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Code of Federal Regulations

48

Chapters 3 to 6
Revised as of October 1, 2000

Federal Acquisition Regulations System

Containing a Codification of documents of general applicability and future effect

As of October 1, 2000

With Ancillaries

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 301.101 *refers to title 48, part 301, section 101.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

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The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

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For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency's name appears at the top of odd–numbered pages.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

October 1, 2000.

THIS TITLE

Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of seven volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2000.

The Federal acquisition regulations in chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapters 2 through 99 are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of chapters 2 through 99 are reserved for agency regulations *implementing* the Federal acquisition regulations in chapter 1 and are numerically keyed to them. Parts 70 to 99 in chapters 2 through 99 contain agency regulations *supplementing* the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in section 1.106 of chapter 1. For the convenience of the user section 1.106 is reprinted in the Finding Aids section of the second volume containing chapter 1 (parts 52 to 99).

The first volume, containing chapter 1 (parts 1 to 51), includes an index to the Federal acquisition regulations.

For this volume, Melanie L. Marcec was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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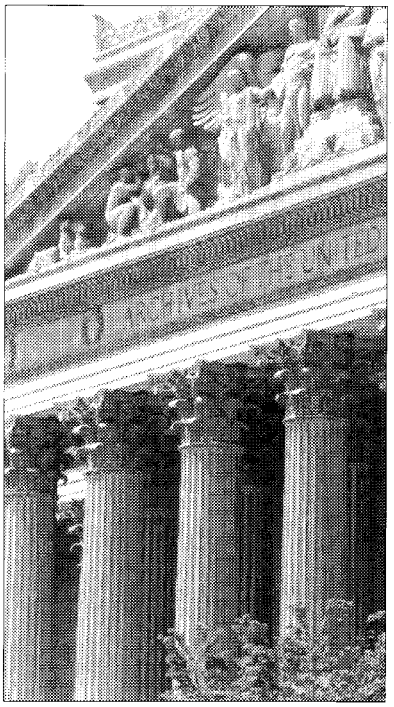

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Title 48—Federal Acquisition Regulations System

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13961, Apr. 9, 1984, unless otherwise noted.

Subpart 301.1—Purpose, Authority, Issuance

301.101 Purpose.

(a) The Department of Health and Human Services Acquisition Regulation (HHSAR) is issued to establish uniform acquisition policies and procedures for the Department of Health and Human Services (HHS) which conform to the Federal Acquisition Regulation (FAR) System.

(b) The HHSAR implements and supplements the FAR. (Implementing material expands upon or indicates the manner of compliance with related FAR material. Supplementing material is new material which has no counterpart in the FAR.)

(c) The HHSAR contains all formal departmental policies and procedures that govern the acquisition process or otherwise control contracting relationships between the Department's contracting offices and contractors.

301.102 Authority.

The HHSAR is prescribed by the Assistant Secretary for Management and Budget under the authority of 5 U.S.C. 301 and section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary. The Assistant Secretary for Management and Budget has redelegated the authority to establish all departmental acquisition policy and publish all acquisition regulations to the Deputy Assistant Secretary for Management and

Acquisition. This authority is not redelegable.

[49 FR 13961, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989]

301.103 Applicability.

The FAR and HHSAR apply to all HHS acquisitions as stated in FAR 1.103. Unless specified otherwise, these regulations apply to acquisitions within and outside the United States.

301.104 Issuance.

301.104–1 Publication and code arrangement.

(a) The HHSAR is also published in the same forms as indicated in FAR 1.104–1(a).

(b) The HHSAR is issued in the Code of Federal Regulations (CFR) as Chapter 3 of Title 48, Department of Health and Human Services Acquisition Regulation. It may be referenced as ''48 CFR Chapter 3.''

301.104–2 Arrangement of regulations.

(a) *General.* The HHSAR conforms to the FAR with respect to divisional arrangements; i.e., subchapters, parts, subparts, sections, subsections, and paragraphs.

(b) *Numbering.* The FAR System of numbering permits the keying of the same or similar subject matter throughout Chapters 1 (FAR) and 3 (HHSAR). However, unlike the FAR numbering scheme, our scheme varies somewhat in the numbering to the left of the decimal point. Whereas the FAR only identifies the part number to the left of the decimal point, our corresponding reference identifies the chapter as well. For example, this corresponding paragraph in the FAR is numbered 1.104–2(b) where ''1'' is the part number (may be one or two digits and is followed by a decimal point), ''1'' (to the right of the decimal point) is the subpart number, ''04'' (always two digits) is the section number, ''2'' is the subsection number (always hyphenated), and ''(b)'' is the paragraph reference. The corresponding HHSAR reference is 301.104–2(b) where the ''3'' or first digit is the chapter number assigned to the particular department or agency (may be two digits) and the ''01'' represents the part number (part numbers will always be two digits for agencies implementing the FAR). The remaining numbers are identical to and represent the same divisions as the FAR example.

(c) *References and citations.* (1) Unless otherwise stated, references, indicate parts, subparts, sections, subsections, etc, of this regulation, the HHSAR.

(2) This regulation shall be referred to as the Department of Health and Human Services Acquisition Regulation (HHSAR). Any reference may be cited as ''HHSAR'' followed by the appropriate number. Within the HHSAR, the number alone will be used.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by ''FAR''.

301.104–3 Copies.

Copies of the HHSAR in FEDERAL REGISTER and CFR form may be purchased by the public from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Lose-leaf copies of the HHSAR may be obtained by departmental personnel having a need for the document by placing an order with a Directives Distribution Coordinator in accordance with General Administration Manual Chapter 1–00, HHS Staff Manual System.

301.105 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this regulation:

HHSAR segment	OMB control no.
315.4	0990–0139
324.70	0990–0136
332.406	0990–0134
342.7103	0990–0131
352.215–71	0990–0139
352.216–70	0990–0138
352.224–70	0990–0136
352.228–70	0990–0135
352.232–71	0990–0134
352.232–73	0990–0134
352.233–70	0990–0133
352.270–1	0990–0129
352.270–2	0990–0129
352.270–3	0990–0129
352.270–5	0990–0130
370.1	0990–0129
370.2	0990–0129

The OMB control number ''OMB No. 0990–0115'' is to be included in the upper right corner of the first page of all solicitations, purchase orders, and contracts issued by departmental contracting activities. The number represents approval of the HHS acquisition process and covers recordkeeping and reporting requirements which are unique to individual acquisitions (e.g., requirements contained in specifications, statements of work, etc.).

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44293, Dec. 9, 1986; 53 FR 15562, May 2, 1988]

Subpart 301.2—Administration

301.201 Maintenance of the HHSAR.

(a) The HHSAR is prepared and issued under the authority of the Deputy Assistant Secretary for Management and Acquisition. Acquisition policies and procedures which are necessary to implement, supplement, or deviate from the FAR will be issued in the HHSAR by the Deputy Assistant Secretary for Management and Acquisition when necessary to accomplish Department-wide acquisition objectives.

(b) The HHSAR is maintained by the Office of Acquisition and Grants Management. The Director, Office of Acquisition and Grants Management is responsible for developing and preparing for issuance all acquisition regulatory material to be included in the HHSAR.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24342, June 7, 1989]

301.270 Executive Committee for Acquisition.

(a) The Deputy Assistant Secretary for Management and Acquisition has established the Executive Committee for Acquisition (ECA) to assist and facilitate the planning and development of departmental acquisition policies and procedures and to assist in responding to other agencies and organizations concerning policies and procedures impacting the Federal acquisition process.

(b) The ECA consists of members and alternates from the Office of Acquisition and Grants Management, Division of Contract Operations-OS, Office of Human Development Services, Health Care Financing Administration, Social Security Administration, Public Health Service, and, collectively, the regional offices. The ECA is chaired by the Director, Office of Acquisition and Grants Management. All meetings will be held at the call of the Chairman, and all activities will be carried out under the direction of the Chairman.

(c) The ECA, to facilitate the planning, development, and coordination of government-wide and department-wide acquisition policies and procedures, is to:

(1) Advise and assist the Chairman concerning major acquisition policy matters;

(2) Review and appraise, at appropriate intervals, the overall effectiveness of existing policies and procedures; and

(3) Review and appraise the impact of new major acquisition policies, procedures, regulations, and developments on current acquisition policies and procedures.

(d) The Chairman will periodically issue a list of current members and alternates specifying the name, title, organization, address, and telephone number of each. The member organizations are responsible for apprising the Chairman whenever a new member or alternate is to be appointed to the ECA.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24342, June 7, 1989]

301.271 Timing of HHSAR revisions.

HHSAR revisions will be issued throughout the year as the need arises. HHSAR material shall become effective on the date cited in the FEDERAL REGISTER issuance or on the date of the transmittal notice which distributes it to HHSAR Staff Manual holders, unless otherwise indicated.

Subpart 301.3—Agency Acquisition Regulations

301.301 Policy.

(a)(1) The FAR and HHSAR are intended to provide all necessary regulatory guidance for the conduct of the

acquisition process within the Department. However, there may be some rare instances where regulations are necessary to implement and/or supplement the FAR and/or HHSAR at the Operating Division (OPDIV) level or lower. The Department discourages the proliferation of OPDIV and lower level issuances, but will allow lower level issuances when deemed pertinent.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.302 Limitations.

The same limitations applicable to the FAR also apply to the HHSAR.

301.303 Publication and codification.

(a) The HHSAR shall be codified in Chapter 3 of Title 48, Code of Federal Regulations. Any OPDIV or lower implementation or supplementation of the HHSAR or FAR shall also be codified as part of Chapter 3. Implementing material is that which expands upon or indicates the manner of compliance with related higher level material. Supplementing material is that for which there is no counterpart. Where material in the FAR requires no implementation, there will be no corresponding number in the HHSAR. Thus, there are gaps in the HHSAR sequence of numbers where the FAR, as written, is deemed adequate. Supplementary material shall be numbered as specified in FAR 1.303.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.304 Agency control and compliance procedures.

(a) Whenever an OPDIV or lower level organization determines a need for an acquisition regulation not covered by the FAR or HHSAR or wishes to implement or supplement the coverage in either, the organization shall prepare a memorandum that explains the need, background, justification, and significant aspects of the proposed regulation and send it, together with an outline, to the Director, Office of Acquisition and Grants Management. The Director will analyze the request to determine if it has applicability to the HHSAR or FAR; if not, the Director will either approve or disapprove the request for incorporation into the organization's acquisition regulation. If the request is approved, the organization must prepare the proposed regulation in FEDERAL REGISTER format, obtain all necessary concurrences, including Office of General Counsel—Business and Administrative Law Division, and send it to the Director, Office of Acquisition and Grants Management for review and approval. The regulation must be prepared for signature by the Deputy Assistant Secretary for Management and Acquisition. All regulations will be required to be processed through the public rulemaking process in the FEDERAL REGISTER.

(b) Only the organizations listed in paragraph (d) are authorized to established acquisition regulations. As of the date of issuance of the HHSAR, no acquisition regulations below the HHSAR level exist, and the procedures detailed in paragraph (a) must be followed to initiate the establishment of an OPDIV or lower level regulation.

(c) Under no circumstances shall any organization's implementation or supplementation of the FAR or HHSAR conflict with, supersede, or repeat, paraphrase, or otherwise restate policies or procedures prescribed by these regulatory issuances. OPDIV or lower level material shall follow the numbering system, format, and arrangement of the FAR and HHSAR and will be applicable only within the organization issuing it. One copy of all OPDIV or lower level material issued in loose-leaf format shall be furnished the Director, Office of Acquisition and Grants Management at the times of issuance.

(d) Material issued by OPDIV or lower level organizations to implement and supplement the HHSAR and FAR shall be identified by prefixes to the digit 3 (indicating Chapter 3–HHSAR) as follows, and shall use the same numbering system as the HHSAR:

Organization	Prefix
Office of the Secretary	OS
Health Care Financing Administration	HCFA
Office of Human Development Services	OHDS
Public Health Service	PHS
Alcohol, Drug Abuse, and Mental Health Administration.	ADAMHA
Centers for Disease Control	CDC
Food and Drug Administration	FDA

Organization	Prefix
Health Resources and Services Administration.	HRSA
Indian Health Service	IHS
National Institutes of Health	NIH
Social Security Administration	SSA

Each OPDIV or lower level acquisition regulation will be included in its entirety as a separate appendix to 48 CFR Chapter 3. The Director, Office of Acquisition and Grants Management will assign the appendix designation upon approval of the initial request to establish the OPDIV or lower level acquisition regulation.

[49 FR 13961, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984; 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 53 FR 43206, Oct. 26, 1988, 54 FR 24342, June 7, 1989]

Subpart 301.4—Deviations From the FAR

301.403 Individual deviations.

Requests for individual deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Director, Office of Acquisition and Grants Management for review and approval.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24342, June 7, 1989]

301.404 Class deviations.

Requests for class deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Deputy Assistant Secretary for Management and Acquisition for review and approval.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24342, June 7, 1989]

301.470 Procedure.

(a) When a contracting activity or contracting office determines that a deviation is needed, it shall prepare a deviation request in memorandum form and forward it through administrative channels to the official designated as stated in 301.403 or 301.404. In an exigency situation, the contracting activity or contracting office may request a deviation verbally, but is required to confirm the request in writing as soon as possible.

(b) A deviation request shall clearly and precisely set forth the:

(1) Nature of the needed deviation;

(2) Identification of the FAR or HHSAR from which the deviation is needed;

(3) Circumstances under which the deviation would be used;

(4) Intended effect of the deviation;

(5) Time-frame; and

(6) Reasons which will contribute to complete understanding and support of the requested deviation. A copy of pertinent background papers such as a form or contractor's request should accompany the deviation request.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24342, June 7, 1989]

Subpart 301.5—Agency and Public Participation

301.501 Solicitation of agency and public views.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.501–2 Opportunity for public comments.

(b) Public opportunity for comment on proposed changes or additions to the HHSAR or lower level acquisition regulations will be offered whenever the proposed regulation will have an impact on the public and/or contractors. This will be accomplished by publishing a notice of proposed rulemaking in the FEDERAL REGISTER which will include the proposed language and the background and rationale for the proposed regulation. Comments will not be solicited directly from professional or industry associations or other interested parties; they will be expected to respond based upon the FEDERAL REGISTER notification. Normally, the public will be given 45 days to comment. Proposed changes or additions to the HHSAR or FAR shall be staffed to the Executive Committee

for Acquisition in accordance with 301.270.

[49 FR 13961, Apr. 9, 1984. Redesignated and amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.501–3 Exceptions.

(e) Comments will not be solicited from the public when the change or addition to the HHSAR or lower level acquisition regulation is deemed procedural in nature and concerns internal administrative directions aimed at departmental personnel (see FAR 1.301(b)).

[49 FR 13961, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984. Redesignated and amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.503 Public meetings.

Public meetings will not normally be used to solicit comments or views on HHSAR or lower level acquisition regulations. However, when the topic is so controversial that the Department or OPDIV believes a public meeting would be beneficial, public meetings will be convened.

[49 FR 13961, Apr. 9, 1984. Redesignated at 50 FR 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 301.6—Contracting Authority and Responsibility

SOURCE: 53 FR 15562, May 2, 1988, unless otherwise noted.

301.602–3 Ratification of unauthorized commitments.

(b) *Policy*. (1) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. However, execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. The ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity (HCA).

(2) The HCA or his/her designee is the official authorized to ratify an unauthorized commitment (but see (b)(3), below).

(3) Ratification authority may be redelegated by the HCA, but not below the level of the principal official responsible for acquisition (PORA).

(c) *Limitations.* (5) The concurrence of legal counsel concerning the payment issue is optional.

(7) The ratification shall be in written document form containing verification of each limitation stated in FAR 1.602–3(c)(1)–(6), and shall be processed in accordance with 301.602–3(e) *Procedures.*

(e) *Procedures.* (1) The individual who made the unauthorized contractual commitment shall furnish the reviewing contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the submitted material, and prepare the ratification document if he/she determines that the commitment may be ratifiable. The contracting officer shall forward the ratification document and the submitted material to the HCA or designee with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the HCA or designee will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the HCA or designee, the file will be returned, along with the ratification document, to the contracting officer for issuance of a purchase order or contract, as appropriate.

