. Amount .....	Insert the total amount claimed from the last page of the SF 1035.
Payee must NOT use the space below. ....	Do NOT write or type below this line.

APPENDIX B TO SUBPART 1232.70—  
INSTRUCTIONS FOR COMPLETING THE  
SF 1035

The SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), shall be completed in accordance with the below instructions.

1. Use the same basic instructions for the SF 1035 as used for the SF 1034. Ensure that the contract and, if applicable, order number, are shown on information required by the contract, contracting officer, or cognizant audit agency; however, if more than one sheet of SF 1035 is used, each sheet shall be in numerical sequence.

2. The following items are generally entered below the line with Number and Date of Order; Date of Delivery or Service; Articles or Services; Quantity; Unit Price; and Amount (but do not necessarily tie to these captions).

3. Description of data to be inserted as it applies to the contract or order number.

a. Show, as applicable, the target or estimated costs, target or fixed-fee, and total contract value, as adjusted by any modifications to the contract or order. The FAR permits the contracting officer to withhold a percentage of fixed fee until a reserve is set aside in an amount that is considered necessary to protect the Government's interest.

b. Show the following costs and supporting data (as applicable) to the contract or order:

(1) *Direct Labor*. List each labor category, rate per labor hour, hours worked, and extended total labor dollars per labor category.

(2) *Premium Pay/Overtime*. List each labor category, rate per labor hour, hours worked,

and the extended total labor dollars per labor category. Note: Advance written authorization must be received from the contracting officer to work overtime or to pay premium rates; therefore, identify the contracting officer's written authorization to the contractor.

(3) *Fringe Benefits*. If fringe benefits are included in the overhead pool, no entry is required. If the contract allows for a separate fringe benefit pool, cite the formula (rate and base) in effect during the time the costs were incurred. If the contract allows for billing fringe benefits as a direct expense, show the actual fringe benefit costs.

(4) *Materials, Supplies, Equipment*. Show those items normally treated as direct costs. Expendable items need not be itemized and may be grouped into major classifications such as office supplies. However, items valued at \$5,000 or more must be itemized. See (FAR) 48 CFR part 45, Government Property, for reporting of property.

(5) *Travel*. List the name and title of traveler, place of travel, and travel dates. If the travel claim is based on the actual costs expended, show the amount for the mode of travel (i.e., airline, private auto, taxi, etc.), lodging, meals, and other incidental expenses separately, on a daily basis. These actual costs must be supported with receipts to substantiate the costs paid. Travel costs for consultants must be shown separately and also supported.

(6) *Other Direct Costs*. Itemize those costs that cannot be placed in categories (1) through (5) above. Categorize these costs to the extent possible.

(7) *Total Direct Costs*. Cite the sum of categories (1) through (6) above.

(8) *Overhead*. Cite the rate, base, and extended amount.

(9) *G&A Expense*. Cite the rate, base, and extended amount.

(10) *Total Costs*. Cite the sum of categories (7) through (9) above.

(11) *Fee*. Cite the rate, base, and extended amount.

(12) *Total Cost and Fee Claimed*. Enter this amount on the SF 1034.

#### COMPLETION VOUCHER

The completion (final) voucher is the last voucher to be submitted for incurred, allocable, and allowable costs expended to perform the contract or order. This voucher should include all contract reserves, allowable cost withholdings, balance of fixed fee, etc. However, the amount of the completion voucher when added to the total amount previously paid cannot exceed the total amount of the contract.

## PART 1233—PROTESTS, DISPUTES, AND APPEALS

### Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

1233.214 Alternative dispute resolution.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1233.2—Disputes and Appeals

#### 1233.211 Contracting officer's decision.

For DOT contracts, the Board of Contract Appeals (BCA) referenced at (FAR) 48 CFR 33.211 is the Department of Transportation Board of Contract Appeals (S-20), 400 7th Street, S.W., Washington, DC, 20590. The DOTBCA Rules of Procedure are contained in 48 CFR chapter 63, part 6301.

[59 FR 40283, Aug. 8, 1994]

#### 1233.214 Alternative dispute resolution.

(c) The Administrative Dispute Resolution Act (ADRA), Pub. L. 101-552, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. The DOTBCA Alternate Dispute Resolution (ADR) procedures are contained in 48 CFR chapter 63, section 6302.30, ADR Meth-

ods (Rule 30), and will be distributed to the parties, if ADR procedures are used. These procedures may be obtained from the DOTBCA upon request. ADR procedures may be used when:

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim.

(d) DOT's Dispute Resolution Specialist in accordance with the ADRA is located in the DOT Office of the General Counsel, C-1. The Dispute Resolution Specialist performs the functions set forth in the Administrative Disputes Resolution Act for DOT operating administrations on a non-reimbursable basis. The Dispute Resolution Specialist may conduct any of the alternative means of dispute resolution set forth in Title 5, U.S.C. Section 581(3), including settlement negotiations under the auspices of a settlement judge, conciliation, facilitation, mediation, fact finding, mini-trials, and arbitration, or any combination of these methods.

[59 FR 40283, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

## PART 1234—MAJOR SYSTEM ACQUISITION

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### 1234.003 Responsibilities.

DOT's internal procedures for implementing OMB Circular A-109, Major System Acquisitions, is contained in Chapter 1234, Appendix A, of the Transportation Acquisition Manual (which is stocked at the Government Printing Office).

[59 FR 40283, Aug. 8, 1994]

## PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.



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1237.110

### **1235.003 Policy.**

(b) *Cost sharing.* DOT cost sharing policies shall be in accordance with (FAR) 48 CFR 16.303, (FAR) 48 CFR 42.707(a), and OA procedures.

[59 FR 40284, Aug. 8, 1994]

## **PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

### **Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting**

1236.305 Preconstruction conference.

#### **Subpart 1236.5—Contract Clauses**

1236.570 Special precautions for work at operating airports.

#### **Subpart 1236.6—Architect-Engineer Services**

1236.602 Selection of firms for architect-engineer contracts.

1236.602-1 Selection criteria.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40284, Aug. 8, 1994, unless otherwise noted.

### **Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting**

#### **1236.305 Preconstruction conference.**

When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

#### **Subpart 1236.5—Contract Clauses**

#### **1236.570 Special precautions for work at operating airports.**

Where any acquisition will require work at an operating airport, insert the clause at (TAR) 48 CFR 1252.236-70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

### **Subpart 1236.6—Architect-Engineer Services**

#### **1236.602 Selection of firms for architect-engineer contracts.**

##### **1236.602-1 Selection criteria.**

(b) If a design competition is to be used, written approval by the COCO shall be obtained prior to soliciting proposals.

[59 FR 40284, Aug. 8, 1994, as amended at 62 FR 67751, Dec. 30, 1997]

## **PART 1237—SERVICE CONTRACTING**

### **Subpart 1237.1—Service Contracts—General**

1237.110 Solicitation provisions and contract clauses.

### **Subpart 1237.70—Department of Transportation Procedures for Acquiring Training Services**

1237.7000 Policy.

1237.7001 Certification of data.

1237.7002 Applicability.

1237.7003 Solicitation provision and contract clause.

#### **Subpart 1237.90—Mortuary Services**

1237.9000 Solicitation provisions and contract clauses. (USCG)

#### **Subpart 1237.104—Personal Services Contracts**

1237.104-90 Delegation of authority. (USCG)

1237.104-91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### **Subpart 1237.1—Service Contracts—General**

#### **1237.110 Solicitation provisions and contract clauses.**

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.237-70, Qualifications of Employees, in all solicitations and contracts for services which require contract performance at a Government facility.

[59 FR 40284, Aug. 8, 1994]

### Subpart 1237.70—Department of Transportation Procedures for Acquiring Training Services

SOURCE: 61 FR 391, Jan. 5, 1996, unless otherwise noted.

#### 1237.7000 Policy.

When training services are provided under contract to DOT, it is the policy of DOT that all prospective contractors:

- (a) Certify that the data provided concerning company qualifications, background statements, etc., is current, accurate, and complete; and
- (b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

#### 1237.7001 Certification of data.

Towards fulfilling DOT's policy at (TAR) 48 CFR 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

#### 1237.7002 Applicability.

The policy at (TAR) 48 CFR 1237.7000 applies to all DOT contracts as defined in FAR 2.101 for training services when DOT controls the content and/or presentation of the course. This policy does not apply to courses attended by DOT employees which are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation. (See (TAR) 48 CFR 1213.7100 for examples.)

#### 1237.7003 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.237-71, Certification of Data, in solicitations and the clause at (TAR) 48 CFR 1252.237-72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified

data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as résumés, company and/or personnel qualifications) to reliably describe the certified data submitted.

### Subpart 1237.90—Mortuary Services

#### 1237.9000 Solicitation provisions and contract clauses. (USCG).

(a) The contracting officer shall insert the following clauses in solicitations and contracts for mortuary services. However, USCG clauses (TAR) 48 CFR 1252.237-91 and 1252.237-97 shall not be inserted in solicitations and contracts that include port of entry requirements:

- (1) (TAR) 48 CFR 1252.237-90, Requirements;
- (2) (TAR) 48 CFR 1252.237-91, Area of Performance;
- (3) (TAR) 48 CFR 1252.237-92, Performance and Delivery;
- (4) (TAR) 48 CFR 1252.237-93, Subcontracting;
- (5) (TAR) 48 CFR 1252.237-94, Termination for Default;
- (6) (TAR) 48 CFR 1252.237-95, Group Interment;
- (7) (TAR) 48 CFR 1252.237-96, Permits;
- (8) (TAR) 48 CFR 1252.237-97, Facility Requirements; and
- (9) (TAR) 48 CFR 1252.237-98, Preparation History.

(b) The contracting officer shall insert USCG provision (TAR) 48 CFR 1252.237-99, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with Alternate I in negotiated solicitations for mortuary services.

(c) The contracting officer shall insert (FAR) 48 CFR 52.245-4, Government-Furnished Property (Short Form) in solicitations and contracts that include port of entry requirements.

[59 FR 40284, Aug. 8, 1994]

### Subpart 1237.104—Personal Services Contracts

SOURCE: 61 FR 50250, Sept. 25, 1996, unless otherwise noted.