(4) HCA's or their designees will report the number and dollar value of requests for ratifications received and

ratifications authorized each calendar quarter. Reports shall be submitted in an original and one copy to the Deputy Assistant Secretary for Management and Acquisition to arrive no later than 30 calendar days after the close of each calendar quarter.

[53 FR 43206, Oct. 26, 1988]

301.603 Selection, appointment, and termination of appointment.

301.603–1 General.

(a) The appointment and termination of appointment of contracting officers shall be made by the principal official responsible for acquisition (PORA). This authority is not delegable. The head of the contracting activity shall ensure that only the PORA is redelegated, and exercises, this authority.

(b) Only GS–1105 and 1106 and GS/GM–1101 and 1102 personnel shall be appointed as contracting officers (see 301.603–3(b)).

(c) The appointment of contracting officers shall be made at one of the four levels specified under the HHS Acquisition Certification Program (see 301.603–3(b)).

(d) An individual shall be appointed only in instances where a valid organizational need for a contracting officer can be demonstrated or a replacement position is to be filled. Factors to be considered in assessing the need for a contracting officer appointment include volume of actions, complexity of work, and structure of the organization.

301.603–2 Selection.

(a) When an organizational need for a contracting officer is determined or a replacement is required, an official (usually the prospective contracting officer's immediate supervisor) will nominate a contracting officer candidate. The nomination shall be accompanied by the candidate's current Standard Form (SF) 171, Personal Qualifications Statement, that contains all relevant information, to include that stated in FAR 1.603–2, a copy of the nominee's most recent performance appraisal, and a copy of the certificate issued under the HHS Acquisition Certification Program indicating the current level of certification.

(b) The PORA shall review the submitted material to determine the candidate's ability to perform the contracting functions required to meet the organizational need. If the PORA requires additional information to make the decision, it shall be provided expeditiously by the nominating official.

301.603–3 Appointment.

(a) Contracting officer appointments shall become effective when the PORA signs the Standard Form 1402, Certificate of Appointment. SF 1402's shall be prepared and maintained in accordance with FAR 1.603–3.

(b) Appointments shall be made at one of the four levels established by the HHS Acquisition Certification Program. Therefore, the contracting officer candidate must meet the minimum eligibility requirements of certification for one of the four stated levels. The level will be determined by the organizational need or position being refilled (replacement). The four levels are as follows:

(1) *Level I—Purchasing Agent.* Mandatory for all personnel who have signature authority for small purchases (GS–1102, 1105, and 1106), including orders from GSA sources.

(2) *Level II—Acquisition Official.* Mandatory for those in the GS–1102 series. Sufficient for delegation of contracting officer authority to a maximum of $100,000.

(3) *Level III—Senior Acquisition Official.* Mandatory for those in the GS–1102 series for delegation of contracting officer authority above $100,000.

(4) *Level IV—Acquisition Manager.* Mandatory for preaward review and approval authority as specified in HHSAR Subpart 304.71.

(c) Changes to contracting officer appointments, either increasing or decreasing the warrant limitations, shall be made by the PORA. Changes must be made from one of the four certification levels to another, or within one of the certification levels, and must be implemented by the PORA's issuance of a new SF 1402 to replace the existing SF 1402.

(d) Personnel shall not ordinarily be appointed as contracting officers if they do not meet the qualifications

prescribed for one of the four certification levels. However, if it is essential to appoint a contracting officer who does not fully meet the certification qualifications, an interim appointment may be granted by the PORA. The PORA shall require as a condition of the interim appointment that all training or experience requirements be met within a six month time period. Usually, interim appointments shall not exceed six months. Failure to successfully complete the necessary training requirements or gain the experience within this time frame will result in termination of the appointment, unless the PORA determines that unusual circumstances prevented the attainment of either. In this instance, one additional six month interim appointment may be issued, but no more shall be allowed. The PORA shall fully document all interim appointment actions.

(e) The original SF 1402 shall be provided to the contracting officer, and a copy shall be retained by the PORA. Another copy of the SF 1402 along with the SF 171 material shall be forwarded to the servicing personnel office for inclusion in the individual's personnel file folder. Files on individuals should not be established by the PORA.

301.603–4 Termination.

Termination of contracting officer appointments shall be executed by the PORA in accordance with FAR 1.603–4.

301.603–70 Delegation of contracting officer responsibilities.

(a) Non-GS/GM–1101 or 1102 or GS–1105 or 1106 personnel shall only be delegated contracting officer responsibilities when determined necessary by a warranted contracting officer (holder of a valid SF 1402), and in accordance with this subsection. Personnel, such as a contracting officer's representative or an ordering officer, shall be delegated only the needed responsibilities by the warranted contracting officer in a written memorandum of delegation which clearly states any limitations on the delegation. Personnel who are not in the GS/GM–1101 or 1102 or GS–1105 or 1106 job series shall not be issued a SF 1402, Certificate of Appointment.

(b) Non-acquisition personnel who are delegated acquisition responsibilities shall be required to have the training, experience, and education requirements necessary for the responsibilities assigned. If, for example, responsibility is to be delegated for making small purchases, the training, education, and experience for Level I—Purchasing Agent, or its equivalent as determined by the PORA, shall be required.

301.670 Head of the contracting activity.

301.670–1 Responsibility.

The head of the contracting activity (HCA) is responsible for conducting an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training.

301.670–2 Designation.

Each OPDIV head and PHS agency head has been designated as HCA along with the following officials:

(a) Deputy Assistant Secretary for Management and Acquisition; and

(b) Each Regional Director.

[53 FR 15562, May 2, 1988, as amended at 54 FR 24342, June 7, 1989]

301.670–3 Redelegation.

(a) The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. However, HCA and other contracting approvals and authorities shall not be redelegated below the levels specified in the HHS Acquisition Regulation or, in the

absence of coverage in the HHS Acquisition Regulation, the Federal Acquisition Regulation. To ensure proper control of redelegated acquisition authorities, HCA's shall maintain a file containing successive delegations of HCA authority through and including the contracting officer level.

(b) Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the acquisition actions involved.

Subpart 301.7—Determinations and Findings

SOURCE: 50 FR 23127, May 31, 1985 (interim rule) and 50 FR 38004, Sept. 19, 1985 (final rule), unless otherwise noted.

301.703 Class determinations and findings.

(b) All class determinations and findings (D&F's) shall be limited to a period of one year or less.

301.704 Content.

An example of a D&F format may be found in 316.301–3(c). All D&F's shall be prepared using the referenced format and shall include the information required by FAR 1.704(a)–(g).

PART 302—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 302.1—Definitions

302.100 Definitions of terms.

Chief of the contracting office (CCO) is a mid-level management official in charge of a contracting office who controls and oversees the daily contracting operation of an Operating Division (OPDIV) or major component of an OPDIV. The CCO is subordinate to the principal official responsible for acquisition and is located at a management level above other contracting personnel, usually as a branch chief.

Head of the agency or *agency head* means the head of the Operating Division (OPDIV) for HCFA, OHDS, PHS, and SSA, or the Assistant Secretary for Management and Budget (ASMB) for the Office of the Secretary (OS).

Head of the contracting activity (HCA)—see 301.670–2.

Principal official responsible for acquisition (PORA) is defined in terms of certain organizational positions within the Office of Management and Acquisition (OMAC–OS), Health Care Financing Administration (HCFA), Office of Human Development Services (OHDS), Office of the Assistant Secretary for Health (OASH), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Centers for Disease Control (CDC), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), Social Security Administration (SSA), and the Regional Offices (RO's), as follows:

OMAC–OS—Director, Division of Contract Operations

HCFA—Director, Office of Acquisition and Grants, Office of Budget and Administration

OHDS— Director, Grants and Contracts Management Division, Office of Management Services

OASH—Director, Division of Acquisitions Management, Administrative Services Center, Office of Management

ADAMHA— Director, Division of Grants and Contracts Management, Office of the Administrator

CDC— Director, Procurement and Grants Office, Office of the Center Director

FDA— Director, Division of Contracts and Grants Management, Office of the Associate Commissioner for Management and Operations

HRSA— Director, Division of Grants and Procurement Management, Office of Management

IHS— Director, Division of Contracts and Grants Policy, Office of Administration and Management

NIH— Director, Division of Contracts and Grants, Office of Administration

SSA— Associate Commissioner, Office of Acquisition and Grants

RO's— Director, Regional Administrative Support Center

The PORA is subordinate to the head of the contracting activity and is the official in charge of the major contracting operation activity within the

OPDIV, agency, staff office, or regional office.

[49 FR 13964, Apr. 9, 1984, as amended at 51 FR 23231, June 26, 1986; 51 FR 44293, Dec. 9, 1986; 52 FR 27558, July 22, 1987; 53 FR 43207, Oct. 26, 1988; 54 FR 24342, June 7, 1989; 55 FR 13536, Apr. 11, 1990; 56 FR 47002, Sept. 17, 1991]

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 303.1—Safeguards

Sec.

303.101 Standards of conduct.
303.101–3 Agency regulations.
303.104 Procurement integrity.
303.104–4 Definitions.
303.104–5 Disclosure of proprietary and source selection information.
303.104–6 Restrictions on Government officials, employees, and consultants.
303.104–9 Certification requirements.
303.104–11 Processing violations or possible violations.
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Subpart 303.2—Contract Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Subpart 303.3—Report of Suspected Antitrust Violations

303.303 Reporting suspected antitrust violations.

Subpart 303.4—Contingent Fees

303.408 Evaluation of the SF 119.
303.408–1 Responsibilities.
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Subpart 303.5—Other Improper Business Practices

303.502 Subcontractor kickbacks.

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13964, Apr. 9, 1984, unless otherwise noted.

Subpart 303.1—Safeguards

SOURCE: 54 FR 31528, July 31, 1989, unless otherwise noted.

303.101 Standards of conduct.

303.101–3 Agency regulations.

The Department of Health and Human Services' Standards of Conduct are prescribed in Part 73 of Title 45.

303.104 Procurement integrity.

303.104–4 Definitions.

(h)(1) *Procurement official* means any individual who has participated personally and substantially in the conduct of a procurement. The following classes of employees may be considered procurement officials depending on the circumstances prevailing in a given case: contracting officers, contract specialists, contract administrators, procurement agents, procurement clerks, cost/price analysts, procurement analysts, clerical support and administrative personnel, auditors, professional staff of the Division of Cost Allocation, acquisition review and approval officials, contract clearance staff, board of award members, supervisory procurement officials, small and disadvantaged business utilization specialists, project officers, project managers, program officials, officials who provide special program clearances and approvals, program managers, technical evaluation panelists, peer reviewers, source selection evaluation board members, source selection advisory council members, source selection authorities, finance officials, and procurement lawyers. Concept peer reviewers are not considered to be procurement officials when participating in project concept reviews pursuant to 42 CFR 52h.10(a). However, concept peer reviewers, or other peer reviewers, who participate in a project approach review are procurement officials. When there is a question whether an individual is a procurement official, the activities of the individual should be analyzed by the contracting officer to determine

whether there is both personal and substantial involvement in a procurement. If there is doubt in a particular case, the doubt should be resolved by including the individual as a procurement official. The contracting officer has the authority to decide who is or who is not a procurement official in a particular case. The opinion of the Office of the General Counsel (OGC) should be requested when the contracting officer believes the situation is particularly complex or sensitive. When the contracting officer's decision is disputed by the individual whose status as a procurement official is in question, the matter will be referred to the Principal Official Responsible for Acquisition (PORA) for a final determination.

(k)(1) *Source selection information* includes ''derivative documents'' which are documents containing references to or directly citing or paraphrasing proprietary or source selection information.

303.104–5 Disclosure of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary, source selection information, or derivative documents shall—

(1) Ensure documents are marked as prescribed in FAR 3.104–4 (j) and (k);

(2) Provide physical security for documents in the office environment during and after duty hours; and

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, double wrapping with more than one envelope, and sealing of envelopes, as necessary.

(b) Individuals responsible for preparing derivative documents are responsible for marking such documents in accordance with FAR 3.104–5(b).

(c) Only the contracting officer has the authority to authorize individuals, or classes of individuals, access to proprietary or source selection information for each procurement except for paragraph (d) of this section.

(d) The following classes of individuals are authorized blanket access to only that source selection information developed before a request for contract is sent to the contract office, or to later modifications or supplements to such information—

(1) The generators of the requirements, including program, scientific, and technical experts involved in the development of the statements of work, specifications, evaluation plans, budget estimates, or similar documents;

(2) Reviewing officials; and

(3) Supervisors in the management chain of the individuals listed in paragraphs (d) (1) and (2) of this section. The contracting officer shall include in the contract file names and functions of any other individuals authorized access to proprietary or source selection information.

303.104–6 Restrictions on Government officials, employees, and consultants.

(b) Procurement officials leaving the Department will be required to complete the certification set forth in Chapter 1–90 of the General Administration Manual if that official leaves the Department during the conduct of a procurement expected to result in a contract or modification in excess of $100,000. The administrative officer will forward a copy of the certification to each responsible contracting officer for incorporation into the contract file.

303.104–9 Certification requirements.

(c) The contracting officer shall include the contracting officer certification in the contract file for each contract action over $100,000. Including the certificate in the contract file shall be considered notification to the head of the agency.

(e)(2) The waiver shall be submitted to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget in the Office of the Secretary for review and approval before submission to the head of the agency.

303.104–11 Processing violations or possible violations.

(a)(1) The contracting officer determination that a reported violation or possible violation of the statutory prohibitions has no impact on the impending award or selection of a source must

be submitted through channels, along with supporting documentation, to the PORA for review and approval of the determination before award of a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred through channels, along with all related information available, to the PORA (if the PORA is an SES) or to another SES official designated by the OPDIV. That individual will—

(i) Refer the matter immediately to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget, Office of the Secretary for review, which office may consult with the Office of the General Counsel and the Office of the Inspector General, as appropriate; and

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104–11 (c) and (d).

(b) The individual in paragraph (a)(2) of this section acts as the agency head designee with respect to actions taken under the FAR clause at 52.203–10, Remedies for Illegal or Improper Activity.

303.104–12 Ethics program training requirements.

(a) The Office of Acquisition and Grants Management in the Office of Management and Acquisition (OAGM), Office of Management and Budget in the Office of the Secretary is responsible for developing a training module which can be used by the Department's OPDIVs and Regional offices to train procurement officials. Upon receipt of the module, each OPDIV and Regional Office must train the procurement officials set forth in 303.104–4(h)(1) before they can act as procurement officials.

(b) After the training has been completed, each procurement official must sign the ''Procurement Official's Certificate of Procurement Integrity'' before he/she can act as a procurement official on any procurement. The certificate shall be submitted to the servicing personnel office, where the certificate will be filed on the left side of the employee's Official Personnel Folder. A copy of the certificate shall be provided to the contract office which shall maintain a list of the procurement officials who have signed the certificates.

(c) Procurement officials who serve multiple contracting offices (such as procurement lawyers) shall submit copies of their certificates to OAGM with the originals being transmitted to their servicing personnel office. OAGM shall maintain a list of such procurement officials and inform cognizant contracting officers upon telephonic request whether particular individuals are included on the list.

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Departmental personnel shall report suspected violations of the Gratuities clause in accordance with subpart M, Reporting Violations, of the Department's Standards of Conduct (45 CFR part 73) and General Administration Manual Chapter 5–10, rather than as specified in FAR 3.203. Refer to subpart E, Gifts, Entertainment, and Favors, of 45 CFR part 73 for an explanation regarding what is prohibited and what is permitted.

Subpart 303.3—Report of Suspected Antitrust Violations

303.303 Reporting suspected antitrust violations.

A copy of each report of suspected antitrust violations submitted to the Attorney General shall also be submitted to the Director, Office of Acquisition and Grants Management.

[49 FR 13964, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989]

Subpart 303.4—Contingent Fees

303.408 Evaluation of the SF 119.

303.408–1 Responsibilities.

(b) The chief of the contracting office shall perform the review required by FAR 3.408–1(b) and should consult with the Office of General Counsel, Business

and Administrative Law Division, when deemed necessary.