**§ 1237.104-90 Delegation of authority. (USCG)**

(a) Section 733(a) of Pub. L. 104-106, the DOD Authorization Act of 1996, amended Title 10 of the United States Code to include a new provision which authorizes the Secretary, with respect to the Coast Guard, to enter into personal services contracts at medical treatment facilities (10 U.S.C. 1091).

(b) The authority of the Secretary of Transportation under Pub. L. 104-106 to award personal services contracts for medical services at facilities for the Coast Guard is delegated to the HCA with the authority to redelegate to contracting officers under procedures established by the HCA, who will address applicable statutory limitations under Section 1091A of Title 10 U.S.C.

[62 FR 67751, Dec. 30, 1997]

**§ 1237.104-91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).**

(a) Personal services contracts for health care services are authorized by 10 U.S.C. 1091 for the Coast Guard. Sources for contracts for health care services under the authority of 10 U.S.C. 1091 shall be selected through procedures established in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from (TAR) 48 CFR part 1206 competition requirements (see (TAR) 48 CFR 1206.9000 (USCG)) and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals responding shall be evaluated. Contracting officers shall solicit offerors through the most effective means of seeking competition, such as a local publication which serves the area of the facility. Acquisitions for health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR part 5.

(c) The contracting officer shall provide the qualifications of individuals

responding to the notice to the representative(s) responsible for evaluation and ranking in accordance with the evaluation procedures. Individuals must be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:

(1) Enter into negotiations with the highest ranked offeror. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;

(2) Enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

[62 FR 67751, Dec. 30, 1997]

## **PART 1242—CONTRACT ADMINISTRATION**

### **Subpart 1242.2—Assignment of Contract Administration**

1242.203 Retention of contract administration.

1242.203-70 Contract clauses.

1242.205 Designation of the paying office.

### **Subpart 1242.3—Contract Administration Office Functions**

1242.302 Contract administration functions.

### **Subpart 1242.70—Contracting Officer's Technical Representative**

1242.7000 Contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40285, Aug. 8, 1994, unless otherwise noted.

### **Subpart 1242.2—Assignment of Contract Administration**

#### **1242.203 Retention of contract administration.**

(a) Contracting offices may obtain contract administration assistance from the Defense Logistics Agency (DLA), Defense Contract Management Command, Alexandria, VA, when the contracting officer determines that such action is to be in the best interest of DOT.

#### **1242.203-70 Contract clauses.**

(a) The contracting officer may use the clause at (TAR) 48 CFR 1252.242-70, Dissemination of Information—Educational Institutions, in lieu of the clause at (TAR) 48 CFR 1252.242-72, Dissemination of Contract Information, in DOT research contracts with educational institutions, except contracts

that require the release or coordination of information.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242-71, Contractor Testimony, in all solicitations and contracts issued by NHTSA. Other OAs may use the clause as deemed appropriate.

(c) The contracting officer may insert the clause at (TAR) 48 CFR 1252.242-72, Dissemination of Contract Information, in all DOT contracts except contracts that require the release or coordination of information.

#### **1242.205 Designation of the paying office.**

(a) The assignment of contract administration to a DLA Contract Administration Office (CAO) by the contracting officer does not affect the designation of the paying office unless a transfer of DOT funds to the agency of the CAO is effected, and the funds are converted to the agency's account for payment purposes.

(b) When the contracting officer proposes to delegate the contract payment function to another agency (e.g., DLA), the contracting officer shall discuss the transfer of funds procedures with the OA cognizant payment office.

### **Subpart 1242.3—Contract Administration Office Functions**

#### **1242.302 Contract administration functions.**

(a)(13) The CAO, or the contracting officer's designee under fixed price contracts, shall review and approve the contractor's invoice for payment. The CAO shall review and approve contractors' vouchers under cost-reimbursement contracts, and this function cannot be delegated to a COTR. All payments to contractors will be made by the payment office designated in the contract to make payments.

### **Subpart 1242.70—Contracting Officer's Technical Representative**

#### **1242.7000 Contract clause.**

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242-73,

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Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

### **PART 1245—GOVERNMENT PROPERTY**

#### **Subpart 1245.5—Management of Government Property in the Possession of Contractors**

1245.505 Records and reports of Government property.

1245.505-14 Reports of Government property.

1245.505-70 Solicitation provisions and contract clauses.

1245.508-2 Reporting results of inventories.

1245.508-3 Quantitative and monetary control.

1245.511 Audit of property control system.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40285, Aug. 8, 1994, unless otherwise noted.

#### **Subpart 1245.5—Management of Government Property in the Possession of Contractors**

##### **1245.505 Records and reports of Government property.**

##### **1245.505-14 Reports of Government property.**

When Government property is furnished to or acquired by the contractor to perform the contract, the contract shall require the contractor to submit annual reports (see (FAR) 48 CFR 45.505-14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on Form DOT F 4220.43, Contractor Report of Government Property.

##### **1245.505-70 Solicitation provisions and contract clauses.**

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.245-70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

##### **1245.508-2 Reporting results of inventories.**

The inventory report shall also include the following:

(a) Name and title of the individual(s) that performed the physical inventory;

(b) An itemized, categorized listing of all property capitalized:

(1) Land and rights therein;

(2) Other real property;

(3) Plant equipment;

(4) Special test equipment; and

(5) Special tooling;

(c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident; and

(d) Any discrepancies between the physical inventory and the contractor's record of Government property.

##### **1245.508-3 Quantitative and monetary control.**

Contracting officers shall require the contractor to provide the quantity and unit cost of each item of Government property reported under (TAR) 48 CFR 1245.508-2(b) and (c).

##### **1245.511 Audit of property control system.**

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

(1) Failure of the contractor to acknowledge receipt of GFP;

(2) Failure of the contractor to submit the annual property reports required by (TAR) 48 CFR 1245.505-14;

(3) Failure of the contractor to reconcile its physical inventory with its property control record; or

(4) Failure of the contractor to submit a Government property listing when requested by the property administrator.

(b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor

does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies must be corrected.

## PART 1246—QUALITY ASSURANCE

### Subpart 1246.7—Warranties

- 1246.701 Definitions.
- 1246.701-70 Additional definitions.
- 1246.701-90 Additional USCG definitions. (USCG)
- 1246.703 Criteria for use of warranties.
- 1246.705 Limitations.
- 1246.706 Warranty terms and conditions.
- 1246.790 Use of warranties in major system acquisitions by the USCG. (USCG)
- 1246.790-1 Policy. (USCG)
- 1246.790-2 Tailoring warranty terms and conditions. (USCG)
- 1246.790-3 Warranties on Government-furnished property. (USCG)
- 1246.791 Cost benefit analysis. (USCG)
- 1246.792 Waiver and notification procedures. (USCG)

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40286, Aug. 8, 1994, unless otherwise noted.

### Subpart 1246.7—Warranties

#### 1246.701 Definitions.

##### 1246.701-70 Additional definitions.

*At no additional cost to the Government* means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or at no increase in estimated cost or fee for cost-reimbursement contracts.

*Defect* means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

*Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

*Major system* means a system or major subsystem used directly by DOT to carry out its mission(s), as defined by TAM Chapter 1234, Major Acquisition Policies and Procedures (for dollar

threshold applicable to U.S. Coast Guard, See Coast Guard guidance at (TAR) 48 CFR 1246.701-90). The term does not include:

(a) Related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or

(b) Commercial items sold in substantial quantities to the general public as described in (FAR) 48 CFR 15.804-1..

*Performance requirements* means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

[59 FR 40286, Aug. 8, 1994, as amended at 62 FR 26420, May 14, 1997]

#### 1246.701-90 Additional USCG definitions. (USCG)

For the USCG, in accordance with Public Law 99-190, the dollar threshold as it pertains to the inclusion of a warranty in major systems acquisitions is \$10 million.

#### 1246.703 Criteria for use of warranties.

(a) *Major systems.* The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (TAR) 48 CFR 1246.792). Other OAs may use the procedures in USCG guidance in this part as a guideline for major systems acquisitions.

(b) *Other systems.* (1) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by (FAR) 48 CFR 46.703.

(2) Contracting officers should negotiate a warranty that meets or exceeds the requirements of (TAR) 48 CFR 1246.706 when it is advantageous.

#### 1246.705 Limitations.

(a) The following restrictions are applicable to DOT contracts:

(1) The USCG is the only DOT OA which is required to include a warranty in cost reimbursement contracts for

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the production of major systems acquisitions.

(2) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in the USCG guidance at (TAR) 48 CFR 1246.790-3.

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

[59 FR 40286, Aug. 8, 1994, as amended at 62 FR 67752, Dec. 30, 1997]

### **1246.706 Warranty terms and conditions.**

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending

of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

### **1246.790 Use of warranties in major systems acquisitions by the USCG. (USCG)**

This subpart sets forth the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

#### **1246.790-1 Policy. (USCG)**

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (TAR) 48 CFR 1246.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the

manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

**1246.790-2 Tailoring warranty terms and conditions. (USCG)**

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more

comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

**1246.790-3 Warranties on Government-furnished property. (USCG)**

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (TAR) 48 CFR 1246.790-1 on any property furnished to that contractor by the Government except for:

(a) Defects in installation; and

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

**1246.791 Cost benefit analysis. (USCG)**

Warranties shall be obtained for a major systems acquisition only when it is cost beneficial in accordance with TAM (Copies of the Transportation Acquisition Manual may be obtained from the Government Printing Office) 1246.703. If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with USCG guidance at 48 CFR 1246.792.

**1246.792 Waiver and notification procedures. (USCG)**

(a) The Secretary of Transportation, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the



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Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, at a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the Office of Acquisition and Grant Management (M-60). The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

## PART 1247—TRANSPORTATION

### Subpart 1247.1—General

1247.104-370 Contract clause.

### Subpart 1247.3—Transportation in Supply Contracts

1247.305 Solicitation provisions, contract clauses, and transportation factors.

1247.305-70 Solicitation provisions.

1247.305-71 Contract clause.

### Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40287, Aug. 8, 1994, unless otherwise noted.