303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Reports shall be made promptly to the contracting officer.

(b)(1)–(3) [Reserved]

(4) Suspected fraudulent or criminal matters to be reported to the Department of Justice shall be prepared in letter format and forwarded through acquisition channels to the head of the contracting activity for signature. The letter must contain all pertinent facts and background information considered by the contracting officer and chief of the contracting office that led to the decision that fraudulent or criminal matters may be present. A copy of the signed letter shall be sent to the Director, Office of Acquisition and Grants Management.

[49 FR 13964, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989]

Subpart 303.5—Other Improper Business Practices

303.502 Subcontractor kickbacks.

(b) Any known or suspected violations of the Anti-Kickback Act (41 U.S.C. 51–54) shall be reported to the contracting officer who shall investigate the matter, document the findings, and report the results to the chief of the contracting office. If the results substantiate the known or suspected violation, the chief of the contracting office shall notify the Office of General Counsel, Business and Administrative Law Division and report the matter, through acquisition channels, to the head of the contracting activity. The head of the contracting activity shall take appropriate action is consonance with the Act, and notify the Director, Office of Acquisition and Grants Management of the case and its disposition.

[49 FR 13964, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989]

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Approval of an exception to the policy stated in FAR 3.601 shall be made by the head of the OPDIV (Assistant Secretary for Management and Budget in OS cases) or the Regional Director.

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

For the purposes of implementing FAR subpart 3.7, the authorities granted to the ''agency head or designee'' shall be exercised by the principal official responsible for acquisition.

[51 FR 44293, Dec. 9, 1986]

PART 304—ADMINISTRATIVE MATTERS

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304.170 [Reserved]

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304.602 Federal Procurement Data System.

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304.7100 Scope of subpart.
304.7101 Contracts requiring review and approval.
304.7102 Conduct of the review.
304.7103 Approvals.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13965, Apr. 9, 1984, unless otherwise noted.

Subpart 304.1—Contract Execution

304.101 Contracting officer's signature.

An original of each bilateral contract or modification shall be executed by the contractor and contracting officer. An original of each unilateral contract or modification shall be executed by the contracting officer. The contracting officer need only sign the original when carbon paper is used in sets of forms such as Standard Form 44 or Optional Form 347 or 348. A legible carbon impression of the contracting officer's signature shall carry the same force and effect as a pen and ink signature for unilateral contracts.

304.170 [Reserved]

Subpart 304.2—Contract Distribution

304.201 Procedures.

The signed original of bilateral contracts and modifications shall be placed in the contract file, and duplicate originals shall be furnished the contractor, the appropriate accounting point, the project officer, and other individuals or offices, as applicable. Purchase orders, delivery orders, and other unilateral contracts and modifications shall be distributed the same as bilateral contracts except the original shall be furnished the contractor or seller. Copies of unilateral contracts and modifications with carbon impressioned signatures may be used but must be stamped ''DUPLICATE ORIGINAL'' (see 304.101).

[49 FR 36110, Sept. 14, 1984]

Subpart 304.6—Contract Reporting

304.602 Federal Procurement Data System.

The Department-wide Contract Information System (DCIS) represents the Department's implementation of the FPDS. All departmental contracting activities are required to participate in the DCIS and follow the procedures stated in the Contract Information System Manual and amendments to it. The principal official responsible for acquisition shall ensure that all required contract information is collected, submitted, and received into the DCIS on or before the 15th of each month for all appropriate contract and contract modification awards of the prior month.

[49 FR 13965, Apr. 9, 1984. Redesignated at 51 FR 44293, Dec. 9, 1986]

Subpart 304.8—Contract Files

304.801 General.

OPDIVs shall prescribe the contents of contract files and establish filing procedures consistent with the nature of the contracting actions and in accordance with FAR 4.801, 4.802, and 4.803. Contract files should contain an index of the contents to facilitate review and should be separated into logical categories (see FAR 4.803).

304.804 Closeout of contract files.

304.804–1 Closeout by the office administering the contract.

(3) Files for all cost-reimbursement type contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion (see FAR 4.804–4). The contracting officer responsible for contract closeout may negotiate settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates in accordance with FAR 42.708.

304.870 Closing review.

(a) Contracting officers shall assure the applicable items in FAR 4.804–5,

other than a field audit, have been accomplished prior to closing any physically completed contract. Cost-reimbursement type contracts will be subject to the additional requirements set forth below before they may be closed.

(b) Contracting officers shall use the instructions in the October 5, 1982 memorandum from the Deputy Assistant Secretary for Procurement, Assistance and Logistics to closeout cost-reimbursement type contracts physically completed prior to fiscal year 1977 and cost-reimbursement type contracts completed subsequent to that date for which field audit information is available.

(c) Contracting officers shall closeout all other cost-reimbursement type contracts physically completed after September 30, 1977 in accordance with the following procedures:

(1) Field audits will be conducted for contracts in excess of $500,000 awarded to commercial organizations and nonprofit organizations other than colleges and universities, hospitals and State and local units of government for which an agency other than HHS has audit cognizance. Field audits will also be conducted each year on approximately 25 of the same type contractors for which HHS has audit cognizance. These contracts may be closed after receipt of the field audit report.

(2) Contracts of any dollar value with non-proprietary colleges and universities, hospitals and State and local units of government and contracts not in excess of $500,000 with other institutions/organizations shall be closed out on the basis of a desk audit. The desk audit should include (i) a confirmation from the project officer that labor, material, travel, and other types of direct costs are commensurate with contract requirements, (ii) a review of available audit reports to determine if any adjustments were made that may be applicable to the contract under review, and (iii) discussions with the cognizant government auditor when considered appropriate. These contracts shall be closed with the condition that they are subject to adjustment should an on-site audit be conducted at a later date and should unallowable costs be identified as a result of that audit. The release executed by the contractor shall contain the following:

> The Contractor agrees, pursuant to the clause in this contract entitled Allowable Cost (for cost-reimbursement contracts) or Allowable Cost and Fixed Fee (for CPFF contracts), that the amount of any sustained audit exceptions resulting from any audit made after final payment will be refunded to the Government.

(3) The contracting officer may request a field audit of any contract when, in his/her judgment, the risk attendant with the contract warrants it. The contracting officer, however, shall exercise discretion in requesting such audits on creditable evidence such as unsatisfactory dealings with the contractor during the period of contract performance, prior audit reports containing serious findings against the contractor, the known experience of other government officials in dealing with the contractor when the contracting officer is personally knowledgeable about the circumstances, formal third party complaints or allegations which bear upon the contractor's integrity or the propriety of costs charged to the Government, and other comparable allegations or advice of a derogatory nature about the contractor made by responsible individuals which in the contracting officer's judgment should be investigated. Except where a contracting officer suspects misrepresentation or fraud, audits should not be requested if their cost of performance is likely to exceed their potential cost recovery.

(4) When an audit is warranted prior to closing out a contract, the contracting officer should request the audit directly from the Department of Health and Human Services Office of the Inspector General, Office of Audits (HHSOA). The request should cite the reasons the contracting officer believes an audit is warranted. A copy of the request should be forwarded to the Director, Office of Acquisition and Grants Management (DOAGM). In the event the Office of the Inspector General cannot honor the request in a reasonable period of time, it will consult with DOAGM and the contracting officer. The final decision on the need and scope of an audit will be made on the basis of the value of the contract, the

nature of the contracting officer's concerns, and the availability of HHSOA or other existing resources in the Department to perform a review to satisfy the contracting officer's concerns.

(5) Closeout procedures are to be followed in conjunction with the regular procedures now followed in administering contracts. These procedures are not meant or to be interpreted as imposing any requirement or responsibility on contracting officers or necessitating any reviews on the part of the contracting officials not currently required by the FAR. With some rare exceptions, Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, will contain sufficient information to allow a contracting officer to satisfy requirements for desk audits. Accordingly, these closeout procedures shall not cause contracting officers to engage in extraordinary oversight or review and shall not be used by contracting officers as the basis for requiring contractors to submit extraordinary documentation such as payroll listing, labor billings, travel details, etc.

[49 FR 13965, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989; 54 FR 43965, Oct. 30, 1989; 56 FR 47002, Sept. 17, 1991]

Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.

This subpart prescribes policy and procedures for assigning identifying numbers to contracts and related instruments, including solicitation documents, purchase orders, and delivery orders.

304.7001 Numbering contracts.

(a) *Contracts which require numbering.* The following contracts shall be numbered in accordance with the system prescribed in paragraph (b) of this section:

(1) All contracts, including letter contracts and task orders under basic ordering agreements, which involve the payment of $2,500 or more for the acquisition of personal property or nonpersonal services.

(2) All contracts which involve the payment of $2,000 or more for construction (including renovation or alteration).

(3) All contracts which involve more than one payment regardless of amount.

(The number assigned to a letter contract shall be assigned to the superseding definitized contract.)

(b) *Numbering system.* All contracts which require numbering shall be assigned a number consisting of the following:

(1) The three digit code assigned to the contracting office by the Office of Financial Operations, Office of Finance.

(2) A two digit fiscal year designation; and

(3) A four digit serial number. While it is required that a different series of four digit serial numbers be used for each fiscal year, serial numbers assigned need not be sequential.

(c) *Illustration of contract numbers.* The initial contract executed by the Division of Contract Operations, Office of the Secretary, for fiscal year 1983 should be numbered 100–83–0001, the second contract 100–83–0002. Alternatively, if it is desirable for internal identification purposes to establish separate series of numbers for sealed bid and negotiated contracts, this procedure is permissible. In this instance, the initial sealed bid contract might be numbered 100–83–0001 and the initial negotiated contract numbered 100–83–0500.

(d) *Assignment of identification codes.* Each contracting office of the Department shall be assigned a three digit identification code by the Office of Financial Operations. Requests for the assignment of such codes for newly established contracting offices shall be submitted by the headquarters acquisition staff office of the contracting activity to the Director, Office of Financial Operations. Conversely, in the event that a contracting office is to be disestablished, the Director, Office of Financial Operations shall be notified.

A listing of the contracting office identification codes currently in use is contained in the Department-wide Contract Information System Manual (DCIS).

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24342, June 7, 1989]

304.7002 Numbering solicitation documents.

Requests for proposals and invitations for bids shall be numbered in accordance with procedures prescribed by the headquarters staff office of the contracting activity.

304.7003 Numbering purchase and delivery orders.

Contracting offices shall establish procedures for numbering purchase orders as required for effective identification and control.

304.7004 Numbering basic agreements.

Basic agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the cognizant contracting activity. However, individual contracts entered into pursuant to the terms and conditions of a basic agreement shall be numbered in accordance with 304.7001(b).

304.7005 Numbering basic ordering agreements.

Basic ordering agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the contracting activity.

[49 FR 13965, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

Subpart 304.71—Review and Approval of Proposed Contract Awards

304.7100 Scope of subpart.

This subpart prescribes review and approval procedures for contract actions to ensure that:

(a) Contract awards are in conformance with law, established policies and procedures, and sound business practices;

(b) Contractual documents properly reflect the mutual understanding of the parties; and

(c) The contracting officer is informed of deficiencies and items of questionable acceptability and corrective action is taken.

304.7101 Contracts requiring review and approval.

(a) *General.* All contractual documents, regardless of dollar value, are to be reviewed by the contracting officer prior to award, even if the review and approval procedures prescribed in this section are applicable. However, under no circumstances may the individual who signs a contract instrument as contracting officer perform final review and approval of that contract action if it, or any modification to it, is expected to exceed the levels set forth in (b) (1) or (2) below.

(b) *Required reviews and approvals.* (1) Officials responsible for the acquisition function in the Office of the Secretary, OPDIVs (except the Public Health Service), and regional offices are to assure that sealed bid or negotiated contracts, and/or modifications to them, expected to exceed $300,000, are reviewed and approved prior to award. In order to assure the propriety of smaller dollar acquisitions, a statistically significant sample of contract actions not expected to exceed $300,000 are to be reviewed and approved prior to award.

(2) Contract actions of the Public Health Service are to be reviewed and approved prior to award in accordance with the dollar thresholds stated in Subpart PHS 304.71. In order to assure the propriety of smaller dollar acquisitions, a statistically significant sample of contract actions not expected to exceed those dollar thresholds referenced in Subpart PHS 304.71 are to be reviewed and approved prior to award.

(c) *Reviewing officials.* Officials assigned responsibility for review and approval of contract actions must possess qualifications in the field of acquisition commensurate with the level of review performed, and, as a minimum, possess those acquisition skills expected of a contracting officer. The following officials are responsible for preaward contract review and approval:

Office of the Secretary—

Director, Division of Contract and Grant Operations
Director, Division of Contract Operations, Office of Administrative and Management Services
Office of Human Development Services—Director, Grants and Contracts Management Division
Social Security Administration—Director, Office of Acquisition and Grants (may be redelegated to the appropriate division direction within the Office of Acquisition and Grants)
Health Care Financing Administration—Director, Division of Procurement Services.
Public Health Service—The reviewing official is designated in Subpart PHS 304.71, as approved by the Director, Office of Procurement and Logistics Policy, OPAL.

However, if any of the officials are to serve as the contracting officer and sign the contractual document, the review and approval function shall be performed by an appropriate official at least one level above.

(d) *Regional offices.* The Director, Regional Administrative Support Center (RASC) is responsible for review and approval of contracts, or modifications to them, expected to exceed $300,000 and executed by the regional office's contracting staff. The RASC may obtain the advice of the Regional Attorney in the review of proposed contract awards.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44293, Dec. 9, 1986; 52 FR 27558, July 22, 1987; 54 FR 24343, June 7, 1989]

304.7102 Conduct of the review.

(a) *General.* Reviewing officials may solicit the participation of specialists in various technical and administrative disciplines to aid in the review. The method of the review is not prescribed here in order to permit discretionary judgment in determining the depth to which significant areas are to be examined.

(b) *Contract file.* The reviewer is to: (1) Determine that the contract file constitutes an independent record, documented to provide a complete chronology of actions related to all aspects of the acquisition, and that the documentation is consistent with the requirements of FAR 4.803;

(2) Determine that each contract file contains documentation or other data (i.e., technical and business management evaluation, cost advisory and audit reports, negotiation memorandum, etc.) sufficient to explain and support the rationales, judgments, and authorities upon which all decisions and actions were predicated; and

(3) Ascertain:

(i) If the proposed acquisition action is to be awarded by other than full and open competition, that the documentation and approvals supporting the decision are present in the contract file;

(ii) That proper publicizing of the proposed acquisition was made pursuant to FAR Part 5;

(iii) That approval was obtained for any deviation from prescribed contract clauses;

(iv) That sufficient competition was obtained, the competitive range was appropriately determined, and oral or written discussions were conducted with all firms in the competitive range;

(v) That all the rules set forth in FAR Part 14 were complied with when the proposed award is a result of an IFB; and

(vi) That appropriate determinations and findings which justify the type of contract and advance payments are a part of the contract file.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

304.7103 Approvals.

(a) Awards are not to be made until approval is granted by the reviewing official identified in 304.7101. All approvals are to be in writing, except that when time is of the essence approval may be given orally and subsequently confirmed in writing.

(b) The reviewing official shall not approve a proposed contract award if a substantive issue (or issues) remains to be resolved. However, in appropriate circumstances, the reviewing official may use discretion and grant approval on a conditional basis and require the contracting officer to submit follow-up written documentation that the substantive issue has been resolved. This provides the reviewing official the option to require the contracting officer to resolve the substantive issue and submit documenting evidence before award approval is given, or to grant

conditional approval providing the substantive issue is resolved before the contract is awarded and require the contracting officer to submit documenting evidence either before or after the award. The reviewing official also has the option to determine the extent of documentation evidence to be submitted by the contracting officer. This may range from complete resubmission of the contract file to submission of a memorandum stating the contracting officer's actions in resolving the substantive issue.

SUBCHAPTER B—ACQUISITION PLANNING

PART 305—PUBLICIZING CONTRACT ACTIONS

Subpart 305.1—Dissemination of Information

Sec.
305.102 [Reserved]

Subpart 305.2—Synopsis of Proposed Contract Actions

305.202 Exceptions.

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

Subpart 305.5—Paid Advertisements

305.502 Authority.
305.503 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13969, Apr. 9, 1984, unless otherwise noted.

Subpart 305.1—Dissemination of Information

305.102 [Reserved]

Subpart 305.2—Synopsis of Proposed Contract Actions

305.202 Exceptions.

(b) When a contracting office believes that it has a situation where advance notice is not appropriate or reasonable, it shall prepare a memorandum citing all pertinent facts and details and send it, through normal acquisition channels, to the Director, Office of Acquisition and Grants Management (DOAGM) requesting relief from synopsizing. The DOAGM shall review the request and decide whether an exception to synopsizing is appropriate or reasonable. If it is, the DOAGM shall take the necessary coordinating actions required by FAR 5.202(b). Whatever the decision is on the request, the DOAGM shall promptly notify the contracting office when a determination has been made.

[51 FR 44293, Dec. 9, 1986, as amended at 54 FR 24343, June 7, 1989]

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

(a) *Public announcement.* Any contract, contract modification, or delivery order in the amount of $1 million or more shall be reported by the contracting officer to the Office of the Deputy Assistant Secretary for Legislation (Congressional Liaison), Room 406G, Hubert H. Humphrey Building. Notification shall be accomplished by providing a copy of the contract or award document face page to the referenced office prior to the day of award, or in sufficient time to allow for an announcement to be made by 5 p.m. Washington, DC time on the day of award.

[53 FR 43207, Oct. 26, 1988, as amended at 57 FR 11689, April 7, 1992]

Subpart 305.5—Paid Advertisements

305.502 Authority.

The contracting officer is authorized to publish advertisements, notices, and contract proposals in newspapers and periodicals in accordance with the requirements and conditions referenced in FAR Subpart 5.5.

305.503 Procedures.

Requests for acquisition of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information. Paid advertisements shall be limited to the publication of essential details of grant announcements, invitations for bids, and requests for proposals, including those for the sale of personal property, and for the recruitment of employees.

PART 306—COMPETITION REQUIREMENTS

Subpart 306.2—Full and Open Competition After Exclusion of Sources

Sec.
306.202 Establishing or maintaining alternative sources.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.
306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
306.302–7 Public interest.
306.303 Justifications.
306.303–1 Requirements.
306.303–2 Content.
306.304 Approval of the justification.

Subpart 306.4—Sealed Bidding and Competitive Proposals

306.401 Sealed bidding and competitive proposals.

Subpart 306.5—Competition Advocates

306.501 Requirement.
306.502 Duties and responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 23127, May 31, 1985, unless otherwise noted.

Subpart 306.2—Full and Open Competition After Exclusion of Sources

306.202 Establishing or maintaining alternative sources.

(a) The reference to the agency head in FAR 6.202(a) shall mean the appropriate competition advocate cited in 306.501.

(b)(1) The required determination and findings (D&F) shall be prepared by the contracting officer based on the data provided by program personnel, and shall be signed by the appropriate competition advocate. The D&F signatory authority is not delegable.

[50 FR 23127, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 51 FR 44293, Dec. 9, 1986]

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.

306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (2)(ii) Follow-on contracts for the continuation of major research and development studies on long-term social and health programs, major research studies, or clinical trails may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling the Department's or OPDIV's requirements.

(b) *Application.* (4) When the OPDIV head has determined that a specific item of technical equipment or parts must be obtained to meet an activity's program responsibility to test and evaluate certain kinds and types of products, and only one source is available. (This criterion is limited to testing and evaluation purposes only and may not be used for initial outfitting or repetitive acquisitions. Project officers should support the use of this criterion with citations from their agency's legislation and the technical rationale for the item of equipment required.)

(c) *Application for brand name descriptions.* There is existing equipment which, for reasons of compatibility and interchangeability, requires an item which is manufactured only by one source. (This criterion is for use in acquisitions where a particular brand name item is required, and an ''or equal'' will not meet the Government's requirements. This criterion may not be used when there are other manufacturers available which may be able to produce acceptable items even though their products might require some adjustments and modifications. These other manufacturers must be given the opportunity to compete.)

[50 FR 23127, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 51 FR 44293, Dec. 9, 1986; 57 FR 11689, Apr. 7, 1992]

306.302–7 Public interest.

(a) *Authority.* (2) Agency head, in this instance, means the Secretary.

(c) *Limitations.* When using the authority cited in FAR 6.302–7(a)(1), the Secretary's approval must be obtained. Therefore, an ''approval package'' must be prepared and staffed through departmental acquisition channels to the Secretary. The package shall include:

(1) A determination and findings, prepared by the contracting officer, for the Secretary to sign.

(2) A letter for the Secretary to sign notifying Congress of the determination to award a contract under the authority of 41 U.S.C. 253(c)(7). This letter must be received by Congress at least 30 days before contract award.

(3) A ''Justification for Other than Full and Open Competition'' (JOFOC).

(4) A briefing paper presenting background, need, etc.

(5) Any other pertinent papers or documents required by the Department.

306.303 Justifications.

306.303–1 Requirements.

(b) Preliminary arrangements or agreements with the proposed contractor made by someone other than the contracting officer shall have no effect on the rationale used to support an acquisition for other than full and open competition.

(f) The program office should discuss prospective other than full and open competition requests with their supporting contracting office as early as possible during the acquisition planning stage (see FAR Subpart 7.1 and Subpart 307.1), and before submitting the requisition or request for contract. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the acquisition, and avoid delays which might otherwise occur should it be determined that the request for other than full and open competition is not justified.

(g) When a program office desires to obtain certain goods or services by contract without full and open competition, it shall, at the time of forwarding the requisition or request for contract, furnish the contracting office a justification explaining why full and open competition is not feasible. All justifications shall be initially reviewed by the contracting officer.

(1) Justifications in excess of the small purchase limitation shall be in the form of a separate, self-contained document, prepared in accordance with FAR 6.303 and 306.303, and called a ''JOFOC'' (Justification for Other than Full and Open Competition). Justifications of $25,000 or less may be in the form of a paragraph or paragraphs contained in the requisition or request for contract.

(2) Justifications, whether over or under the small purchase limitation, shall fully describe what is to be acquired, offer reasons which go beyond inconvenience, and explain why it is not feasible to obtain competition. The justifications shall be supported by verifiable facts rather than mere opinions. Documentation in the justifications should be sufficient to permit an individual with technical competence in the area to follow the rationale.

[50 FR 23127, May 31, 1985, as amended at 57 FR 11689, Apr. 7, 1992]

306.303–2 Content.

(a)(1) The program office and name, address, and telephone number of the project officer shall also be included.

(2) This item shall include project identification such as the authorizing program legislation, to include citations or other internal program identification data such as title, contract number, etc.

(3) A full description of the requirement and its dollar amount is to be included. It may be in the form of a statement of work, purchase description, or specification. A statement is to be included to explain whether the acquisition is an entity in itself, whether it is one in a series, or part of a related group of acquisitions.

(c) Each JOFOC shall conclude with at least the following signatory lines (other concurrence lines may be added as deemed necessary by the contracting activity):

Recommended, Project Officer _____
Date _____
Concur, Project Officer's Immediate Supervisor _____
Date _____
Concur, Contracting Officer _____

Date _____
Approved, Approving Official _____
Date _____

306.304 Approval of the justification.

(a)(1) For purchases in excess of 10 percent of the small purchase limitation but not over the small purchase limitation, the contracting officer is authorized to review and approve (or disapprove) the justification (see 313.106(c)(2)). For acquisitions over the small purchase limitation, but not exceeding $100,000, the JOFOC shall be submitted to the contracting officer for review. The contracting officer will either concur or nonconcur, and forward the JOFOC to the principal official responsible for acquisition for approval. (When the contracting officer and principal official responsible for acquisition are the same individual, the approval will be made by the respective official listed in 306.501.) The principal official responsible for acquisition may redelegate approval for acquisitions between the small purchase limitation and $50,000 to the chief of the contracting office, provided that individual is at least one level above the contracting officer who will sign the contract.

(2) The competition advocates are listed in 306.501.

(3) The following shall serve as the approving officials referenced in FAR 6.304(a)(3):

HCFA—Administrator for Health Care Financing
OHDS—Assistant Secretary for Human Development Services
OS—Assistant Secretary for Management and Budget
PHS—Assistant Secretary for Health (may be delegated to the Deputy Assistant Secretary for Health Operations)
SSA—Commissioner of Social Security
RO's—Regional Director

This authority is not delegable, except as indicated for PHS.

(4) The senior procurement executive of the Department is the Assistant Secretary for Management and Budget.

(c) A class justification shall be processed the same as an individual justification.

(d) The contracting officer who receives a JOFOC for processing shall, after ascertaining that the document is complete, request advice from pricing, audit, legal, and other appropriate staff offices, and forward the JOFOC with his or her concurrence or nonconcurrence, to the appropriate approving official. When the contracting officer does not concur with the JOFOC, a written explanation setting forth the reasons must be provided the approving official. If the JOFOC is disapproved by the approving official, the contracting officer shall promptly notify the concerned program office.

(e) It is the responsibility of the approving official to determine whether a contract may properly be awarded without full and open competition. The program office and project officer are responsible for furnishing the contracting officer and approving official with pertinent supporting information necessary to make such determinations. Other staff offices shall advise the contracting officer and approving official as requested.

(f) As each justification is reviewed, the approving official should ask: why the acquisition cannot be competed, are there sufficient grounds for excluding all other actual or potential sources, what actions can be taken to obtain full and open competition in the instant acquisition, and what actions are needed to avoid the need for a subsequent or continuing acquisition that is for other than full and open competition?

[50 FR 23127, May 31, 1985, as amended at 56 FR 47002, Sept. 17, 1991]

Subpart 306.4—Sealed Bidding and Competitive Proposals

306.401 Sealed bidding and competitive proposals.

The requirement in FAR 6.401 to document the reasons sealed bidding is not appropriate may be accomplished by adding a sentence to the negotiation memorandum (see 315.672) specifying which criterion (or criteria) listed in FAR 6.401(a) is (are) not applicable to the acquisition.

Subpart 306.5—Competition Advocates

306.501 Requirement.

The Department's competition advocate is the Deputy Assistant Secretary for Management and Acquisition. The competition advocates for the Department's primary contracting offices are as follows:

HCFA—Associate Administrator for Management and Support Services
OHDS—Director, Office of Management Services
OS—Director, Office of Acquisition and Grants Management
OASH—Director, Administrative Services Center
ADAMHA—Associate Administrator for Management
AHCPR—Executive Officer, Agency for Health Care Policy and Research
CDC—Director, Office of Program Support
FDA—Associate Commissioner for Management and Operations
HRSA—Associate Administrator for Operations and Management
IHS—Associate Director, Office of Administration and Management
NIH—(R&D)—Associate Director for Extramural Affairs (Other than R&D)—Associate Director for Intramural Affairs
SSA—Deputy Commissioner for Management.
RO's—Director, Regional Administrative Support Center

[50 FR 23127, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 52 FR 27558, July 22, 1987; 53 FR 15563, May 2, 1988; 53 FR 43207, Oct. 26, 1988; 54 FR 24343, June 7, 1989; 55 FR 42197, Oct. 18, 1990]

306.502 Duties and responsibilities.

(b) The competition advocates listed in 306.501 shall assist the Department's competition advocate, when requested, by providing data and reports to aid in the accomplishment of the duties required of the Department's competition advocate as stated in FAR 6.502(a).

[50 FR 23127, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985]

PART 307—ACQUISITION PLANNING

Subpart 307.1—Acquisition Plans

Sec.
307.104 General procedures.
307.104–1 Requirement for acquisition planning.
307.104–2 Responsibilities for acquisition planning.
307.104–3 Preparation of acquisition plan.
307.105 Contents of written acquisition plans.
307.105–1 Format and content.
307.105–2 Special program clearances or approvals.
307.105–3 Specification, purchase description, and statement of work.
307.170 Program training requirements.
307.170–1 Policy exceptions.
307.170–2 Training course prerequisites.

Subpart 307.3—Contractor Versus Government Performance

307.302 General.
307.303 Determining availability of private commercial sources.
307.304 Procedures.
307.307 Appeals.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.
307.7001 Applicability.
307.7002 Purpose.
307.7003 Distinction between acquisition and assistance.
307.7004 Procedures.

Subpart 307.71—Phase II Advance Acquisition Planning (Scheduling)

307.7101 Background.
307.7102 Accountability and responsibility.
307.7103 Purpose.
307.7104 Contracting activity actions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13969, Apr. 9, 1984, unless otherwise noted.

Subpart 307.1—Acquisition Plans

307.104 General procedures.

(a) The acquisition planning document is an administrative tool designed to enable the contracting officer and project officer to plan effectively for the accomplishment of an acquisition during a specified time frame. The acquisition planning document serves as an outline of the method by which the contracting officer expects to accomplish the acquisition task.

(c) If the plan proposes using other than full and open competition, the plan shall also be coordinated with the

Chief of the contracting office, acting for the competition advocate.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44293, Dec. 9, 1986]

307.104–1 Requirement for acquisition planning.

(a) The acquisition planning document is required for all new negotiated acquisitions which are expected to exceed $100,000, except the following:

(1) Acquisition of architect-engineer services;

(2) Acquisitions of utility services where the services are available from only one source; and

(3) Acquisitions made from or through other Government agencies.

(b) An acquisition planning document is also required for all two-step sealed bid acquisitions expected to exceed $100,000.

(c) The principal official responsible for acquisition shall prescribe acquisition planning procedures for:

(1) Negotiated acquisitions which are not expected to exceed $100,000;

(2) Two-step sealed bid acquisitions which are not expected to exceed $100,000; and

(3) All other sealed bid acquisitions regardless of dollar amount.

(d) An acquisition planning document is not required for a contract modification which either exercises an option or adds funds to an incrementally funded contract, provided there is an approved acquisition planning document in accordance with 307.105 and there is no significant deviation from that plan.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

307.104–2 Responsibilities for acquisition planning.

(a) *Planning by program and staff activities.* Whenever execution of a program or project requires the acquisition of property or services by contract, the program or project plan shall delineate all elements to be acquired by contract. The program or project plans must include a plan and timeframe for completion action.

(b) *Planning for acquisition actions.* Action should commence as early as possible to effect an orderly and balanced acquisition workload throughout a fiscal year. Project officers who expect to initiate acquisitions are required to discuss their requirements with the contracting officials who will be responsible for these acquisitions to compare current staff capabilities with anticipated requirements to achieve an even distribution of fiscal year workload consistent with program needs. These discussions should result in understandings on:

(1) The details of the acquisition plan;

(2) Schedule for the completion of the acquisition plan;

(3) Preliminary discussions on the work statement/specifications and appropriate evaluation criteria; and

(4) Preliminary discussions on the content and timing of the request for contract (RFC).

(c) *Planning by contracting activities.* Contracting activities are required to coordinate with program and staff offices to ensure:

(1) Timely and comprehensive planning for acquisitions;

(2) Timely initiation of requests for contracts; and

(3) Instruction of program and staff offices in proper acquisition practices and methods.

307.104–3 Preparation of acquisition plan.

(a) The acquisition planning document serves as an advance agreement between program and contracting personnel by outlining the methods of how and when the acquisition is to be accomplished. It serves to resolve problems early in the acquisition cycle thereby precluding delays in contract placement. It is developed prior to the preparation and submission of the formal request for contract to the contracting activity. (For detailed information concerning the request for contract, see Subpart 315.70.)

(b) The acquisition planning document shall be prepared jointly by the project officer and the contract negotiator or in accordance with procedures prescribed by the principal official responsible for acquisition.

307.105 Contents of written acquisition plans.

307.105–1 Format and content.

The Department does not prescribe a standard format for the acquisition planning document, but recommends the use of a format similar to what is provided in this section. The subject areas addressed in paragraphs (a) through (e) must be included in every acquisition planning document. An OPDIV, agency, or regional office contracting activity may prescribe a standard format for the acquisition planning document and may include additional subject areas that are pertinent to that activity's needs.