### Subpart 1247.1—General

#### 1247.104-370 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247-70, Acceptable Service at Reduced Rates, to implement the requirements of (FAR) 48 CFR 47.104-3.

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

### Subpart 1247.3—Transportation in Supply Contracts

#### 1247.305 Solicitation provisions, contract clauses, and transportation factors.

##### 1247.305-70 Solicitation provisions.

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (TAR) 48 CFR 1252.247-71, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(b);

(b) (TAR) 48 CFR 1252.247-72, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(e);

(c) (TAR) 48 CFR 1252.247-73, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-4(b);

(d) (TAR) 48 CFR 1252.247-74, Shipments to Ports and Air Terminals, with Alternates I, II, and III, shall be inserted in accordance with (FAR) 48 CFR 47.305-6(a)(1) through (a)(4);

(e) (TAR) 48 CFR 1252.247-75, F.o.b. Designated Air Carrier's Terminal, Point of Exportation, implements the requirements of (FAR) 48 CFR 47.305-6(a)(5); and

(f) (TAR) 48 CFR 1252.247-76, Nomination of Additional Ports, implements the requirements of (FAR) 48 CFR 47.305-6(d).

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

##### 1247.305-71 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247-77, Supply Movement in the Defense Transportation System, in contracts to implement the requirements of (FAR) 48 CFR 47.305-6(f)(1).

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

### Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

#### 1247.506 Procedures.

(d) Reports concerning cargo preference shipments/ocean shipments (see

(FAR) 48 CFR 47.506(d) shall, as a minimum, contain the information and follow the procedures within subparagraph (c) of (FAR) 48 CFR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

## **PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **Subpart 1252.1—Instructions for Using Provisions and Clauses**

1252.101 Using part 1252.

### **Subpart 1252.2—Texts of Provisions and Clauses**

1252.209-70 Disclosure of conflicts of interest.

1252.210-90 Bar coding requirement. (USCG)

1252.211-70 Brand name or equal.

1252.211-71 Index for specifications.

1252.213-90 Evaluation factor for Coast Guard performance of bar coding requirement. (USCG)

1252.215-70 Key personnel and/or facilities.

1252.216-70 Evaluation of offers subject to an economic price adjustment clause.

1252.216-71 Determination of award fee.

1252.216-72 Performance evaluation plan.

1252.216-73 Distribution of award fee.

1252.216-74 Settlement of letter contract.

1252.217-71 Delivery and shifting of vessel.

1252.217-72 Performance.

1252.217-73 Inspection and manner of doing work.

1252.217-74 Subcontracts.

1252.217-75 Lay days.

1252.217-76 Liability and insurance.

1252.217-77 Title.

1252.217-78 Discharge of liens.

1252.217-79 Delays.

1252.217-80 Department of Labor safety and health regulations for ship repairing.

1252.217-81 Guarantee.

1252.219-70 Small business and small disadvantaged business subcontracting reporting.

1252-220-90 Local hire. (USCG)

1252.222-70 Strikes or picketing affecting timely completion of the contract work.

1252.222-71 Strikes or picketing affecting access to a DOT facility.

1252.223-70 Removal or disposal of hazardous substances—applicable licenses and permits.

1252.223-71 Accident and fire reporting.

1252.223-72 Protection of human subjects.

1252.228-70 Loss of or damage to leased aircraft.

1252.228-71 Fair market value of aircraft.

1252.228-72 Risk and indemnities.

1252.228-90 Notification of Miller Act payment bond protection. (USCG)

1252.231-70 Date of incurrence of costs.

1252.236-70 Special precautions for work at operating airports.

1252.237-70 Qualifications of employees.

1252.237-71 Certification of data.

1252.237-72 Prohibition on advertising.

1252.237-90 Requirements. (USCG)

1252.237-91 Area of performance. (USCG)

1252.237-92 Performance and delivery. (USCG)

1252.237-93 Subcontracting. (USCG)

1252.237-94 Termination for default. (USCG)

1252.237-95 Group interment. (USCG)

1252.237-96 Permits. (USCG)

1252.237-97 Facility requirements. (USCG)

1252.237-98 Preparation history. (USCG)

1252.237-99 Award to single offeror. (USCG)

1252.242-70 Dissemination of information—educational institutions.

1252.242-71 Contractor testimony.

1252.242-72 Dissemination of contract information.

1252.242-73 Contracting officer's technical representative.

1252.245-70 Government property reports.

1252.247-70 Acceptable service at reduced rates.

1252.247-71 F.o.b. origin information.

1252.247-72 F.o.b. origin only.

1252.247-73 F.o.b. destination only.

1252.247-74 Shipments to ports and air terminals.

1252.247-75 F.o.b. designated air carrier's terminal, point of exportation.

1252.247-76 Nomination of additional ports.

1252.247-77 Supply movement in the Defense Transportation System.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40288, Aug. 8, 1994, unless otherwise noted.

### **Subpart 1252.1—Instructions for Using Provisions and Clauses**

#### **1252.101 Using part 1252.**

(b) *Numbering—(2)(i) Provisions or clauses that supplement the FAR.* (A) Agency-prescribed provisions and clauses permitted by TAR and used on a standard basis (i.e., normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the TAR. OAs desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to M-60 in accordance with (TAR) 48 CFR 1201.304 for possible inclusion in the TAR.

(B) Provisions and clauses used on a one-time basis (i.e., non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OA. This authority is permitted subject to:

(1) evidence of legal counsel review in the contract file;

(2) inserting these clauses in the appropriate sections of the uniform contract format; and

(3) ensuring the provisions and clauses do not deviate from the requirements of the FAR and TAR.

### Subpart 1252.2—Texts of Provisions and Clauses

#### 1252.209-70 Disclosure of conflicts of interest.

As prescribed in 1209.507, insert the following provision:

##### DISCLOSURE OF CONFLICTS OF INTEREST (OCT 1994)

It is the Department of Transportation's (DOT) policy to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the entities. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in paragraph (a) of this section, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in paragraph (a) of this section, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.

(End of provision)

#### 1252.210-90 Bar coding requirement. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1210.011-90 and 1213.507-90, insert the following clause:

##### BAR CODING REQUIREMENTS (OCT 1994)

Item markings shall include bar coding in accordance with MIL-STD-1189 as follows:

(a) The stock number shall be bar coded with no prefixes, dashes, spaces, or suffixes encoded. The contract number, the delivery order, or call order number, when used, shall be bar coded with no spaces or dashes encoded.

(b) Prefixes and suffixes to the stock number may be included in the OCR-A in-the-clear markings, but not in the bar code.

(c) Preferred Bar Code Density (characters per inch as defined in MIL-STD-1189) is

“standard,” but densities from “standard” to “low” are acceptable.

(d) OCR-A characters do not have to be machine readable.

(e) Bar coding shall be machine readable.

(f) Unless otherwise specified herein, minimum bar code height shall be 0.25 inch (6.4 mm) or 15 percent of the bar code length, whichever is greater.

(g) The preferred position of the OCR-A characters is beneath the bar codes, but the OCR-A characters may be over the bar codes.

(h) On outer containers contractors shall either:

(1) Encode the stock numbers and contract number in one line of bar code with the stock number appearing first; or

(2) Encode the item stock number and contract number on two labels, with the top label containing the stock number and the lower label containing the contract number.

(i) On unit and intermediate containers, the item stock number in bar code with OCR-A below may be on the same label as the other data (identification markings) required by MIL-STD-129H. However, the bar code stock number shall appear on the top line with OCR-A characters on the second line; the OCR-A characters may include the stock number prefix and suffix, or alternatively, the complete stock number including any prefix and suffix, shall be repeated as part of the identification markings.

(j) Exclusions from bar code markings are:

(1) Multi-packs/consolidation containers (containers with two or more different stock numbers within).

(2) Reusable shipping containers used for multiple/ different stock number applications.

(3) Items consigned to a prime contractor's plant for installation in production.

(End of clause)

#### **1252.211-70 Brand name or equal.**

As prescribed in (TAR) 48 CFR 1210.011, insert the following provision:

##### **BRAND NAME OR EQUAL (OCT 1994)**

(As used in this provision, the term “brand name” includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Offers offering “equal” products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient char-

acteristic requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an “equal” product, its offer shall be considered as offering the brand name product referenced in the solicitation.

(c) If the offeror proposed to furnish an “equal” product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting office. CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to: (1) determine whether the product offered meets the salient characteristic requirements of the solicitation; and (2) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting office.

(d) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (1) include in its offer a clear description of such proposed modifications; and (2) clearly mark any descriptive material to show the proposed modifications.

(e) Modifications to make a product conform to a brand name product referenced in the solicitation and proposed after the time for receipt of offers, will not be considered.

(End of provision)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

#### **1252.211-71 Index for specifications.**

As prescribed in (TAR) 48 CFR 1210.011, insert the following clause:

##### **INDEX FOR SPECIFICATIONS (OCT 1994)**

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not

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to be considered as part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.213-90 Evaluation factor for Coast Guard performance of bar coding requirement. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1213.107-90, insert the following provision:

EVALUATION FACTOR FOR COAST GUARD PERFORMANCE OF BAR CODING REQUIREMENT (OCT 1994)

If a small business cannot provide the bar coding requirement, as indicated elsewhere in the schedule, the contracting officer will apply the following formula to the quoted amounts:

- (a) Unit price quoted by small business \$ \_\_\_\_\_
- (b) Add unit cost to the USCG to provide bar coding \$ \_\_\_\_\_
- (c) Adjusted unit price (add lines a. and b.) \$ \_\_\_\_\_

The line (c) amount will become the amount the contracting officer considered when determining the lowest quoted amount.

(End of provision)

### **1252.215-70 Key personnel and/or facilities.**

As prescribed in (TAR) 48 CFR 1215.106, insert the following clause:

KEY PERSONNEL AND/OR FACILITIES (OCT 1994)

(a) The personnel and/or facilities as specified in paragraph (c) are considered essential to the work being performed hereunder and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel and/or facilities, as appropriate.

(b) Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify, in writing, and receive consent from, the Contracting Officer reasonably in advance of the action and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(c) No diversion shall be made by the Contractor without the written consent of the Contracting Officer. The Contracting Officer may ratify, in writing, the change and such ratification shall constitute the consent of

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the Contracting Officer required by this clause.