(a) *Identification information.* The contracting activity shall prescribe the information necessary for readily identifying a planned acquisition. The information may include items such as acquisition planning document number, request for contract number, public law, program or project officer, etc.

(b) *Programmatic considerations.* (1) *Description of the project/supplies/services.* Include a brief description of the proposed project/supplies/services. Discuss all anticipated future requirements related to the acquisition. Discuss any past, present or future interrelated projects.

(2) *Project funding.* Include the summary of funds expected to be obligated for the entire project by fiscal years and phases. Include expenditures for previous years. Discuss the probability of obtaining future years funding and/or what specific managerial action can be taken to insure future funding (if applicable).

(3) *Background and acquisition history.* Provide a brief factual summary of the technical and contractual history of the supplies/services being acquired.

(4) *Related projects, efforts undertaken to avoid duplication of effort.* Discuss efforts made to determine if existing projects, supplies or materials will satisfy the requirement. Include any related in-house efforts, searches, and clearinghouse reviews made to avoid duplication of effort.

(5) *Need for project/supplies/services.* Discuss rationale for deciding on the need for the project/supplies/services.

(6) *Special program clearances or approvals.* Review 307.105–2 to determine which special program clearances or approvals are required. Specify clearances or approvals applicable to this acquisition.

(7) *Phasing.* Briefly describe discrete tasks or stages of accomplishment which could be susceptible to phasing. Describe criteria for evaluation of performance of each phase before proceeding to the next. (See 307.105–3(c)(3) for a discussion on phasing.)

(8) *Government furnished material/facilities.* Indicate material and facilities that will be furnished to the contractor and any associated problems which may be encountered. Discuss possible inequities which may arise in furnishing the materials or facilities. Discuss screening efforts for availability through GSA excess property schedules.

(9) *Discussion of project risk.* Provide a discussion of major areas of project risk including technical, cost, and schedule risk. Describe what efforts are planned to reduce risk. If an acquisition, which is planned to be awarded using other than full and open competition represents a significant portion of a proposed contractor's business, discuss the impact on technical capability, realism of schedule, changes in contractor workload and related cost impact.

(10) *Reporting/delivery requirements.* Describe the basis for establishing the delivery/reporting requirements and include the anticipated deliverables and time(s) for delivery.

(11) *Replication, dissemination, or use of the results.* Discuss anticipated replication, dissemination, or use of the results. Describe user audience and their expected use. Include a description of the delivery system.

(12) *Data, data rights, patents, copyrights.* Discuss data to be developed. Specify data to be delivered and data to remain in the contractor's possession. Discuss how the data is to be used, maintained, disclosed and disposed of by the contractor. Discuss data subject to the Privacy Act or Confidentiality of Information clause. Discuss data to be delivered with limited rights, data where title would not vest in the Government, and anticipated

copyrights or patents. Discuss whether or not the data will permit any follow-on acquisitions to be competitive.

(13) *Post-award administration and monitoring.* Detail milestones that require periodic evaluation of the contractor's progress. Discuss any formal management systems to be used to monitor the contractor. Discuss plans for post-award conference and site visits. Delineate the timing of the periodic status reports.

(14) *Technical evaluation plans.* Discuss the plans for technical evaluation of the proposal. Discuss whether non-Federal technical evaluators will review the proposals. Discuss potential conflict of interest situations.

(c) *Acquisition approach.* (1) *Proposed sources.* Include sources or categories of sources (if apparent). Address the pertinent areas stated in FAR 7.105(b)(2).

(2) *Contract type.* Provide the rationale for recommendation of contract type.

(3) *Socioeconomic programs.* Discuss preliminary liaison with the Small and Disadvantaged Business Utilization Specialist for review to determine requirements susceptible for the various socioeconomic acquisition programs; i.e., small business, disadvantaged business, or labor surplus area set-asides.

(4) *Other considerations, as applicable.* Discuss special contract clauses and proposed HHSAR deviations, if required. Discuss circumstances such as the effect of a protest on a previous acquisition to this acquisition, special public law or regulatory requirements which place restrictions on this acquisition, and use of a special type of synopsis. Address planned preproposal conference, preaward survey and preaward site visits.

(d) *Planning for the acquisition cycle.* (1) *Scheduling considerations.* The project officer and the contract negotiator shall establish realistic planned dates which meet the program needs for award to assure timely delivery or completion of the project. The following factors should be considered in planning realistic dates:

(i) Individual project officer and contract negotiator workloads;

(ii) Planned, extended absences from the office; and

(iii) Schedules are in consonance with established office goals for overall orderly and balanced workloads.

(2) *Acquisition planning schedule.* The following acquisition planning schedule should be included in all plans to the extent the items are significant or appropriate to the acquisition. Additional items may be added as appropriate.

ACQUISITION PLANNING SCHEDULE

Actions and Date

Advance or sources sought synopsis released
Advance or sources sought synopsis closed
Synopsis evaluation received
Request for contract received
Special program approvals received
Synopsis publicizing proposed acquisition released
Request for proposal released
Preproposal conference conducted
Proposals received
Technical evaluation received
Cost advisory or audit report received
Equal opportunity clearance obtained
Prenegotiation conference conducted
Negotiation completed
Contract document prepared
Contract approval completed
Contract released
Award

(e) *Approvals.* All acquisition planning documents shall be signed by the project officer and the contract negotiator. Acquisition planning documents for acquisitions estimated to be between $100,000 and $1,000,000 shall be approved by the contracting officer. Acquisition planning documents for acquisitions estimated to be in excess of $1 million shall be approved by the principal official responsible for acquisition or his/her designee. The designated official shall be in a position no lower than the level above the contracting officer. One copy of all acquisition planning documents shall be filed with the principal official responsible for acquisition or the designated official for planning purposes. The original acquisition planning document shall be retained in the contract file.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

307.105–2 Special program clearances or approvals.

The following special program clearances or approvals should be reviewed for applicability to each planned acquisition. The ones which are applicable should be addressed in the acquisition planning document and immediate programmatic action should be initiated to obtain the necessary clearances or approvals.

(a) *Clearances or approvals required to be completed and submitted with the request for contract (RFC).* (1) *Automatic data processing.* All proposed acquisitions of automatic data processing hardware, software packages, and services, as well as telecommunications equipment, which exceed the dollar thresholds stated in Chapter 4–10 of the HHS Information Resources Management (IRM) Manual, must be reviewed and approved by the Office of Information Resources Management (OIRM), OASMB–0S. (See HHS Information Resources Management (IRM) Manual, Chapter 4–10; Title 41 CFR Chapter 201; and Subpart 339.70.)

(2) *ADP systems security*. All ADP systems regardless of dollar amount are required to have a Certification of ADP Systems Security Adequacy signed by the ADP system manager and the cognizant ADP systems security officer. (See HHS IRM Manual, Part 6—ADP Systems Security; OMB Circular No. A–71, Transmittal Memorandum No. 1; and Subpart 339.70.)

(3) *Advisory and assistance services.* OPDIV and STAFFDIV heads and regional directors are responsible for review and approval of all proposed advisory and assistance services contracts and purchase orders. (See General Administration Manual Chapter 8–15.)

(4) *Evaluation contracts.* The Assistant Secretary for Planning and Evaluation (ASPE) must approve all evaluation projects for proposed solicitations, except those which have been included in research, demonstration, or evaluation plans previously approved by the ASPE.

(5) *Commercial activities.* (OMB Circular No. A–76) A request for contract (RFC) must contain a statement as to whether the proposed solicitation is or is not to be used as part of an OMB Circular No. A–76 cost comparison. (See General Administrative Manual (GAM) Chapter 18–10; FAR Subpart 7.3, Subpart 307.3; OMB Circular No. A–76.)

(6) *Paid advertising.* Paid advertisements, notices or contract proposals to be published in newspapers and periodicals may be authorized by the contracting officer. (See FAR Subpart 5.5, Subpart 305.5; Title 7, Chapter 5–25.2, and the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.)

(7) *Printing.* The acquisition of printing by contract is prohibited unless it is authorized by the Joint Committee on Printing of the U.S. Congress. Procedures to be followed are contained in the ''Government Printing and Binding Regulations'' and the HHS Printing Management Manual and FAR Subpart 8.8.

(8) *Fraud, abuse and waste.* All proposed acquisitions that concern the subjects of fraud, abuse and waste must be reviewed and approved by the Inspector General or Deputy Inspector General, and written approval from either must be included in the request for contract.

(9) *Paperwork Reduction Act.* Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), a Federal agency shall not collect information or sponsor the collection of information from ten or more persons (other than Federal employees acting within the scope of their employment) unless, in advance, the agency has submitted Standard Form 83, Request for OMB Review, to the Director of the Office of Management and Budget, and the Director has approved the proposed collection of information. Procedures for the approval may be obtained by contacting the OPDIV reports clearance officer. (See Title 5 CFR Part 1320 and General Administration Manual Chapter 10–20.)

(10) *Contracts with federal employees.* Contracts between the Government and Government employees or between the Government and organizations which are substantially owned or controlled by Government employees may not knowingly be entered into, except for the most compelling reasons (see FAR Subpart 3.6). Authority to enter into a contract with a Government employee or an organization substantially owned

or controlled by a Government employee must be approved prior to award of the contract by either the Assistant Secretary for Management and Budget, the head of the OPDIV, or the regional director, or their designees. (See 45 CFR Part 73 and HHS Standards of Conduct.)

(11) *Publications.* All projects which will result in contracts and which include publications require review and approval by the Office of the Assistant Secretary for Public Affairs (OASPA). Form HHS–615, Publication Planning and Clearance Request, should be forwarded to OASPA through the OPDIV public affairs officer. Publications are defined in the chapter on publications in the Public Affairs Management Manual.

(12) *Public affairs services.* Projects for the acquisition of public affairs services in excess of $5,000 shall be submitted to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval on Form HHS–524, Request for Public Affairs Service Contract.

(13) *Audiovisual (videotape and motion picture production).* Any proposed acquisition of an audiovisual production requires the submission of a Standard Form 282, Mandatory Title Check, to the National Audiovisual Center (NAC). When the results of this title check have been reviewed by the project office and if a determination is made that existing materials are not adequate to fulfill the requirement, a statement to that effect shall be prepared by the project office. For acquisitions in excess of $5,000, a copy of that statement, together with a Standard Form 202, Federal Audiovisual Production Report, and Form HHS–524A, Request for Audiovisual Material, shall be submitted through the OPDIV public affairs officer to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval. Following approval by OASPA, the SF 202 and the statement explaining why existing materials are insufficient will be forwarded to NAC by OASPA. An approved copy of the Form HHS–524A will be returned to the OPDIV for transmission to the contract negotiator. All audiovisuals are required to be acquired under the Government-wide Contracting System for Motion Picture and Videotape Productions, unless they are included in the exceptions to the mandatory use of the uniform system. (See the Executive Agent for Government-Wide Contracting System for Audiovisual Productions' March 21, 1980, memorandum on Implementation of OFPP Policy Letter No. 79–4, November 28, 1979, Contracting for Motion Picture and Videotape Productions; HHS General Administration Manual Chapter 1–121.)

(14) *Privacy Act (Pub. L. 93–579.)* Whenever the Department contracts for the design, development, operation, or maintenance of a system of records on individuals on behalf of the Department in order to accomplish a departmental function, the Privacy Act is applicable. The program official, after consultation with the activity's Privacy Act Coordinator and the Office of General Counsel as necessary shall include a statement in the request for contract as to the applicability of the Act. Whenever an acquisition is subject to the Act, the program official prepares a ''system notice'' and has it published in the FEDERAL REGISTER. (See HHS Privacy Act regulation, 45 CFR 5b; FAR Subpart 24.1 and Subpart 324.1.)

(b) *Clearances or approvals required to be completed prior to contract award.* All foreign research contract projects to be conducted in a foreign country and financed by HHS funds (U.S. dollars) must have clearance by the Department of State with respect to consistency with foreign policy objectives. This clearance should be obtained prior to negotiation. Procedures for obtaining this clearance are set forth in the HHS General Administration Manual, Chapter 20–60.

[49 FR 13969, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984; 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 53 FR 15563, May 2, 1988; 53 FR 43207, Oct. 26, 1988; 53 FR 44551, Nov. 3, 1988]

307.105–3 Specification, purchase description, and statement of work.

One of the most important parts of a contract is the description of the work to be done. The description of that work may be in the form of a specification, purchase description or statement

of work. A brief reference to specifications and purchase descriptions is provided, although the nature of the work performed in this Department usually results in the development of work statements. The development of the acquisition planning document should result in sufficient information to readily develop the description of work, usually in the form of a statement of work.

(a) *Specification.* Specification is defined in FAR 10.001. Use of the specification is primarily limited to supply or service contracts where the material end item or service to be delivered is well defined by the Government.

(b) *Purchase description.* FAR 10.001 also contains the definition of purchase description.

(c) *Statement of work.* (1) *General.* A statement of work differs from a specification and purchase description primarily in that it describes work or services to be performed in reaching an end result rather than a detailed, well defined description or specification of the end product. The statement of work may enumerate or describe the methods (statistical, clinical, laboratory, etc.) that will be used. However, it is preferable for the offeror to propose the method of performing the work. The statement of work should specify the desired results, functions, or end items without telling the offeror what has to be done to accomplish those results unless the method of performance is critical or required for the successful performance of the contract. The statement of work should be clear and concise and must completely define the responsibilities of the Government and the contractor. The statement of work should be worded so as to make more than one interpretation virtually impossible because it has to be read and interpreted by persons of varied backgrounds, such as attorneys, contracting personnel, cost estimators, accountants, scientists, sociologists, educators, functional specialists, etc. If the statement of work does not state exactly what is wanted, or does not state it precisely, it will generate many contract management problems for both the project officer and the contracting officer. Ambiguous statements of work can create unsatisfactory performance, delays, and disputes, and can result in higher costs.

(2) *Term (level of effort) vs. completion work statement.* Careful distinctions must be drawn between term (level of effort) statements of work, which essentially require the furnishing of technical effort and a report thereof, and completion type work statements, which often require development of tangible end items designed to meet specific performance characteristics.

(i) *Term or level of effort.* A term or level of effort type statement of work is appropriate to research where one seeks to discover the feasibility of later development, or to gather general information. A term or level of effort type statement of work may only specify that some number of labor-hours be expended on a particular course of research, or that a certain number of tests be run, without reference to any intended conclusion.

(ii) *Completion.* A completion type statement of work is appropriate to development work where the feasibility of producing an end item is already known. A completion type statement of work may describe what is to be achieved through the contracted effort, such as the development of new methods, new end items, or other tangible results.

(3) *Phasing.* Individual research, development, or demonstration projects frequently lie well beyond the present state of the art and entail procedures and techniques of great complexity and difficulty. Under these circumstances, a contractor, no matter how carefully selected, may be unable to deliver the desired result. Moreover, the job of evaluating the contractor's progress is often difficult. Such a contract is frequently phased and often divided into stages of accomplishment, each of which must be completed and approved before the contractor may proceed to the next. Phasing makes it necessary to develop methods and controls, including reporting requirements for each phase of the contract and criteria for evaluation of the reports submitted, that will provide, at the earliest possible time, appropriate data for making decisions relative to all phases. A phased contract may include

stages of accomplishment such as research, development, and demonstration. Within each phase, there may be a number of tasks which should be included in the statement of work. When phases of work can be identified, the statement of work will provide for phasing and the request for proposals will require the submission of proposed costs by phases. The resultant contract will reflect costs by phases, require the contractor to identify incurred costs by phases, establish delivery schedules by phases, and require the written acceptance of each phase. The provisions of the Limitation of Cost clause shall apply to the estimated cost of each phase. Contractors shall not be allowed to incur costs for phases which are dependent upon successful completion of earlier phases until written acceptance of the prior work is obtained from the contracting officer.

(4) *Elements of the statement of work.* The elements of the statement of work will vary with the objective, complexity, size, and nature of the acquisition. In general, it should cover the following matters as appropriate.

(i) *A general description of the required objectives and desired results.* Initially, a broad, nontechnical statement of the nature of the work to be performed. This should summarize the actions to be performed by the contractor and the results that the Government expects.

(ii) *Background information helpful to a clear understanding of the requirements and how they evolved.* Include a brief historical summary as appropriate. Include pertinent legislative history, related contracts or grants, and the relationship to overall program objectives.

(iii) *A detailed description of the technical requirements.* A comprehensive description of the work to be performed to provide whatever details are necessary for prospective offerors to submit meaningful proposals.

(iv) *Subordinate tasks or types of work.* A listing of the various tasks or types of work (it may be desirable in some cases to indicate that this is not all-inclusive). The degree of task breakout is directly dependent on the size and complexity of the work to be performed and the logical groupings. A single cohesive task should not be broken out merely to conform to a format. Indicate whether the tasks are sequential or concurrent for offeror planning purposes.

(v) *Phasing.* When phasing is applicable, describe in detail the work or effort required in each phase and the criteria for determining whether the next phase will take place. If one or more phases contain subordinate tasks or types of work, the preceding information in paragraph (c)(4) (iv) may be incorporated into the part.

(vi) *Reference material.* All reference material to be used in the conduct of the project, such as technical publications, reports, specifications, architect or engineering drawings, etc., that tell how the work is to be carried out must be identified. Applicability should be explained, and a statement made as to where the material can be obtained.

(vii) *Level of effort.* When a level of effort is required, the number and type of personnel required should be stated. If known, the type and degree of expertise should be specified.

(viii) *Special requirements* (as applicable). An unusual or special contractual requirement, which would impact on contract performance, should be included as a separate section. Such items could include required place(s) of performance or unusual travel requirements. Clearance requirements, such as forms clearance, should be addressed.

(ix) *Deliverables reporting requirements.* All deliverables and/or reports must be clearly and completely described. For example, in a Final Study Report it is important to indicate what areas the report should cover and the criteria for use in accepting the final report to determine if the contract objectives have been satisfied. It is important to require the preparation and submission of progress reports (administrative, technical and financial) to reflect contractor certification of satisfactory progress. If possible, the reports should be coordinated in such a manner as to provide a correlation between costs incurred and the state of completion. All delivery and reporting requirements shall include the quantities, the place of delivery, and time of delivery.

307.170 Program training requirements.

(a) Chapter 8–95 of the General Administration Manual (GAM) addresses the general parameters for acquisition planning as stated in 307.104. In conjunction with the principles of proper acquisition planning, the Department has established training courses for program officials to promote expedient program management in the planning and other pertinent aspects of the acquisition process. Chapter 8–96 of the GAM sets forth specific training requirements for program officials as follows:

(1) All program personnel selected to serve as project officer for an HHS contract shall have successfully completed either the Department's appropriate ''Base Project Officer'' course, or an equivalent course (see paragraph (b), below).

(2) At least fifty percent of the HHS program personnel performing the function of technical proposal evaluator on a technical evaluation team or panel for any competitively solicited HHS contract shall have successfully completed the appropriate ''Basic Project Officer'' course, or an equivalent course (see paragraph (b), below). This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may be required.

(b) Determination of course equivalency shall be made by the principal official responsible for acquisition of the cognizant contracting activity. The contracting officer is responsible for ensuring that the project officer and technical proposal evaluators have successfully completed the required training discussed in 307.170–2.

[49 FR 13969, Apr. 9, 1984, as amended at 56 FR 47002, Sept. 17, 1991]

307.170–1 Policy exceptions.

(a) *Small contracting activities.* (1) Program personnel designated to serve as project officers and technical proposal evaluators for contracts which originate in offices having a mission which only incidentally and infrequently involves the generation of contract requirements (i.e., normally less than three contract requirements per fiscal year and in an amount not exceeding $100,000 per contract) are not required to have completed any of the referenced training courses, although completion of an appropriate ''Basic Project Officer'' course is recommended.

(2) As a substitute for the training, contracting officers servicing these program offices are required to ensure, as a minimum, that program personnel designated to serve as project officers and technical proposal evaluators have read and studied the ''DHHS Project Officers' Contracting Handbook,'' and fully understand their responsibilities. The contracting officer shall require these program personnel to furnish written certification that they have fulfilled this requirement prior to discharging the duties of project officer or technical proposal evaluator.

(b) *Urgent requirements.* In the event there is an urgent requirement for a specific individual to serve as a project officer and that individual has not successfully completed the prerequisite training course, the principal official responsible for acquisition may waive the training requirement and authorize the individual to perform the project duties, provided that:

(1) The individual first meets with the cognizant contracting officer to review the ''DHHS Project Officers' Contracting Handbook,'' and to discuss the important aspects of the contracting—program office relationship as appropriate to the circumstances; and

(2) The individual attends the next scheduled and appropriate ''Basic Project Officer'' course.

[49 FR 13969, Apr. 9, 1984, as amended at 56 FR 47002, Sept. 17, 1991]

307.170–2 Training course prerequisites.

(a) *Project officers.* (1) Newly appointed project officers, and project officers with less than three years experience and no previous related training, are required to take the appropriate ''Basic Project Officer'' course. (The grade level for project officers attending the course should be GS–7 and above). All project officers are encouraged to take the appropriate ''Writing Statements of Work'' course.

(2) Project officers with more than three years experience, and project officers with less than three years experience who have successfully completed the appropriate basic course, are qualified (and encouraged) to take the ''Advanced Project Officer'' course.

(3) Additional information on prerequisites for attendance of these courses may be found in the ''DHHS Acquisition Training and Certification Program Handbook.''

(b) *Technical proposal evaluators.* Technical proposal evaluators, regardless of experience, are required to take the appropriate ''Basic Project Officer'' course. Upon successful completion of the basic course, it is recommended that they take the appropriate ''Advanced Project Officer'' course.

[49 FR 13969, Apr. 4, 1984, as amended at 56 FR 47002, Sept. 17, 1991]

Subpart 307.3—Contractor Versus Government Performance

307.302 General.

(a) GAM Chapter 18–10, Commercial-Industrial Activities of the Department of Health and Human Services Providing Products or Services for Government Use, assigns responsibilities for making method-of-performance decisions (contract vs. in-house performance) to various management levels within the Department depending on the dollar amount of capital investment or annual operating costs. It also requires that each operating division (OPDIV), staff division (STAFFDIV) and regional office (RO) designate a ''Commercial-Industrial Control Officer'' (CICO) to be responsible for ensuring compliance with the requirements of the Chapter.

(d) Besides contracts with annual operating costs under $100,000, contracts under an authorized acquisition set-aside for small business or labor surplus area concerns and contracts made pursuant to section 8(a) of the Small Business Act are exempted from the requirements of FAR Subpart 7.3, GAM Chapter 18–10, and OMB Circular No. A–76.

307.303 Determining availability of private commercial sources.

In accordance with the provisions of GAM Chapter 18–10, OPDIVs, STAFFDIVs, and ROs and must prepare and maintain a complete inventory of all individual commercial or industrial activities, including those conducted under contracts in excess of $100,000 annually. They must also conduct periodic reviews of each activity and contract in the inventory to determine if the existing performance, in-house or by contract, continues to be in accordance with the policy guidelines of GAM Chapter 18–10.

307.304 Procedures.

Contracting officers shall ensure that no acquisition action involving a commercial-industrial activity is initiated unless it is in compliance with the requirements of GAM Chapter 18–10. The contracting officer must check each request for contract expected to result in a contract in excess of $100,000 to ensure that it contains a statement as to whether the proposed contract is or is not subject to review under GAM Chapter 18–10 requirements. If the contracting officer has any questions regarding the determination of applicability or nonapplicability, or if the required statement is missing, the program office submitting the request for contract should be contacted and the situation rectified. If the issue cannot be resolved with the program office, the contracting officer shall refer the matter to the CICO for a final determination. The principal official responsible for acquisition is responsible for ensuring that contracting activities are in full compliance with FAR Subpart 7.3.

307.307 Appeals.

The review and appeals procedures discussed in FAR 7.307 are addressed in GAM Chapter 18–10.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award instruments consistent with the Federal

Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) and the OMB implementation of the Act as published in the FEDERAL REGISTER on August 18, 1978 (41 FR 36860). This subpart addresses acquisition relationships where the award instrument is the contract, and assistance relationships where the award instrument is either a grant or cooperative agreement.

307.7001 Applicability.

This subpart applies to the choice of award instrument—contract, grant, or cooperative agreement—for all program and individual transactions, except where specifically prohibited by law.

307.7002 Purpose.

This subpart provides guidance to assist in the determination of whether to use the acquisition or assistance process to fulfill program needs. The distinction between, and use of, grants and cooperative agreements is not discussed in detail. Detailed guidance may be found in Chapter 1–02 of the Grants Administration Manual.

307.7003 Distinction between acquisition and assistance.

(a) The Federal Grant and Cooperative Agreement Act of 1977 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) A contract is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever:

(1) The principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) The Department determines in a specific instance that the use of a type of contract is appropriate. That is, it is determined in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and only with the prior approval of the Director, Office of Acquisition and Grants Management.

(c) A grant or cooperative agreement is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) A grant is the legal instrument to be used when no substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(2) A cooperative agreement is the legal instrument to be used when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(d) As a general rule, contracts are to be used for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Planning for Government use.

(7) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(8) Design or development of items for Government use or pursuant to agency definition or specifications.

(9) Conferences conducted on behalf of the Government.

(10) Generation of management information or other data for Government use.

(e) As a general rule, grants or cooperative agreements are to be used for the following purposes:

(1) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing the assistance.

(2) Financial assistance (stimulation or support) to a specific program activity eligible for assistance under specific legislation authorizing the assistance.

[49 FR 13969, Apr. 9, 1984, as amended at 54 FR 24343, June 7, 1989]

307.7004 Procedures.

(a) OPDIV, agency, and regional office program officials should use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. It is the responsibility of these program officials to meet with the principal official responsible for acquisition and the principal grants management official, or their designees, to distinguish the relationships and determine whether award is to be made through the acquisition process or assistance process. This determination should be made prior to the time when the annual acquisition plan is reviewed and approved so that the plan will reflect all known proposed contract actions. The cognizant contracting officer will confirm the appropriateness of the use of the contract instrument when reviewing the request for contract.

(b) Shifts from one award instrument to another must be fully documented in the appropriate files to show a fundamental change in program purpose that unequivocably justifies the rationale for the shift.

(c) OPDIVs, agencies, and regional offices must ensure that the choice of instrument is determined in accordance with the Federal Grant and Cooperative Agreement Act of 1977 and applicable departmental policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other, guidance should be obtained from the Director, Office of Acquisition and Grants Management through normal channels, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals must indicate whether the intended relationship will be one of acquisition or assistance and specify the award instrument to be used.

[49 FR 13969, Apr. 9, 1984, as amended at 54 FR 24343, June 7, 1989]

Subpart 307.71—Phase II Advance Acquisition Planning (Scheduling)

307.7101 Background.

(a) Failure to properly plan individual acquisitions and failure to schedule the overall acquisition workload of an office, agency, or OPDIV tends to result in an inordinate percentage of contract awards being made in the closing weeks and even days of the fiscal year. This phenomenon, variously identified as ''The September Rush'', ''Hurry-up Spending'', ''End-of-Year Purchasing'', and ''Year-End Spending Abuses'', in turn fosters rushed, other than full and open competition, inadequately documented, and potentially wasteful acquisitions. Excessive year-end spending also invites increased intervention and/or scrutiny from Congress, the Office of Management and Budget, and the media. The end of the fiscal year, however, is usually too late to take corrective actions that are effective without being unduly damaging to necessary programs. The key is to begin advance acquisition planning far earlier.

(b) To avoid the historic pattern of wasteful and unnecessary year-end spending, the Department introduced the Acquisition Planning Initiative by Under Secretarial memorandum of

February 19, 1980, Subject: New Procedures to Improve Planning and Scheduling of Contract Awards and Curb Last-Minute Year-End Procurement Spending. Phase II of this initiative, beginning with Fiscal Year 1981, established the present acquisition planning mechanism. Basic guidance on the Phase II mechanism is contained in the ASMB memorandum of March 28, 1980, Subject: Phase II of (Fiscal Year 1981) Procurement Planning Initiative—Guidelines for Program Funding Milestones. For the Public Health Service, the above guidance is supplemented by the ASMB memorandum of April 21, 1982, Subject: Phase II Annual Procurement Planning.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

307.7102 Accountability and responsibility.

Phase II is a Department-wide monitoring and accountability system that requires early planning of acquisition requirements down to the individual project level. The Phase II mechanism includes the following:

(a) Accountability lies with the OPDIV and STAFFDIV heads who are required to coordinate overall schedules which plot the planned distribution of RFC deliveries and contract awards over an eighteen-month timeline extending to fiscal year-end.

(b) Each OPDIV and STAFFDIV retains the flexibility to schedule individual RFC deliveries and contract awards as desired, so long as the overall schedule presents a relatively even distribution of contract awards and workload across the fiscal year.

(c) The schedules are updated quarterly to compare actual versus planned progress and, when necessary, to revise the schedules for the remainder of the fiscal year.

(d) Project officers are responsible for initiating the project planning by coordinating with contracting activities prior to RFC preparation, and taking the lead in developing acquisition plans that establish the date(s) for delivering complete RFC packages to the contracting activity, and that establish the planned award dates for individual projects.

(e) The Director, Office of Acquisition and Grants Management monitors the OPDIV and STAFFDIV Phase II plans throughout the year to assure that an even distribution of awards, dollar obligations, and workload is maintained.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24343, June 7, 1989]

307.7103 Purpose.

The Phase II Advance Acquisition Planning mechanism serves to avoid excessive year-end spending and distributes the contract workload as evenly as possible over the fiscal year, and provides a mechanism for planning at the program/acquisition operational level and a management tool for monitoring at the program, OPDIV, and departmental levels.

307.7104 Contracting activity actions.

The contracting activity shall take the following actions:

(a) Advise program and staff personnel of their responsibilities to ensure that:

(1) Year-end acquisitions of unplanned items are not entered into to use available balances of expiring appropriations (which would otherwise revert to the Treasury);

(2) Orders for supplies, materials, and equipment are kept to the minimum needed to carry on approved programs;

(3) Inventories are held to normal levels; and

(4) New contracts for future services and payments to contractors are made only in accordance with established plans.

(b) Determine closing dates for purchases to be made from appropriations ending on September 30.

(c) Expedite the preparation and processing of determinations and findings which require the approval of the Assistant Secretary for Management and Budget or the OPDIV head.

PART 309—CONTRACTOR QUALIFICATIONS

Subpart 309.1—Responsible Prospective Contractors

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309.407–3 Procedures.
309.470 Reporting of suspected causes for debarment or suspension, or the taking of evasive actions.
309.470–1 Situations where reports are required.
309.470–2 Contents of reports.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13976, Apr. 9, 1984, unless otherwise noted.

Subpart 309.1—Responsible Prospective Contractors

309.104 Standards.

309.104–1 General standards.

(a) In determining the adequacy of a prospective contractor's financial resources for the performance of the proposed contract, particular attention shall be given to the ability of the contractor to discharge its full financial responsibility for charges and losses of Government-furnished material, when the contractor has responsibility for such material.

(e) The prospective contractor must have an established system of accounting and financial controls which are determined by the contracting officer to be adequate to permit the effective administration of the type of contract proposed, particularly if under its terms the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

309.105 Procedures.

309.105–1 Obtaining information.

(b)(2)(ii) To ensure that a prospective contractor has the necessary accounting and operational controls (see 309.104–1(e)), a written determination must be made by the contracting officer that the prospective contractor has an adequate accounting system for determining costs applicable to the contract and a billing system that satisfies the contractual payment provisions. The determination must explain the basis for this judgment.

(A) When dealing with high risk organizations, i.e., new organizations, those with known problems, and those with accounting system deficiencies, the contracting officer shall use every reasonable means available to protect the Government from the improper expenditure of Federal funds. Actions should include at least one of the following: preaward and postaward audits; direct identification of cost with deliverables; billing by contract phases or tasks; fidelity bonding or other guarantees by the parent company or principals of the organization; increased scrutiny of vouchers and financial reports; and frequent site visits to verify the incurrence of specific costs and the relationship of technical progress with the amount billed.