The Key Personnel and/or Facilities under this Contract:

(Specify key personnel and/or facilities)

(End of clause)

### **1252.216-70 Evaluation of offers subject to an economic price adjustment clause.**

As prescribed in (TAR) 48 CFR 1216.203-470, insert the following provision:

EVALUATION OF OFFERS SUBJECT TO AN ECONOMIC PRICE ADJUSTMENT CLAUSE (OCT 1994)

Offers shall be evaluated without an amount for an economic price adjustment being added. Offers will be rejected which: (1) Increase the ceiling stipulated; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

### **1252.216-71 Determination of award fee.**

As prescribed in (TAR) 48 CFR 1216.405(a), insert the following clause:

DETERMINATION OF AWARD FEE (OCT 1994)

(a) The Government shall, at the conclusion of each specified evaluation period(s), evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of the award fee earned will be made by the Government Fee Determination Official (FDO) and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any board or court.

(b) It is agreed that the evaluation of contractor performance shall be in accordance with a Performance Evaluation Plan and that the contractor shall be promptly advised in writing of the determination and reasons why the award fee was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for the determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within \_\_\_\_\_ (insert number) days after the end of the period being evaluated may be given such consideration, if any, as the FDO shall find appropriate.

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(c) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation to one or more subsequent periods. In that event, the distribution of award fee shall be adjusted to reflect such allocations.

(End of clause)

**1252.216-72 Performance evaluation plan.**

As prescribed in (TAR) 48 CFR 1216.405(b), insert the following clause:

PERFORMANCE EVALUATION PLAN (OCT 1994)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor \_\_\_\_ (insert number) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor \_\_\_\_ (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

**1252.216-73 Distribution of award fee.**

As prescribed in (TAR) 48 CFR 1216.405(c), insert the following clause:

DISTRIBUTION OF AWARD FEE (OCT 1994)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:

Available Award Fee:

(insert appropriate information)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or \$100,000, whichever is less.

**48 CFR Ch. 12 (10-1-98 Edition)**

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

**1252.216-74 Settlement of letter contract.**

As prescribed in (TAR) 48 CFR 1216.603-4, insert the following clause:

SETTLEMENT OF LETTER CONTRACT (OCT 1994)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract \_\_\_\_ (insert number) dated \_\_\_\_ (insert effective date). It supersedes the letter contract and its modification number(s) \_\_\_\_ (insert number(s)) and, to the extent of any inconsistencies, governs. (b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract \_\_\_\_ (insert number and modification number(s)) \_\_\_\_ (insert number(s)). Payment of the agreed upon fee or profit withheld pending definitization of the letter contract, may commence immediately at the rate and times stated within this contract.

(End of clause)

**1252.217-71 Delivery and shifting of vessel.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

DELIVERY AND SHIFTING OF VESSEL (OCT 1994)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein

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specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

### **1252.217-72 Performance.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

#### PERFORMANCE (OCT 1994)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge,—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be re-

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sponsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

### **1252.217-73 Inspection and manner of doing work.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

#### INSPECTION AND MANNER OF DOING WORK (OCT 1994)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the

contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

#### **1252.217-74 Subcontracts.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

SUBCONTRACTS (OCT 1994)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

#### **1252.217-75 Lay days.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

LAY DAYS (OCT 1994)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price



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was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

### **1252.217-76 Liability and insurance.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

#### **LIABILITY AND INSURANCE (OCT 1994)**

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment. (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the

Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first \$5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) Indemnification. The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of \$300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) Insurance. (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain

and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair,

plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

#### **1252.217-77 Title.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

##### **TITLE (OCT 1994)**

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

#### **1252.217-78 Discharge of liens.**

As prescribed at 1217.7000 (a) and (b), insert the following clause:

##### **DISCHARGE OF LIENS (OCT 1994)**

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at

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the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

### 1252.217-79 Delays.

As prescribed at 1217.7000 (a) and (b), insert the following clause:

#### DELAYS (OCT 1994)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

### 1252.217-80 Department of Labor safety and health regulations for ship repairing.

As prescribed at 1217.7000 (a) and (b), insert the following clause:

#### DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIR (OCT 1994)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);

(b) The Safety and Health Regulations for Ship Repairing (29 CAR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

### 1252.217-81 Guarantee.

As prescribed at 1217.7000(c), insert the following clause:

#### GUARANTEE (OCT 1994)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day pe-

riod, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

[59 FR 40288, Aug. 8, 1994, as amended at 60 FR 55802, Nov. 3, 1995]

### 1252.219-70 Small business and small disadvantaged business subcontracting reporting.

As prescribed in (TAR) 48 CFR 1219.708-70, insert the following clause:

#### SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING REPORTING (OCT 1994)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form 295 (SF-295)) to the Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization (S-42), 400 7th St., SW, Washington, DC, 20590.

(b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219-9.

(End of clause)

[59 FR 40288, Aug 8, 1994, as amended at 62 FR 26420, May 14, 1997]

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**1252.220-90 Local hire. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1220.9001, insert the following clause:

LOCAL HIRE (OCT 1994)

The Contractor shall employ, for the purpose of performing this contract in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as defined by the Secretary of Labor), individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. *Local Resident* means a resident or an individual who commutes daily to that State.

(End of clause)

**1252.222-70 Strikes or picketing affecting timely completion of the contract work.**

As prescribed in (TAR) 48 CFR 1222.101-71(a), insert the following clause:

STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (OCT 1994)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

**1252.222-71 Strikes or picketing affecting access to a DOT facility.**

As prescribed in (TAR) 48 CFR 1222.101-71(b), insert the following clause:

STRIKES OR PICKETING AFFECTING ACCESS TO A DOT FACILITY (OCT 1994)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DOT facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary,

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the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

**1252.223-70 Removal or disposal of hazardous substances—applicable licenses and permits.**

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES—APPLICABLE LICENSES AND PERMITS (DEC 1997)

The Contractor must have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within \_\_ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

[62 FR 67752, Dec. 30, 1997]

**1252.223-71 Accident and fire reporting.**

As prescribed in (TAR) 48 CFR 1223.7000(a), insert the following clause:

ACCIDENT AND FIRE REPORTING (OCT 1994)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

- (1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;
- (2) Damage of \$1,000 or more to Federal property, either real or personal;
- (3) Damage of \$1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or
- (4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) of this section shall be accomplished by the following means:

- (1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal), the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram or facsimile transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known

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facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) of this section may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

- (i) The extent of injury; and
- (ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

### **1252.223-72 Protection of human subjects.**

As prescribed in (TAR) 48 CFR 1223.7000(b), insert the following clause:

#### **PROTECTION OF HUMAN SUBJECTS (OCT 1994)**

The Contractor shall comply with the National Highway Traffic Safety Administration (NHTSA) principles and procedures (in accordance with NHTSA Order 700-1, 700-3, and 700-4) for the protection of human subjects participating in activities supported directly or indirectly by contracts from DOT. A copy of the applicable NHTSA orders shall be provided to offerors and/or contractors upon request. In fulfillment of its assurance:

(a) A committee competent to review projects and activities that involve human subjects shall be established and maintained by the Contractor.

(b) The committee shall be assigned responsibility to determine for each activity planned and conducted that:

- (1) The rights and welfare of subjects are adequately protected;
- (2) The risks to subjects are outweighed by potential benefits; and

(3) The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

(c) Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from review of projects or activities in which they have an active role or a conflict of interests.

(d) Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

(e) Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of

participating in an activity shall be provided.

(f) The committee shall maintain records of committee review of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any review that adversely affects the rights or welfare of the individual subjects. Such materials shall be made available to DOT upon request.

(g) The retention period of such records and materials shall be as specified at (FAR) 48 CFR 4.703.

(h) Periodic reviews shall be conducted by the Contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(NOTE: If the Contractor has a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and NHTSA Orders 700-1, 700-3, and 700-4, that IRB will be considered acceptable for the purposes of this contract.

(End of clause)

### **§ 1252.228-70 Loss of or damage to leased aircraft.**

As prescribed in (TAR) 48 CFR 1228.306-70 (a) and (b), insert the following clause:

#### **LOSS OF OR DAMAGE TO LEASED AIRCRAFT (DEC 1997)**

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228-71, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

[62 FR 67752, Dec. 30, 1997]

#### **1252.228-71 Fair market value of aircraft.**

As prescribed in (TAR) 48 CFR 1228.306-70 (a) and (c), insert the following clause:

##### **FAIR MARKET VALUE OF AIRCRAFT (OCT 1994)**

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b):

(a) \$\_\_\_\_\_; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

#### **§ 1252.228-72 Risk and indemnities.**

As prescribed in (TAR) 48 CFR 1228.306-70(a) and (d), insert the following clause:

##### **RISK AND INDEMNITIES (DEC 1997)**

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers,

agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

[62 FR 67752, Dec. 30, 1997]

#### **1252.228-90 Notification of Miller Act payment bond protection. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1228.9000, insert the following clause:

##### **NOTIFICATION OF MILLER ACT PAYMENT BOND PROTECTION (OCT 1994)**

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain the surety which has provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact & Tel. No.)

(End of clause)

#### **1252.231-70 Date of incurrence of costs.**

As prescribed in (TAR) 48 CFR 1231.205-32, insert the following clause:

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### DATE OF INCURRENCE OF COSTS (OCT 1994)

The Contractor shall be entitled to reimbursement for costs incurred on or after \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

### **1252.236-70 Special precautions for work at operating airports.**

As prescribed in (TAR) 48 CFR 1236.570, insert the following clause:

#### SPECIAL PRECAUTIONS FOR WORK AT OPERATING AIRPORTS (OCT 1994)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be established by airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

### **1252.237-70 Qualifications of employees.**

As prescribed in (TAR) 48 CFR 1237.110, insert the following clause:

#### QUALIFICATIONS OF EMPLOYEES (OCT 1994)

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be fingerprinted. Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

### **1252.237-71 Certification of data.**

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following provisions:

#### CERTIFICATION OF DATA (JAN 1996)

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (e.g., company profile, qualifications, background statements,

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brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-2812 and 49 CFR part 31 and/or; (3) termination for default under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Typed Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

[61 FR 392, Jan. 5, 1996]

**1252.237-72 Prohibition on advertising.**

As prescribed in (TAR) 48 CFR 1213.7002 and 1237.7003, insert the following clause:

**PROHIBITION ON ADVERTISING (JAN 1996)**

The contractor or its representatives (including training instructors) shall not advertise or solicit business from attendees for private, non-Government training during contracted-for training sessions. This prohibition extends to unsolicited oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes.