(B) If a prospective contractor's accounting or billing system (or both) is determined to be inadequate, corrective action must be taken before that organization is awarded a contract. When corrective action cannot be completed until after the award and the contracting officer determines that the award must be made, the contracting officer shall consult with the cognizant cost advisor and take the appropriate actions set forth in FAR 16.104 to ensure that the Government's interests will be protected and the contract will be adequately costed and administered. Awards made under the preceding condition must be approved in writing by the principal official responsible for acquisition.

Subpart 309.4—Debarment, Suspension, and Ineligibility

SOURCE: 50 FR 7780, Feb. 26, 1985, unless otherwise noted.

309.403 Definitions.

Acquiring agency's head or a designee, as used in the FAR, shall mean, unless otherwise stated in this subpart, the head of the contracting activity. Acting in the capacity of the acquiring agency's head, the head of the contracting activity may make the required justifications or determinations, and take the necessary actions, specified in FAR 9.405, 9.406, and 9.407 for his or her respective activity, but only after obtaining the approval of the debarring or suspending official, as the case may be.

Debarring official means the Assistant Secretary for Management and Budget, or his/her designee.

Initiating official means either the contracting officer, the head of the contracting activity, the Deputy Assistant Secretary for Management and Acquisition, or the Inspector General.

Suspending official means the Assistant Secretary for Management and Budget, or his/her designee.

[50 FR 7780, Feb. 26, 1985, as amended at 54 FR 24343, June 7, 1989; 54 FR 43965, Oct. 30, 1989]

309.404 Parties excluded from procurement programs.

(c) The Office of Management and Acquisition (OMAC) shall perform the actions required by FAR 9.404(c).

(4) OMAC shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OMAC review.

[50 FR 7780, Feb. 26, 1985, as amended at 54 FR 24343, June 7, 1989; 54 FR 43966, Oct. 30, 1989]

309.405 Effect of listing.

(a) The head of the contracting activity may, with the concurrence of the debarring or suspending official, make the determinations referenced in FAR 9.405(a), regarding contracts for their respective activities.

(1) If a contracting officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the contracting officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Some examples of circumstances that may constitute a compelling reason for the award to, or consent to a subcontract with, a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor;

(ii) The urgency of the requirement dictates that the Department deal with the listed contractor; or

(iii) There are other compelling reasons which require business dealings with the listed contractor.

(2) If the head of the contracting activity decides to approve the requested action, he/she shall request the concurrence of the debarring or suspending official and, if given, shall, in writing, inform the contracting officer of the decision within the required time period.

309.405–1 Continuation of current contracts.

(a) Notwithstanding the debarment or suspension of a contractor, contracting officers may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the head of the contracting activity or debarring or suspending official directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by the awarding activity's contracting and technical personnel. The contracting officer shall coordinate any termination with the Office of the General Counsel to ensure the propriety of the proposed action.

(b) Contracting officers shall not renew the current contracts of debarred or suspended contractors, or otherwise extend their duration, unless

the head of the contracting activity determines to do so, with the concurrence of the debarring or suspending official. The contracting officer shall prepare a determination meeting the requirements of 309.405(a) and submit it, through acquisition channels, to the head of the contracting activity. If the head of the contracting activity agrees with the determination, he/she shall obtain the concurrence of the debarring or suspending official.

309.406 Debarment.

309.406–3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for debarment becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470–2, if known, and forward it through appropriate channels, with a written recommendation, to the debarring official. Contracting officers shall forward their reports in accordance with 309.470–1. The debarring official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures are to be commenced. A copy of the determination shall be promptly sent through appropriate channels to the initiating official, and the contracting officer, if necessary. If the debarring official determines to commence debarment procedures, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.406–3(c). If the proposed action is not based on a conviction or judgment and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary actions specified in FAR 9.406–3(b)(2). The debarring official shall also ensure that written findings of fact are prepared, and shall base the debarment decision on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record. The Office of the General Counsel shall represent the Department at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

309.407 Suspension.

309.407–3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for suspension becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470–2, if known, and forward it through appropriate channels, with a written recommendation, to the suspending official. Contracting officers shall forward their reports in accordance with 309.470–1. The suspending official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The suspending official shall review the results of the investigation, if any, and make a written determination whether or not suspension should be imposed. A copy of this determination shall be promptly sent through appropriate channels to the initiating official and the contracting officer, if necessary. If the suspending official determines to impose suspension, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.407–3(c). If the action is not based on an indictment and, subject to the provisions of FAR 9.407-3(b)(2), the contractor's submission in response to the notice raises a genuine dispute over facts material to the suspension, the suspending official shall, after suspension has been imposed, arrange for fact-finding hearings and take the necessary actions specified in FAR 9.407–3(b)(2).

309.470 Reporting of suspected causes for debarment or suspension, or the taking of evasive actions.

309.470–1 Situations where reports are required.

A report incorporating the information required by 309.470-2 shall be forwarded, in duplicate, by the contracting officer through acquisition channels to the OMAC when—

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 or FAR 9.407–2; or

(b) A contractor is suspected of attempting to evade the prohibitions of debarment or suspension imposed under this regulation, or any other comparable regulation, by changes of address, multiple addresses, formation of new companies, or by other devices.

[50 FR 7780, Feb. 26, 1985, as amended at 54 FR 24343, June 7, 1989]

309.470–2 Contents of reports.

Each report prepared under 309.470–1 shall be coordinated with the Office of the General Counsel and shall include the following information, where available:

(a) Name and address of contractor.

(b) Name of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the amount paid the contractor and the amount still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether contract funds have been assigned pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, and, if so assigned, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of such contracts, whether these funds have been assigned pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, and the amounts paid or due on such contracts.

(h) A complete summary of all available pertinent evidence.

(i) A recommendation as to the continuation of current contracts.

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and statements regarding whether the contractor should be suspended or debarred, whether any limitations should be applied to such action, and the period of any proposed debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation or a written summary of any information for which documentation is not available.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 313.1—General

Sec.
313.101 Definitions.
313.104 Procedures.
313.105 Small business-small purchase set-aside.
313.106 Competition and price reasonableness.
313.107 Solicitation and evaluation of quotations.

Subpart 313.2—Blanket Purchase Agreements

313.201 General.
313.204 Purchases under Blanket Purchase Agreements.

Subpart 313.4—Imprest Fund

313.403 Agency responsibilities.

Subpart 313.5—Purchase Orders

313.505 Purchase order and related forms.
313.505–3 Standard Form 44, Purchase Order—Invoice—Voucher.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13977, Apr. 9, 1984, unless otherwise noted.

Subpart 313.1—General

313.101 Definitions.

''Small purchase procedures''

(d) Acquisition of architect-engineer professional services of any dollar amount.

313.104 Procedures.

(i) Small purchase methods are designed to acquire defined, off-the-shelf, standard supplies, equipment, or services which may be awarded on the basis of a fixed price quotation. Small purchase methods should not be used to acquire R & D, complex studies, services, and the like (which require judgmental technical evaluations and involve negotiations) where the award cannot be confidently made on the low price. Where requirements are not suitable for accomplishment using small purchase methods, more formal negotiation methods or sealed bidding should be used.

(j) Small purchases accomplished in accordance with this part may not be awarded on a cost-reimbursement basis.

(k) Small purchase methods should be used with great prudence for the acquisition of consultants to avoid the increased possibility of using consultants in an improper personal services capacity.

[49 FR 13977, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 53 FR 15563, May 2, 1988]

313.105 Small business-small purchase set-aside.

(d)(2) The contracting officer shall consult with the small and disadvantaged business utilization specialist (SADBUS) to determine whether small business sources are known by the SADBUS before determining not to proceed with the small business-small purchase set-aside. Coordination with the SADBUS is not required for small purchases at or below ten percent of the small purchase limitation.

[57 FR 11689, Apr. 7, 1992]

313.106 Competition and price reasonableness.

(a) *Purchases not over 10 percent of the small purchase limitation.* Purchases not exceeding this limit are exempt from the documentary requirements of FAR Subpart 6.3 and Subpart 306.3. However, purchases shall not be made repetitively from one source except for reasons which clearly and convincingly justify other than full and open competition (see FAR Subpart 6.3).

(b) *Purchases over 10 percent of the small purchase limitation.*

(4)(i)(D) Women-owned small business.

(c) *Data to support small purchases over 10 percent of the small purchase limitation.*

(2) Purchases ranging in excess of 10 percent of the small purchase limitation up to and including the small purchase limitation which are made without full and open competition require justification as to why competition was not obtained. The justification, which may be in the form of a paragraph or paragraphs in the request for contract or requisition, must address the considerations in FAR Subpart 6.3 and Subpart 306.3. The contracting officer may approve or disapprove the justification. Award of the contract or purchase order by the contracting officer shall constitute approval of the justification (see 306.304(a)(1)).

[49 FR 13977, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 56 FR 47002, Sept. 17, 1991]

313.107 Solicitation and evaluation of quotations.

(e) *Amendments.* (1) If after the issuance of a request for quotations but before the closing date of their receipt, it becomes necessary (i) to make significant changes in the quantity, specifications, or delivery schedule, (ii) to make any change in the closing date, or (iii) to correct a defect or ambiguity, the change shall be accomplished by issuance of an amendment to the request. Requests for quotations using the Standard Form 18 may be amended by letter. Oral requests for quotations may be amended orally.

(2) When it is considered necessary to issue an amendment to a request for quotations, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, extension of time may be made by telegram or telephone. This notification should be confirmed in the amendment.

(3) Any information given to one potential quoter concerning a request for quotations shall be furnished promptly to all other potential quoters in an amendment to the request, if the information is necessary to potential quoters in submitting quotations, or if the lack of the information would be prejudicial to uninformed potential quoters.

[49 FR 13977, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984; 56 FR 47003, Sept. 17, 1991]

Subpart 313.2—Blanket Purchase Agreements

313.201 General.

(e) Each blanket purchase arrangement (BPA) shall be documented by issuance of a contractual instrument which is appropriately numbered.

313.204 Purchases under Blanket Purchase Agreements.

(e)(5) Delivery documents, invoices, etc. signed by the Government employee receiving the item or service, will be forwarded to the fiscal office or other paying office as designated by the OPDIV. Payment will be made on the basis of the signed document, invoice, etc. Contracting offices will ensure that established procedures allowing for availability of funds are in effect prior to placement of orders.

[49 FR 13977, Apr. 9, 1984, as amended at 56 FR 47003, Sept. 17, 1991]

Subpart 313.4—Imprest Fund

313.403 Agency responsibilities.

(a) The amount of each imprest fund shall be established on the basis of the estimated monthly payment and the need for replenishment. A review shall be made by the responsible official at least quarterly to insure that the fund is not in excess of needs, and appropriate adjustments are made accordingly.

(c) Requests to establish imprest funds shall be made to the responsible fiscal office. At larger activities where the cashier may not be conveniently located near the purchasing office, a Class C Cashier may be installed in the purchasing office. Documentation of cash purchases shall be in accordance with instructions contained in the HHS Voucher Audit Manual Part 1, Chapter 1–10.

Subpart 313.5—Purchase Orders

13.505 Purchase order and related forms.

313.505–3 Standard Form 44, Purchase Order—Invoice—Voucher.

(d) Since the Standard Form 44 is an accountable form, a record shall be maintained of serial numbers of the form, to whom issued, and date issued. SF–44's shall be kept under adequate lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF–44.

PART 314—FORMAL ADVERTISING

Subpart 314.2—Solicitation of Bids

Sec.
314.202–7 Facsimile bids.
314.213 Annual submission of representations and certifications.

Subpart 314.4—Opening of Bids and Award of Contract

314.404 Rejection of bids.
314.404–1 Cancellation of invitations after opening.
314.406 Mistakes in bids.
314.406–3 Other mistakes disclosed before award.
314.406–4 Mistakes after award.
314.407 Award.
314.407–8 Protests against award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 314.2—Solicitation of Bids

SOURCE: 55 FR 13536, Apr. 11, 1990, unless otherwise noted.

314.202–7 Facsimile bids.

The principal official responsible for acquisition (PORA) shall determine whether to allow the use of facsimile bids. If the PORA decides to allow the use of facsimile bids, internal procedures shall be developed, in accordance with the FAR, to ensure uniform processing and control.

314.213 Annual submission of representations and certifications.

Each principal official responsible for acquisition (PORA) shall determine whether to allow the use of the annual submission of representations and certifications by bidders. If allowed, the provisions of FAR 14.213 shall be followed.

Subpart 314.4—Opening of Bids and Award of Contract

314.404 Rejection of bids.

314.404–1 Cancellation of invitations after opening.

(c) The chief of the contracting office (CCO) shall make the determination required by FAR 14.404–1(c).

(e) The CCO shall make the referenced determination.

[51 FR 44294, Dec. 9, 1986]

314.406 Mistakes in bids.

314.406–3 Other mistakes disclosed before award.

(e) Authority has been delegated to the Protest Control Officer, Division of Acquisition Policy, Office of Acquisition and Grants Management (OAGM) to make administrative determinations in connection with mistakes in bid alleged after opening and before award. This authority may not be redelegated.

(f) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

(g)(3) The data required by FAR 14.406–3(g)(3) shall be marked ''IMMEDIATE ACTION—MISTAKE IN BID'' and submitted through acquisition channels to the Protest Control Officer, Division of Acquisition Policy, Office of Acquisition and Grants Management (OAGM). The file shall be assembled in an orderly manner and shall include an index of enclosures. A single copy of the file is sufficient.

(4) Since examination of evidence is necessary to determine the proper course of action to be taken, no action will be taken on cases referred by telephone or telegraph.

(5) Where the evidence submitted by the bidder is incomplete or in need of clarification, the contracting officer shall document the file to indicate the effort made to obtain clear and convincing evidence to support the alleged mistake. Since the burden of providing

such evidence lies with the bidder-claimant, repeated efforts to obtain such information are neither necessary nor desirable.

(i) Doubtful cases shall *not* be submitted by the contracting officer directly to the Comptroller General, but shall be submitted as indicated in 314.406–3(g)(3).

[49 FR 13978, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24343, June 7, 1989]

314.406–4 Mistakes after award.

(c) Authority has been delegated to the Protest Control Officer, Division of Acquisition Policy, OAGM to make administrative determinations in connection with mistakes in bid alleged after award. This authority may not be redelegated.

(d) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

(2) The data required by FAR 14.406–4(e)(2) shall be marked ''IMMEDIATE ACTION—MISTAKE IN BID'' and submitted as prescribed in 314.406–3(g)(3).

[49 FR 13978, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24343, June 7, 1989]

314.407 Award.

314.407–8 Protests against award.

See Subpart 333.1—Protests.

[50 FR 23129, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

PART 315—CONTRACTING BY NEGOTIATION

Subpart 315.1—General Requirements for Negotiation

Sec.
315.103 Converting from sealed bidding to negotiation procedures.

Subpart 315.4—Solicitation and Receipt of Proposals and Quotations

315.402 General.
315.404 Presolicitation notices and conferences.
315.405 Solicitations for information or planning purposes.
315.405–1 General.
315.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).
315.406–1 Uniform contract format.
315.406–2 Part I—The Schedule.
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315.407 Solicitation provisions.
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315.413–1 Alternate I.
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315.470 Review of RFP.
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Subpart 315.5—Unsolicited Proposals

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315.506 Agency procedures.
315.506–1 Receipt and initial review.
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Subpart 315.6—Source Selection

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315.605 Evaluation factors.
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315.608 Proposal evaluation.
315.608–70 Technical evaluation plan.
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315.608–73 Receipt of proposals.
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315.608–75 Rating and ranking of proposals.
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315.804 Cost or pricing data.
315.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
315.805 Proposal analysis.
315.805–5 Field pricing support.

Subpart 315.9—Profit

315.900 Scope of subpart.
315.905–70 Structured approach.
315.905–71 Profit factors.

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315.905–74 Facilities capital cost of money.

Subpart 315.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

315.1000 General.
315.1003 Debriefing of unsuccessful offerors.
315.1004 Protests against award.
315.1005 Discovery of mistakes.