The contractor agrees to insert this clause in its subcontracts.

(End of clause)

[61 FR 392, Jan. 5, 1996]

**1252.237-90 Requirements. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

**REQUIREMENTS (OCT 1994)**

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its require-

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ments in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

- (1) The supplies or services being ordered;
- (2) The quantities to be furnished;
- (3) Delivery or performance dates;
- (4) Place of delivery or performance;
- (5) Packing and shipping instructions;
- (6) The address to send invoices; and
- (7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(End of clause)

**1252.237-91 Area of performance. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

**AREA OF PERFORMANCE (OCT 1994)**

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.



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(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

### **1252.237-92 Performance and delivery. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

#### PERFORMANCE AND DELIVERY (OCT 1994)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

### **1252.237-93 Subcontracting. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

#### SUBCONTRACTING (OCT 1994)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

### **1252.237-94 Termination for default. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

#### TERMINATION FOR DEFAULT (OCT 1994)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(i) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in con-

nection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Transportation in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

### **1252.237-95 Group interment. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

#### GROUP INTERMENT (OCT 1994)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

### **1252.237-96 Permits. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

#### PERMITS (OCT 1994)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

### **1252.237-97 Facility requirements. (USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

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**FACILITY REQUIREMENTS (OCT 1994)**

(a) The Contractor's building shall have complete facilities for maintaining the highest standards for solemnity, reverence, assistance to the family, and prescribed ceremonial services.

(b) The Contractor's preparation room shall be clean, sanitary, and adequately equipped.

(c) The Contractor shall have, or be able to obtain the necessary items (e.g., catafalques, structures, trucks, equipment) for religious services.

(d) The Contractor's funeral home, furnishings, grounds, and surrounding area shall present a clean and well-kept appearance.

(End of clause)

**1252.237-98 Preparation history.  
(USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

**PREPARATION HISTORY (OCT 1994)**

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

**1252.237-99 Award to single offeror.  
(USCG)**

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following provision:

**AWARD TO SINGLE OFFEROR (OCT 1994)**

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

**ALTERNATE I (OCT 1994)**

If mortuary services are procured by negotiations, substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

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**1252.242-70 Dissemination of information—educational institutions.**

As prescribed in (TAR) 48 CFR 1242.203-70(a), insert the following clause:

**DISSEMINATION OF INFORMATION—  
EDUCATIONAL INSTITUTIONS (OCT 1994)**

(a) The Department of Transportation (DOT) desires widespread dissemination of the results of funded transportation research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause must contain acknowledgment of DOT's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DOT. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, two copies of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

**1252.242-71 Contractor testimony.**

As prescribed in (TAR) 48 CFR 1242.203-70(b), insert the following clause:

**CONTRACTOR TESTIMONY (OCT 1994)**

All requests for the testimony of the Contractor or its employees, and any intention to testify as an expert witness relating to: (a) any work required by, and/or performed under, this contract; or (b) any information provided by any party to assist the Contractor in the performance of this contract, shall be immediately reported to the Contracting

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Officer. Neither the Contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved by the Contracting Officer or required by a judge in a final court order.

(End of clause)

### **1252.242-72 Dissemination of contract information.**

As prescribed in (TAR) 48 CFR 1242.203-70(c), insert the following clause:

#### DISSEMINATION OF CONTRACT INFORMATION (OCT 1994)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

### **1252.242-73 Contracting officer's technical representative.**

As prescribed in (TAR) 48 CFR 1242.7000, insert the following clause:

#### CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (OCT 1994)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents (i.e., contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

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(End of clause)

### **1252.245-70 Government property reports.**

As prescribed in (TAR) 48 CFR 1245.505-70, insert the following clause:

#### GOVERNMENT PROPERTY REPORTS (OCT 1994)

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on Form DOT F 4220.43, Contractor Report of Government Property.

(End of clause)

### **1252.247-70 Acceptable service at reduced rates.**

As prescribed in (TAR) 48 CFR 1247.104-370, insert the following clause:

#### ACCEPTABLE SERVICE AT REDUCED RATES (OCT 1994)

The Contractor is to use carriers that offer acceptable service at reduced rates, if available, to transport supplies under this contract.

(End of clause)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.247-71 F.o.b. origin information.**

As prescribed in (TAR) 48 CFR 1247.305-70, insert the following provision:

#### F.O.B. ORIGIN INFORMATION (OCT 1994)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

#### ALTERNATE I (OCT 1994)

If delivery is "f.o.b. origin, contractor's facility," and the designated facility is not

## 1252.247-72

covered by the line-haul transportation rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

### ALTERNATE II (OCT 1994)

When delivery is "f.o.b. origin, freight allowed," add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.247-72 F.o.b. origin only.**

As prescribed in (TAR) 48 CFR 1247.305-70, insert the following provision:

#### F.O.B. ORIGIN ONLY (OCT 1994)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.247-73 F.o.b. destination only.**

As prescribed in (TAR) 48 CFR 1247.305-70, insert the following provision:

#### F.O.B. DESTINATION ONLY (OCT 1994)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.247-74 Shipments to ports and air terminals.**

As prescribed in (TAR) 48 CFR 1247.305-70, insert the following provision:

#### SHIPMENTS TO PORTS AND AIR TERMINALS (OCT 1994)

The Offeror shall furnish the following information with the offer:

- (a) A delivery schedule in number of units and/or long or short tons;
- (b) Maximum quantities available per shipment; and
- (c) Other data appropriate to shipment by air carrier.

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(End of provision)

### ALTERNATE I (OCT 1994)

When the delivery term is "ex dock, pier or warehouse, port of importation" or "c. & f. destination," substitute the following paragraph (c) for the paragraph (c) of the basic provision:

(c) The number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

### ALTERNATE II (OCT 1994)

When the delivery term is "f.a.s. vessel, port of shipment," "f.o.b. vessel, port of shipment," or "f.o.b. inland carrier, point of exportation," substitute the following paragraphs (c), (d) and (e) for the paragraph (c) of the basic provision:

(c) The quantity that can be made available for loading to vessel per running day of 24 hours (if acquisition involves a commodity to be shipped in bulk);

(d) The minimum leadtime required to make supplies available for loading to vessel; and

(e) The port and pier or other designation and, when applicable, the maximum draft of vessel (in feet) that can be accommodated.

### ALTERNATE III (OCT 1994)

When the delivery term is "c.i.f. destination," substitute the following paragraphs (c) and (d) for the paragraph (c) of the basic provision:

(c) The number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity; and

(d) The amount and type of marine insurance coverage; e.g., whether the coverage is "With Average" or "Free of Particular Average" and whether it covers any special risks or excludes any of the usual risks associated with the specific commodity involved.

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.247-75 F.o.b. designated air carrier's terminal, point of exportation.**

As prescribed in (TAR) 48 CFR 1247.305-70, insert the following provision:

#### F.O.B. DESIGNATED AIR CARRIER'S TERMINAL, POINT OF EXPORTATION (OCT 1994)

The Offeror shall furnish the following information with the offer:

- (a) A delivery schedule in number of units, type of package, and individual weight and dimensions of each package;
- (b) Minimum leadtime required to make supplies available for loading into aircraft;

## Department of Transportation

1253.204

- (c) Name of airport and location to which shipment will be delivered; and
- (d) Other data appropriate to shipment by air carrier.

(End of provision)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.247-76 Nomination of additional ports.**

As prescribed in (TAR) 48 CFR 1247.305-70, insert the following provision:

NOMINATION OF ADDITIONAL PORTS (OCT 1994)

(a) Offerors may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to their shipping points; and

(b) These ports will be considered in the evaluation of offers if they possess all requisite capabilities of the listed ports in relation to the supplies being acquired.

(End of provision)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

### **1252.247-77 Supply movement in the Defense Transportation System.**

As prescribed in (TAR) 48 CFR 1247.305-71, insert the following clause:

SUPPLY MOVEMENT IN THE DEFENSE  
TRANSPORTATION SYSTEM (OCT 1994)

(a) The Contractor shall dispatch a Transportation Control Movement Document (TCMD) to the appropriate DOD air or water clearance authority in accordance with MILSTAMP procedures for all shipments consigned to DOD air or water terminal transshipment points; and

(b) An Export Release must be obtained for supplies to be transshipped via a water port of loading to overseas destination, except for shipments for which an Export Release is not required, generally shipments of less than 10,000 pounds, (see paragraph 202024 of the Military Traffic Management Regulation, AR 55-355, NAVSUP 4600.70, MCO 4600.14A, AFM 75-2, DLAR 4500.3).

(End of clause)

[59 FR 40288, Aug. 8, 1994. Redesignated at 61 FR 50250, Sept. 25, 1996.]

## **PART 1253—FORMS**

### **Subpart 1253.2—Prescription of Forms**

1253.204 Administrative matters.

- 1253.215 Contracting by negotiation.
- 1253.215-270 Price negotiation.
- 1253.222 Application of labor laws to Government acquisitions.
- 1253.227-70 Conveyance of invention rights acquired by the Government.
- 1253.245-70 Report of Government property.

### **Subpart 1253.3—Illustration of Forms**

1253.303 Agency forms.

APPENDIX TO SUBPART 1253.3 TAR MATRIX

CONTRACTOR'S RELEASE.

EMPLOYEE CLAIM FOR WAGE RESTITUTION.

CONTRACTOR REPORT OF GOVERNMENT PROPERTY.

CONTRACT PRICING SUMMARY.

CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS.

CUMULATIVE CLAIM AND RECONCILIATION STATEMENT.

REPORT OF INVENTIONS AND SUBCONTRACTS.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40299, Aug. 8, 1994, unless otherwise noted.

### **Subpart 1253.2—Prescription of Forms**

#### **1253.204 Administrative matters.**

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (TAR) 48 CFR 1204.804-570:

(a) *Form DOT F 4220.4, Contractor's Release.* (See (TAR) 48 CFR 1204.804-570.) Form DOT F 4220.4 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

(b) *Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* (See (TAR) 48 CFR 1204.804-570.) Form DOT F 4220.45 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

(c) *Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement.* (See (TAR) 48 CFR 1204.804-570.) Form DOT F 4220.46 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

(d) *DD Form 882, Report of Inventions and Subcontracts.* (See (TAR) 48 CFR 1204.804-570.) DD Form 882 is authorized for local reproduction and a copy is

furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

**1253.215 Contracting by negotiation.**

**1253.215–270 Price negotiation.**

The following form(s) may be used in connection with requirements for obtaining cost or pricing data from offerors or contractors, as prescribed in (TAR) 48 CFR 1215.804–6:

*Form DOT F 4220.44, Contract Pricing Summary.* (See (TAR) 48 CFR 1215.804–6). Form DOT F 4220.44 is authorized for local reproduction and a copy is furnished for this purpose in (TAR) 48 CFR Part 1253 of the loose-leaf edition.

**1253.222 Application of labor laws to Government acquisitions.**

The following form is prescribed for use in connection with the application of labor laws, as specified in (TAR) 48 CFR 1222.406–9:

*Form DOT F 4220.7, Employee Claim for Wage Restitution.* (See (TAR) 48 CFR 1222.406–9(c)(1).) Form DOT F 4220.7 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

**1253.227–70 Conveyance of invention rights acquired by the Government.**

The following form is prescribed for including a means for contractors to

report inventions made in the course of contract performance, as specified in 1227.305–4:

*DD Form 882, Report of Inventions and Subcontracts.* (See (TAR) 48 CFR 1227.305–4.) DD Form 882 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

**1253.245–70 Report of Government property.**

The following form is prescribed for use by contractors to report Government property, as specified in (TAR) 48 CFR 1245.505–14:

*Form DOT F 4220.43, Contractor Report of Government Property.* (See (TAR) 48 CFR 1245.505–14.) Form DOT F 4220.43 is authorized for local reproduction and a copy is furnished for this purpose in Part 1253 of the loose-leaf edition of the (TAR) 48 CFR chapter 12.

**Subpart 1253.3—Illustration of Forms**

**1253.303 Agency forms.**

This subpart contains illustrations of DOT and other agency forms specified by the TAR for use in DOT acquisitions.

## APPENDIX TO SUBPART 1253.3

## TAR MATRIX

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 DEL	IND DEL	TRN
1252.209-70 Disclosure of Conflicts of Interest ...	1209.507	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.211-70 Brand Name or Equal .....	1211.011	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.211-71 Index for Specifications .....	1211.011	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.215-70 Key Personnel and/or Facilities .....	1215.106	P	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.216-70 Evaluation of Offers Subject to an Economic Price Adjustment Clause.	1216.203-470	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.216-71 Determination of Award Fee .....	1216.405(a)	P	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.216-72 Performance Evaluation Plan .....	1216.405(b)	P	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.216-73 Distribution of Award Fee .....	1216.405(c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.216-74 Settlement of Letter Contract .....	1216.603-4	P	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-71 Delivery and Shifting of Vessel .....	1217.7000(b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-72 Performance .....	1217.7000(b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-73 Inspection and Manner of Doing Work.	1217.7000(b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-74 Subcontracts .....	1217.7000 (b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
12542.217-75 Lay Days .....	1217.7000 (b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-76 Liability and Insurance .....	1217.7000 (b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-77 Title .....	1217.7000 (b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-78 Discharge of Liens .....	1217.7000 (b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-79 Delays .....	1217.7000 (b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-80 Department of Labor Safety and Health Regulations for Ship Repair.	1217.7000 (b) and (c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.217-81 Guarantee .....	1217.7000(d)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.219-70 Small Business and Small Disadvantaged Business Subcontracting Report.	1219.708-70	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work.	1222.101-71(a)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.222-71 Strikes or Picketing Affecting Access to a DOT Facility.	1222.101-71(b)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-70 Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits.	1223.303	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-71 Accident and Fire Reporting .....	1223.7000(a)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-72 Protection of Human Subjects .....	1223.7000(b)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

TAR MATRIX—Continued

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract													UTL SVC	UTL SP				
					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	
1252.228-70 Loss of or Damage to Leased Aircraft.	1228.306-70 (a) and (b)	P	Yes	I	.....	.....	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.228-71 Fair Market Value of Aircraft	1228.306-70 (a) and (c)	P	No	I	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.228-72 Risk and Indemnities	128.306-70 (a) and (d)	P	Yes	I	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.231-70 Date of Incurrence of Costs	1231.205-32	P	No	I	.....	A	.....	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.236-70 Special Precautions for Work at Operating Airports.	1236.570	P	Yes	I	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.237-70 Qualifications of Employees	1237.110	P	Yes	I	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.237-71 Certification of Data	1237.7003	P	No	K	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....
1252.237-72 Prohibition on Advertising	1237.7003	C	No	I	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....
1252.242-70 Dissemination of Information—Education Institutions.	1242.203-70(a)	P	Yes	I	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.242-71 Contractor Testimony	1242.203-70(b)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242-72 Dissemination of Contract Information.	1242.203-70(c)	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242-73 Contracting Officers Technical Representative.	1242.7000	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.245-70 Government Property Reports	1245.505-70	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.247-70 Acceptable Service at Reduced Rates.	1247.104-370	C	Yes	I	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.247-71 F.O.B. Origin Information	1247.305-70	P	Yes	L	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.247-72 F.O.B. Origin Only	1247.305-70	P	Yes	L	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.247-73 F.O.B. Destination Only	1247.305-70	P	Yes	L	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.247-74 Shipments to Ports and Air Terminals.	1247.305-70	P	Yes	L	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.247-75 F.O.B. Designated Air Carrier's Terminal, Port of Exportation.	1247.305-70	P	Yes	L	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.247-76 Nominatin of Additional Ports	1247.305-70	P	Yes	L	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1252.247-77 Supply Movement in the Defense Transportation System.	1247.305-71	C	Yes	F	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
USCG 1252.210-90 Bar Coding Requirement	USCG 1210.011-90 and 1213.507-90	P	Yes	I	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
USCG 1252.213-90 Evaluation Factor for Coast Guard Performance of Bar Coding Requirement.	USCG 1213.107-90	P	No	M	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
USCG 1252.220-90 Local Hire	USCG 1220.9001	P	Yes	I	.....	.....	.....	.....	.....	.....	A	A	A	A	A	A	A	A	A	A	A	A	A
USCG 1252.228-90 Notification of Miller Act Payment Bond Protection.	USCG 1228.9000	P	No	I	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
USCG 1252.237-90 Requirements	USCG 1237.9000	P	No	I	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
USCG 1252.237-91 Area of Performance	USCG 1237.9000	P	Yes	I	.....	.....	.....	.....	.....	.....	A	A	A	A	A	A	A	A	A	A	A	A	A
USCG 1252.237-92 Performance and Delivery	USCG 1237.9000	P	Yes	I	.....	.....	.....	.....	.....	.....	A	A	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....



Pt. 1253, Subpt. 1253.3, App.

**Key:** P or C=Provision or Clause; IBR=Is Incorporation By Reference authorized?; UCR=Uniform Contract Format Section, when applicable.  
**Principle type and/or purpose of contract:** R=Required; A=Required-When-Applicable; O=Optional; X=Revision; FP SUP=Fixed-Price Supply; FP R&D=Fixed-Price Research and Development; CR R&D=Cost-Reimbursement Research and Development; FP SVC=Fixed-Price Service; FP CON=Fixed-Price construction; CR CON=Cost Reimbursement Construction; T&M L=Time & Material/Labor Hours; LMV=Leasing of Motor Vehicles; COM SVC=Communication Services; DDR=Dismantling, Demolition, or Removal of Improvements; A-E=Architect-Engineering; FAC=Facilities; IND DEL=Indefinite Delivery; RNN=Transportation; SP=Small Purchases; UTL SVC=Utility Services.

**Key:** P or C=Provision or Clause; IBR=Is Incorporation By Reference authorized?; UCF=Uniform Contract Format Section, when applicable.

**Principle type and/or purpose of contract:** R=Required; A=Required-When-Applicable; O=Optional; X=Revision; FP SUP=Fixed-Price Supply; CR SUP=Cost-Reimbursement Supply; FP R&D=Fixed-Price Research and Development; CR R&D=Cost-Reimbursement Research and Development; FP SVC=Fixed-Price Service; CR SVC=Cost-Reimbursement Service; FP CON=Fixed-Price Construction; CR CON=Cost-Reimbursement Construction; T&M LHM=Time & Material/Labor Hours; LMV=Leasing of Motor Vehicles; COM SVC=Communication Services; DDR=Disabling, Demolition, or Removal of Improvements; A-E=Architect-Engineering; FAC=Facilities; IND DEL=Indefinite Delivery; TRN=Transportation; SP=Small Purchases; UTL SVC=Utility Services.

<b>DEPARTMENT OF TRANSPORTATION CONTRACTOR'S RELEASE</b>		OMB Control No. 2185-0517 Expiration Date: 4/30/97
Public reporting burden for this collection of information is estimated to average 1 hour 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 aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2185-0517), Washington, DC 20503.		
CONTRACTOR (Name and Address)	ENTER SUM OF TOTAL OF AMOUNTS PAID AND PAYABLE	
CONTRACT NO.	\$	
<p>Pursuant to the terms of the above numbered contract and in consideration of the sum stated above, which has been paid or is to be paid to the Contractor, or its assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:</p> <ol style="list-style-type: none"> <li>1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: (or state "None")</li>   <li>2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract; and</li>   <li>3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.</li> </ol> <p>The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that it will comply with all provisions of the said contract, provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.</p> <p>IN WITNESSES WHEREOF, this release has been executed this _____ day of _____, 19 _____.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>WITNESSES</p>    <p>_____</p> <p>_____</p> </div> <div style="width: 45%; text-align: center;"> <p>_____</p> <p>(Contractor)</p>    <p>BY _____</p> <p>TITLE _____</p> </div> </div> <p>NOTE: In the case of a corporation, witnesses are not required but the below statement must be completed.</p> <p>I, _____, am the _____ secretary of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation; release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.</p> <div style="text-align: center; margin-top: 40px;"> <p>(CORPORATE SEAL)</p> <p>_____</p> </div>		

Department of Transportation

Pt. 1253, Subpt. 1253.3, App.

<p align="center"><b>DEPARTMENT OF TRANSPORTATION</b> <b>EMPLOYEE CLAIM FOR WAGE RESTITUTION</b></p>		<p>OMB Control No. 2105-0517 Expiration Date: 4/30/97</p>
<p><small>Public reporting burden for this collection of information is estimated to average 1 hour 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 aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20406; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.</small></p>		
<p><b>TO: The General Accounting Office</b> <b>Claims Division</b> <b>Washington, DC 20548</b></p>	<p><b>CONTRACT NUMBER</b></p>	
	<p><b>DATE OF CLAIM</b></p>	
	<p><b>EMPLOYEE'S FULL NAME</b></p>	
	<p><b>SSN:</b></p>	
<p>I hereby make claim for payment of unpaid wages due me in the amount of \$ _____</p>		
<p>as an employee of _____ <i>(Name of Contractor and/or Subcontractor)</i></p>		
<p>performing work under the above number at _____ <i>(location of work)</i></p>		
<p>_____ . I was employed</p>		
<p>as _____ during the period from _____ <i>(job title)</i> <i>(month/day/year)</i></p>		
<p>to _____ <i>(month/day/year)</i></p>		
<p>This claim constitutes the total amount claimed due and unpaid for the period of employment indicated.</p>		
<p><b>ADDRESS OF EMPLOYEE</b></p>	<p><b>SIGNATURE OF EMPLOYEE</b></p>	

<b>CONTRACTOR REPORT OF GOVERNMENT PROPERTY</b>					OMB Control No. 2185-0517 Expiration Date: 4/30/97	
Public reporting burden for this collection of information is estimated to average 1 hour 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 aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2185-0517), Washington, D.C. 20503.						
1. Contract Number: _____						
2. Report Period Ending: _____						
3. Contractor (Name and Address)				4. Contracting Office (Name and Address)		
5. Name and location of Government-Owned, Contractor-Operated Plant (if applicable)						
6. Any Government property located at a subcontractor's plant? ____ Yes ____ No. If yes, give the name and address of the subcontractor(s) on an attached sheet to this report.						
7. Date contractor's property control system approved? _____						
8. Approved by whom? _____ Name of Agency/Office						
9	Starting Balance				Ending Balance	
Property Class (See FAR 45.5)	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)	Items Added in \$	Items Deleted in \$	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)
a. Land & Rights Therein						
b. Other Real Property						
c. Plant Equipment						
d. Special Test Equipment						
e. Special Tooling						
f. Materials in Stock (when total value exceeds \$50,000)						
NOTE: This report shall include all Government property (i.e., property furnished by the Government, or acquired or fabricated by the contractor or subcontractors). By signature hereon, the contractor's property administrator declares that the report was prepared from the contractor's records that are required by FAR 45.5.						
10. Typed Name of Contractor Property Administrator				11. Signature and Date		

CONTRACT PRICING SUMMARY (For New Contracts Including Letter Contracts) (See Instructions on Reverse)						PAGE OF PAGES	
This form is for use in support of Standard Form 1411 prescribed by GSA, FAR (48 CFR) 53.215-2(c), Format 7A.						OMB Control No. 2105-0517 Expiration Date: 4/30/97	
Public reporting burden for this collection of information is estimated to average 5 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 aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.							
NAME OF OFFEROR				SUPPLIES AND/OR SERVICES TO BE FURNISHED			
HOME OFFICE ADDRESS							
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED				GOVT SOLICITATION NO.			
DETAIL DESCRIPTION OF COST ELEMENTS							
1. DIRECT MATERIAL				EST COST (\$)	TOTAL EST COST	REFER- ENCE	
A. PURCHASED PARTS							
B. SUBCONTRACTED ITEMS							
C. OTHER -- (1) RAW MATERIAL							
(2) STANDARD COMMERCIAL ITEMS							
TOTAL DIRECT MATERIAL							
2. MATERIAL OVERHEAD (Rate % X \$ base =)							
3. DIRECT LABOR				ESTIMATED HOURS	RATE/HOUR	EST COST (\$)	
TOTAL DIRECT LABOR							
4. LABOR OVERHEAD (Rate % X \$ base =)				O.H. RATE	X BASE =	EST COST (\$)	
TOTAL LABOR OVERHEAD							
5. OTHER DIRECT COSTS				EST COST (\$)			
A. SPECIAL TOOLING/EQUIPMENT							
TOTAL SPECIAL TOOLING/EQUIPMENT							
B. TRAVEL				EST COST (\$)			
(1) TRANSPORTATION							
(2) PER DIEM OR SUBSISTENCE							
TOTAL TRAVEL							
C. INDIVIDUAL CONSULTANT SERVICES				EST COST (\$)			
TOTAL INDIVIDUAL CONSULTANT SERVICES							
D. OTHER				EST COST (\$)			
TOTAL OTHER							
SUBTOTAL DIRECT COST AND OVERHEAD							
6. GENERAL AND ADMINISTRATIVE (G&A) EXPENSE (RATE % X \$ BASE (I.E., COST ELEMENT NOS. ) =							
7. ROYALTIES							
SUBTOTAL ESTIMATED COST							
8. CONTRACT FACILITIES CAPITAL AND COST OF MONEY							
SUBTOTAL ESTIMATED COST							
9. FEE OR PROFIT							
TOTAL ESTIMATED COST AND FEE OR PROFIT							

**INSTRUCTIONS FOR COMPLETING CONTRACT PRICING SUMMARY**

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. A separate DOT F 4220-44 is required for the basic and each option period (if applicable). The supporting data for the DOT F 4220-44 shall be as follows (NOTE: The DOT F 4220-44 shall be used to implement the requirements of the SF 1411 and does not relieve offerors from complying with FAR 15.804-6 requirements.)

(a) The basis for all proposed rates (including a copy of the indirect cost pool and a computational trail used to arrive at the proposed rate shall be clearly identified when the proposed rates are not approved by a Government audit agency for use in proposals, or approved by the Government audit agency, but the approval is 12 months or more old. State rather an approved (within 12 months) Government audit agency rate was used.

(b) The information below clarifies FAR 15.804-6 requirements for specific cost elements. The cost elements listed below shall be supported, at a minimum, with the following:

**1. DIRECT MATERIAL**

A. Purchased Parts: Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoices prices, etc.). Give details on an attached schedule.

B. Subcontracted Items: Show the total cost of subcontract effort and provide a separate SF 1411 and supporting DOT F 4220-44 for each subcontractor or written quotations from the prospective subcontractor in accordance with FAR 15.806-2.

**C. Other**

(1) Raw Material: Consists of material in a form or state that requires further processing. Provide priced quantities of items required for the proposal. Show total cost and give details on an attached schedule.

(2) Standard Commercial Items: Consists of items that the offeror normally fabricates, in whole or in part, and that are generally stocked in inventory. Provide an appropriate explanation of the basis for pricing. If price is based on cost, provide a cost breakdown; if priced at other than cost, provide justification for exemption from submission of cost or pricing data, as required by FAR 15.804-3(c). Show total cost and give details on an attached schedule.

**2. MATERIAL OVERHEAD**

Show cost here only if your accounting system provides for such cost segregation and only if this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (item 6).

**3. DIRECT LABOR**

Show the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Indicate whether actual rates or escalated rates are used. If escalation is included, state the degree (percent) and rationale used.

**4. LABOR OVERHEAD**

See paragraph (a) above.

**5. OTHER DIRECT COSTS**

(A) Special Tooling/Equipment: Identify and support specific equipment and unit prices. Use a separate schedule if necessary.

(B) Travel: Identify and support each trip proposed and the persons (or disciplines) designated to make each trip. Identify and support transportation and per diem rates.

(C) Individual Consultant Services: Identify and support the proposed contemplated consultants. State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

(D) Other Costs: List all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment) and provide bases for pricing.

**6. GENERAL AND ADMINISTRATIVE EXPENSE**

See paragraph (a) above and base approved by a Government audit agency for use in proposals.

**7. ROYALTIES**

If more than \$250, provide the following information on a separate page for each separate royalty or license fee, name and address of licensor, date of license agreement, patent numbers, patent application serial numbers, or other basis on which the royalty is payable, brief description (including any part of model numbers of each contract item or component on which the royalty is payable), percentage or dollar rate of royalty per unit, unit price of contract item, number of units, and total dollar amount of royalties. In addition, if specifically requested by the Contracting Officer, provide a copy of the current license agreement and identification of applicable claims of specific patents. (See FAR 27.204 and 31.205-37)

**8. SUBTOTAL ESTIMATED COST**

Enter the total of all direct and indirect costs excluding Contract Facilities Capital and Cost of Money and Fee or Profit.

**9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY**

Show total cost on line 9 and attach supporting calculations on the CASB-CMF forms. (See FAR 31.205-10).

**10. SUBTOTAL ESTIMATED COST**

Enter the total of all proposed costs excluding Fee or Profit and insert this amount in Section 6.A. of SF 1411.

**11. FEE OR PROFIT**

Enter this proposed Fee or Profit and insert this amount in Section 6.B. of SF 1411.

**12. TOTAL ESTIMATED COST AND FEE OR PROFIT**

Enter the total estimated cost including Fee or Profit.

(c) Under the column entitled, "Reference," identify the attachment where information supporting the specific cost element may be found.

<b>CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS</b>	OMB Control No.: 2105-0517 Expiration Date: 4/30/97
Public reporting burden for this collection of information is estimated to average 1 hour 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 (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.	
<p>Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, _____ (hereinafter called the Contractor) does hereby:</p> <ol style="list-style-type: none"> <li>1. Assign, transfer, set over the release to the UNITED STATES OF AMERICA (hereinafter called the Government), all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.</li> <li>2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits or other amounts (including any interest thereon) due or which may become due, and to promptly forward to the UNITED STATES TREASURER checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.</li> <li>3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney or other papers in connection with; and to permit the Government to represent it at any hearing, trial, or other proceeding arising out of such claim or suit.</li> </ol> <p>IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, _____.</p> <p style="text-align: center; margin-top: 20px;">BY: _____ (CONTRACTOR)</p> <p style="margin-top: 20px;">By signature hereon, I, _____, declare that I am the _____ (official title) of the corporation named as Contractor in the foregoing assignment; that _____ signed said assignment on behalf of the Contractor was then _____ of said corporation by authority of its governing body and is within the scope of its corporate powers.</p> <p style="margin-top: 20px;">(CORPORATE SEAL) _____</p>	

<b>CUMULATIVE CLAIM AND RECONCILIATION STATEMENT</b>		OMB Control No. 2105-0517 Expiration Date: 4/30/97
Public reporting burden for this collection of information is estimated to average 1 hour 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 (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.		
1. Name of Contractor	<div style="border-bottom: 1px solid black; width: 100%;"></div>	
2. Address of Contractor	<div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="border-bottom: 1px solid black; width: 100%;"></div>	
3. Contract No.	<div style="border-bottom: 1px solid black; width: 100%;"></div>	
4. Delivery/Task Order No.	<div style="border-bottom: 1px solid black; width: 100%;"></div>	
5. The total amount claimed under the above numbered contract, delivery order, or task order number is as follows:		
a. Direct Labor.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
b. Direct Material.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
c. Other Direct Costs.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
d. Overhead.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
e. G&A.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
f. Subcontract Cost.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
g. Total Costs (5a through 5f).....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
h. Fixed Fee.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
i. Total Amount Claimed.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
6. Total amount due under the above numbered contract, delivery order, task order is as follows:		
a. Total Amount Claimed.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
b. Total Amount Paid by the Government under Voucher Nos. _____ thru _____	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
c. Total Amount (if any) Withheld, Disallowed, etc. (as explained on the attached sheet).....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
d. Total Amount Due.....	\$	<div style="border-bottom: 1px solid black; width: 100%;"></div>
<p>I, _____, as the _____</p> <p style="text-align: center; font-size: small;">(Full Name) (Title)</p> <p>of the above named contractor, declare that the above statements are correct in accordance with the records of the contractor.</p> <p style="text-align: center; margin-top: 40px;">_____ (Signature)</p>		



REPORT OF INVENTIONS AND SUBCONTRACTS (Pursuant to "Patent Rights" Contract Clause) (See Instructions on Reverse Side)										Form Approved OMB No. 0704-0187 Expires June 30, 1992	
Public reporting burden for this collection of information is estimated to average 1 hour 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 aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0187), Washington, DC 20503.											
1. NAME OF CONTRACTOR/SUBCONTRACTOR		2. CONTRACT NUMBER		3. TYPE OF REPORT (A. PRELIMINARY, B. FINAL)		4. REPORTING PERIOD (Y/M/D)		5. FROM		6. TO	
7. ADDRESS (INCLUDE ZIP CODE)		8. AWARD DATE (Y/M/D)		9. AWARD NUMBER		10. CONTRACT NUMBER		11. FROM		12. TO	
SECTION I - SUBJECT INVENTIONS											
13. "SUBJECT INVENTIONS" REQUIRED TO BE REPORTED BY CONTRACTOR/SUBCONTRACTOR (If "None", so state)											
14. NAMED INVENTOR(S) (Last, first, MI)		15. TITLE OF INVENTION(S)		16. DISCLOSURE NO. (If none, so state)		17. ELECTION TO FILE PATENT APPLICATION (1) YES (2) NO (3) YES (4) NO (5) YES (6) NO (7) YES (8) NO (9) YES (10) NO		18. CONFIRMATORY INSTRUMENT OR ASSIGNMENT FORWARDED (1) YES (2) NO (3) YES (4) NO (5) YES (6) NO (7) YES (8) NO (9) YES (10) NO		19. CONFIRMATORY INSTRUMENT OR ASSIGNMENT FORWARDED (1) YES (2) NO (3) YES (4) NO (5) YES (6) NO (7) YES (8) NO (9) YES (10) NO	
20. EMPLOYER OF INVENTOR(S) NOT EMPLOYED BY CONTRACTOR/SUBCONTRACTOR (Last, first, MI)		21. ELECTED FOREIGN COUNTRIES IN WHICH A PATENT APPLICATION WILL BE FILED		22. Foreign Countries of Patent Application		23. Foreign Countries of Patent Application		24. Foreign Countries of Patent Application		25. Foreign Countries of Patent Application	
26. Name of Employer		27. Name of Employer		28. Name of Employer		29. Name of Employer		30. Name of Employer		31. Name of Employer	
32. Address of Employer (Include ZIP Code)		33. Address of Employer (Include ZIP Code)		34. Address of Employer (Include ZIP Code)		35. Address of Employer (Include ZIP Code)		36. Address of Employer (Include ZIP Code)		37. Address of Employer (Include ZIP Code)	
SECTION II - SUBCONTRACTS CONCERNING A "PATENT RIGHTS" AWARD											
38. SUBCONTRACTS AWARDED BY CONTRACTOR/SUBCONTRACTOR (If "None", so state)		39. SUBCONTRACT NO(S)		40. DATE "PATENT RIGHTS" (1) DATE (2) DATE (3) DATE (4) DATE (5) DATE (6) DATE (7) DATE (8) DATE (9) DATE (10) DATE		41. DESCRIPTION OF WORK TO BE PERFORMED UNDER SUBCONTRACT(S)		42. SUBCONTRACT DATE (Y/M/D)		43. SUBCONTRACT COMPLETION (1) YES (2) NO (3) YES (4) NO (5) YES (6) NO (7) YES (8) NO (9) YES (10) NO	
44. NAME OF SUBCONTRACTOR(S)		45. ADDRESS (Include ZIP Code)		46. ADDRESS (Include ZIP Code)		47. ADDRESS (Include ZIP Code)		48. ADDRESS (Include ZIP Code)		49. ADDRESS (Include ZIP Code)	
SECTION III - CERTIFICATION											
50. CERTIFICATION OF REPORT BY CONTRACTOR/SUBCONTRACTOR (I certify that the reporting party has procedures for prompt identification and timely disclosure of "Subject Inventions" that such procedures have been followed and that all "Subject Inventions" have been reported)											
51. NAME OF AUTHORIZED CONTRACTOR/SUBCONTRACTOR OFFICIAL (Last, first, MI)		52. SIGNATURE		53. DATE		54. DATE		55. DATE		56. DATE	
DD Form 882 Previous editions are obsolete											

## DD FORM 882 INSTRUCTIONS

## GENERAL

This form is for use in submitting INTERIM and FINAL Invention reports to the Contracting Officer and for use in the prompt notification of the award of subcontracts containing a "Patent Rights" clause. If the form does not afford sufficient space, multiple forms may be used or plain sheets of paper with proper identification of information by Item Number may be attached.

An INTERIM report is due at least every 12 months from the date of contract award and shall include (a) a listing of "Subject Inventions" during the reporting period, (b) a certification of compliance with required invention identification and disclosure procedures together with a certification of reporting of all "Subject Inventions," and (c) any required information not previously reported on subcontracts awarded during the reporting period and containing a "Patent Rights" clause.

A FINAL report is due within 6 months if contractor is a small business firm or domestic nonprofit organization and within 3 months for all others after completion of the contract work and shall include (a) a listing of all "Subject Inventions" required by the contract to be reported, and (b) any required information not previously reported on subcontracts awarded during the course of or under the contract and containing a "Patent Rights" clause.

While the form may be used for simultaneously reporting inventions and subcontracts, it may also be used for reporting, promptly after award, subcontracts containing a "Patent Rights" clause.

Dates shall be entered where indicated in certain items on this form and shall be entered in four or six digit numbers in the order of year and month (YYMM) or year, month and day (YYMMDD). Example: April 1986 should be entered as 8604 and April 15, 1986 should be entered as 860415.

Item 1a. Self-explanatory.

Item 1b. Self-explanatory.

Item 1c. If "same" as Item 2c, so state.

Item 1d. Self-explanatory.

Item 2a. If "same" as Item 1a, so state.

Item 2b. Self-explanatory.

(Word)

Item 2c. Procurement Instrument Identification (PII) number of contract (DFARS 4.7003).

Item 2d thru 5e. Self-explanatory.

Item 5f. The name and address of the employer of each inventor not employed by the contractor or subcontractor is needed because the Government's rights in a reported invention may not be determined solely by the terms of the "Patent Rights" clause in the contract.

Example 1: If an invention is made by a Government employee assigned to work with a contractor, the Government rights in such an invention will be determined under Executive Order 10096.

Example 2: If an invention is made under a contract by joint inventors and one of the inventors is a Government employee, the Government's rights in such an inventor's interest in the invention will also be determined under Executive Order 10096, except where the contractor is a small business or nonprofit organization, in which case the provisions of Section 202(e) of P.L. 96-517 will apply.

Item 5g(1). Self-explanatory.

Item 5g(2). Self-explanatory with the exception that the contractor or subcontractor shall indicate, if known at the time of this report, whether applications will be filed under either the Patent Cooperation Treaty (PCT) or the European Patent Convention (EPC). If such is known, the letters PCT or EPC shall be entered after each listed country.

Item 6a. Self-explanatory.

Item 6b. Self-explanatory.

Item 6c. Self-explanatory.

Item 6d. Patents Rights Clauses are located in FAR 52.227.

Item 6e thru 7b. Self-explanatory.

Item 7c. Certification not required by small business firms and domestic nonprofit organizations.

Department of Transportation

Pt. 1253, Subpt. 1253.3, App.

[59 FR 40299, Aug. 8, 1994, as amended at 60 FR 55802, Nov. 3, 1995; 61 FR 393, Jan. 5, 1996; 61 FR 50251, Sept. 25, 1996; 62 FR 26421, May 14, 1997; 62 FR 67732, Dec. 30, 1997]