Subpart 315.70—Requests for Contract

315.7000 Scope of subpart.
315.7001 General.
315.7002 Procedures.
315.7003 Responsibilities.
315.7004 Transmittal.
315.7005 Format and content.
315.7006 Review.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486cc).

SOURCE: 49 FR 13979, Apr. 9, 1984, unless otherwise noted.

Subpart 315.1—General Requirements for Negotiation

315.103 Converting from sealed bidding to negotiation procedures.

The chief of the contracting office has the authority to make the determination referenced in FAR 15.103.

[51 FR 44294, Dec. 9, 1986]

Subpart 315.4—Solicitation and Receipt of Proposals and Quotations

315.402 General.

(i) The principal official responsible for acquisition (PORA) shall determine whether to allow the use of facsimile proposals. If the PORA decides to allow the use of facsimile proposals, internal procedures shall be developed, in accordance with the FAR, to ensure uniform processing and control.

[55 FR 13536, Apr. 11, 1990]

315.404 Presolicitation notices and conferences.

(c) *Presolicitation conferences.* (1) The presolicitation conference may only be used when approved by the chief of the contracting office.

315.405 Solicitations for information or planning purposes.

315.405–1 General.

The determination approval required by FAR 15.405–1 that a solicitation for information or planning purposes is appropriate shall be made by the chief of the contracting office.

315.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) The contracting officer is responsible for preparing the RFP with the assistance of the project officer. The purpose of the RFP is to convey information that prospective offerors need to prepare a proposal. The RFP includes the statement of work and the terms, conditions and provisions that will form the basis for the final definitive contract. It specifies all the information that prospective offerors must furnish to permit a meaningful and equitable evaluation of their offers. The RFP must be clear, complete, accurate, and consistent with the requirements of the acquisition so that it provides all who receive it with the same understanding of the requirements. Much of the information in the RFP is either derived directly from the request for contract or is otherwise furnished by the project officer. Therefore, it is important that the project officer develop a meaningful request for contract and supporting documentation during the initial presolicitation phase which will fully satisfy program needs and objectives when included in the RFP (see subpart 315.70).

(b) Careful drafting of the RFP is vital to the proper working of the competitive process. The success of the acquisition depends, in large measure, on how well the work to be performed and the basic ground rules under which the competition will be conducted are described in the RFP. Particular effort must be made to develop a comprehensive and accurate statement of work (see 307.105–3 and FAR 35.007) to prevent ambiguities and to avoid misunderstandings which might otherwise surface at later stages of the acquisition.

(c) Care should be taken to avoid conflicting statements in the RFP. Clear

distinctions must be made as to the contents and purpose of the statement of work, the instructions to offerors, and the evaluation criteria. Briefly:

(1) The statement of work must clearly specify the work to be done by the resultant contractor (or, if it is an R & D acquisition, present a clear statement of the requirements, see FAR part 35);

(2) The general, technical, and business instructions must delineate all the essential information prospective offerors need to know in preparing their proposals (see 315.406–5(b)); and

(3) The evaluation criteria must clearly indicate the technical, management, personnel, and cost or pricing factors which are to be the major considerations in selecting the successful offeror (see 315.406–5(c)).

(d) The RFP must require that proposals be submitted in two parts—a ''Technical Proposal'' and a ''Business Proposal.'' Each part is to be separate and complete in itself so that evaluation of one may be accomplished independently of the other.

(e) The technical and business proposal instructions of the RFP must provide all the information deemed essential for proper evaluation of the proposals so that all prospective offerors are aware of all requirements, and so that differences in proposals will reflect each offeror's individual approach to the clear and unambiguous requirements and criteria stated in the RFP.

(f) The RFP must inform prospective offerors of all evaluation criteria and of the relative importance or weight attached to each criterion. Evaluation criteria must be described sufficiently enough in the RFP to inform prospective offerors of the significant matters which should be addressed in the proposals. Only the evaluation criteria set forth in the RFP shall be used in the evaluation of proposals, and the criteria can only be modified by a formal amendment to the RFP.

(g) Generally, the RFP will provide that the technical proposal not contain any reference to cost. However, resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the technical proposal so that the offeror's understanding of the scope of work may be evaluated.

(h) The project officer should be offered the opportunity to review the finalized RFP before it is printed and released.

315.406–1 Uniform contract format.

The uniform contract format specified in FAR 15.406–1 and Table 15–1 shall be used by all contracting activities of the Department.

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.406–2 Part I—The Schedule.

(a) *Section A, Solicitation/contract form.*

(3) Contracting activities are encouraged to use SF 33 for RFPs. In those instances where a contracting activity believes the SF 33 is not appropriate, a transmittal letter may be used. However, it is essential that the transmittal letter contain the pertinent information that must be brought to the attention of prospective offerors, so the information contained in FAR 15.406–2(a)(3) shall be included in it. The transmittal letter should also contain reference to the solicitation provision ''Late Submissions, Modifications, and Withdrawals of Proposals or Quotations'' and stress the importance of timeliness. The last paragraph of the transmittal letter should provide the name and complete telephone number of a contract specialist who can provide information concerning the solicitation.

[49 FR 13979, Apr. 9, 1984, as amended 54 FR 24343, June 7, 1989]

315.406–3 Part II—Contract clauses.

Section I, Contract clauses.

This section should contain all the pertinent contract clauses applicable to the acquisition, to include those contained in the general provisions, any additions or modifications to the general provisions, and special contract clauses (see part 352—Solicitation Provisions and Contract Clauses).

315.406–5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.*

(1) This section shall begin with the following statements and continue with the applicable representations and certifications:

To Be Completed by the Offeror: (The Representations and Certifications must be executed by an individual authorized to bind the offeror.)

The offeror makes the following Representations and Certifications as part of its proposal (check or complete all appropriate boxes or blanks on the following pages).

Name of offeror _____

RFP No. _____

Signature of authorized individual _____

Date _____

Type name of authorized individual _____

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(2) The contracting officer shall insert in all solicitations the representations and certifications at—

(i) FAR 52.203–2, Certificate of Independent Price Determination;

(ii) FAR 52.203–4, Contingent Fee Representation and Agreement;

(iii) FAR 52.204–3, Taxpayer Identification;

(iv) FAR 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters;

(v) FAR 52.215–6, Type of Business Organization;

(vi) FAR 52.215–20, Place of Performance;

(vii) FAR 52.219–1, Small Business Concern Representation;

(viii) FAR 52.219–2, Small Disadvantaged Business Concern Representation;

(ix) FAR 52.219–3, Women-Owned Small Business Representation;

(x) FAR 52.222–19, Walsh-Healy Public Contracts Act Representation;

(xi) FAR 52.222–21, Certification of Nonsegregated Facilities;

(xii) FAR 52.222–22, Previous Contracts and Compliance Reports;

(xiii) FAR 52.222–25, Affirmative Action Compliance;

(xiv) FAR 52.223–1, Clean Air and Water Certification;

(xv) FAR 52.223–5, Certification Regarding a Drug-Free Workplace;

(xvi) FAR 52.225–1, Buy American Certification;

(xvii) FAR 52.225–12, Notice of Restrictions on Contracting With Sanctioned Persons;

(xviii) FAR 52.230–2, Cost Accounting Standards Notices and Certification (Nondefense); and

(xix) FAR 15.804–4, Certificate of Current Cost or Pricing Data; and

NOTE: The following paragraph shall be inserted between the title and text of this certificate:

(When a certificate of cost or pricing data is required to be submitted in accordance with Federal Acquisition Regulation (FAR) 15.804–4, the Contracting Officer will request that the offeror complete, execute, and submit to the Contracting Officer a certification in the format shown in the following Certificate of Current Cost or Pricing Data. The certification shall be submitted only at the time negotiations are concluded. Offerors should complete the certificate set forth below and return it when requested by the Contracting Officer.)

(xx) 352.215–71, Employer's Identification Number.

(b) *Section L, Instructions, conditions, and notices to offerors and quoters.* This section shall be comprised of the general instructions, technical proposal instructions, and business proposal instructions, as well as pertinent solicitation provisions (see FAR 15.407).

(1) *General instructions.*

(i) The general instructions provide basic guidance to prospective offerors that informs them of what is required in the preparation and submission of proposals. The general instructions must include the following statements and any instructions pertinent to the individual acquisition and applicable requirements of the OPDIV, agency, or regional office.

GENERAL INSTRUCTIONS

The following instructions establish the acceptable minimum requirements for the format and content of proposals:

Your special attention is directed to the requirements for technical and business proposals to be submitted in accordance with these instructions.

Any resultant contract shall include the general provisions applicable to the selected offeror's organization and type of contract awarded. Copies of general provisions may be

obtained by contacting the contracting officer. Any additional clauses required by public law, executive order, or acquisition regulations, in effect at the time of execution of the proposed contract, will be included.

The proposal must be prepared in two parts: a ''Technical Proposal'' and a ''Business Proposal.'' Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of evaluation of the other. The technical proposal must not contain reference to cost; however, resource information, such as data concerning labor hours and categories, materials, subcontracts, etc., must be contained in the technical proposal so that your understanding of the scope of the work may be evaluated. It must disclose your technical approach in sufficient detail to provide a clear and concise presentation that includes, but is not limited to, the requirements of the technical proposal instructions.

The proposal must be signed by an official authorized to bind your organization. (Number) copies of your technical proposal and (number) copies of your business proposal must be submitted to: (Insert complete address indicating where the proposal is to be sent and how it is to be marked. Provide similar information for hand-delivered proposals.)

You may, at your discretion, submit alternate proposals, or proposals which deviate from the requirements; *provided,* that you also submit a proposal for performance of the work as specified in the statement of work. These proposals may be considered if overall performance would be improved or not compromised, and if they are in the best interest of the Government. Alternate proposals, or deviations from any requirements of this RFP, must be clearly identified.

The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this request for proposals.

It is understood that your proposal will become part of the official contract file.

The RFP does not commit the Government to pay any cost for the preparation and submission of a proposal. In addition, the Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with this proposed acquisition.

(ii) Include either of the following in the General Instructions if prospective offerors are to be informed of the Government's estimate of the level of effort necessary to accomplish the requirement:

The Government considers the level of effort to perform the resultant contract should take the following staff-hours: (insert a breakdown of the Government's staff-hour estimates by categories). These estimates are furnished for the offeror's information only and are not to be considered restrictive for proposal purposes; or

To assist you in the preparation of your proposal, the Government considers the effort to perform this contract to be approximately (insert the total number) staff-hours. This number is furnished for the offeror's information only and is not considered restrictive for proposal purposes.

NOTE: The first paragraph should only be used for term (e.g. level of effort task order), rather than completion type, contracts.)

(iii) If the proposed contract will involve performance or services on a Government installation, insert the following in the General Instructions:

Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will failure to inspect the site constitute grounds for claims by the contractor after the award of a contract.

(iv) If reference material is to be provided for use in preparation of proposals, insert either of the following:

To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports, or other documentation being made available as reference material) will be available for inspection at (insert name and address of building and room number).

Offerors are expected to examine all reference material prior to preparation and submission of their proposals. Failure to do so will be at the offeror's risk; or

To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports, or other documentation being furnished as reference material) is enclosed. Offerors are expected to examine all reference material prior to preparation and submission of their proposal. Failure to do so will be at the offeror's risk.

(v) If the reference material being provided is to be returned to the Government, include the following statement:

All reference material furnished hereunder shall be returned within (insert number) days after the submission of proposals to (insert name and address of building and room number).

(vi) If an incentive type contract is being considered, a notice to the offeror of the Government's desire as to use of incentives considered applicable, objectives of the incentive performance goals, schedules, milestones, critical delivery parameters, and similar information must be included.

(2) *Technical proposal instructions.*

(i) The technical proposal instructions should clearly and concisely describe the information prospective offerors must provide in their technical proposals. The instructions should address the need for submission of a detailed work plan indicating how each aspect of the statement of work is to be accomplished, a discussion of how the work is to be organized, staffed, and managed, and statements of the qualifications and experience of the prospective offeror and its key personnel.

(ii) The technical proposal instructions must be specific enough to convey the information the program office will require from offerors to allow the technical proposal evaluators to determine whether a proposal is acceptable. Therefore, it is essential that the instructions are written to elicit the information necessary to fully address all the elements of the work plan with particular emphasis on the evaluation criteria, so that evaluators may readily evaluate each offer in the pertinent areas. The instructions should not require the submission of excessive information since this will complicate the evaluation process and could cause unnecessary proposal preparation costs for offerors.

(iii) The technical proposal instructions should require that technical proposals be prepared in a specified format to facilitate evaluation. A uniform format will minimize evaluators' efforts and should minimize the amount of extraneous and voluminous material sometimes included in proposals.

(iv) Since specific instructions must be developed to suit the needs of the individual acquisition, detailed guidance concerning the contents of the technical proposal instructions is not presented here. However, the following represents a sampling of general statements which may be helpful in the preparation of the instructions:

TECHNICAL PROPOSAL INSTRUCTIONS

Proposals which merely offer to conduct a program in accordance with the requirements of the Government's scope of work will not be eligible for award. You must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

A detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished. Your technical approach should be in as much detail as you consider necessary to fully explain your proposed technical approach or method. The technical proposal should reflect a clear understanding of the nature of the work being undertaken.

The technical proposal must include information on how the project is to be organized, staffed, and managed. Information should be provided which will demonstrate your understanding and management of important events or tasks. You must explain how the management and coordination of consultant and/or subcontractor efforts will be accomplished.

The technical proposal must include a list of names and proposed duties of the professional personnel, consultants, and key subcontractor employees assigned to the project. Their resumes should be included and should contain information on education, background, recent experience, and specific scientific or technical accomplishments. The approximate percentage of time each individual will be available for this project must be included. The proposed staff hours for each of the above individuals should be allocated against each task or subtask for the project.

The technical proposal must provide the general background, experience, and qualifications of the organization. Similar or related contracts, subcontracts, or grants should be included and contain the name of the customer, contract or grant number, dollar amount, time of performance, and the names and telephone numbers of the project officer and contracting/grants officer.

The technical proposal must contain a discussion of present or proposed facilities and equipment which will be used in the performance of the contract.

The technical proposal must be prepared and submitted in the following format:

(Provide the required format.)

(3) *Business proposal instructions.* Business proposal instructions consist of cost and pricing data and administrative and management data.

(i) *Cost and pricing data.* Prospective offerors must be informed in the business proposal instruction that they are

required to submit cost or pricing information in sufficient detail to allow a complete cost analysis. (See FAR 15.804 for requirements on cost or pricing data.) Categories and amounts of labor, materials, travel, computer time, overhead and other costs should be requested. Prospective offerors are to be provided Standard Form 1411, Contract Pricing Proposal Cover Sheet, for use in preparing the cost of pricing data, and are to be told to submit, as a minimum, cost proposals fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amount. Prospective offerors are to comply with the instruction on the SF 1411 and fill in or check the appropriate boxes. In addition, they should be informed to itemize the cost for individual elements, each as analytical studies, reports, etc., and the estimated cost of each phase or segment of the offered performance.

(ii) *Administrative and management data.*

(A) The business proposal instructions must be written so that the contracting officer receives adequate information to evaluate each offeror's management capability and to determine whether each offeror is responsible. Therefore, under this section, information should be requested to allow the contracting officer to assess the following factors as they apply to the instant acquisition:

(*1*) The offeror's financial capability;

(*2*) The offeror's capability to meet delivery or performance schedules;

(*3*) The offeror's record of past performance;

(*4*) The offeror's record of business integrity;

(*5*) The offerors's possession of necessary organization, experience, and technical skills, or the ability to obtain them;

(*6*) The offeror's possession of required facilities; and

(*7*) Any other special consideration involved in the instant acquisition.

In some cases, these factors may duplicate evaluation criteria and may be adequately addressed in the technical proposal instructions. However, the contracting officer must ensure that they are covered in both the business proposal instructions and the technical proposal instructions.

(B) The contracting officer may determine that other administrative data in the form of additional business or cost information is necessary. Some examples of additional information include:

(*1*) A copy of the current agreement on indirect cost rates;

(*2*) A copy of the most recent financial statements;

(*3*) A discussion on the extent of proposed subcontracting with small and disadvantaged business enterprises;

(*4*) A request for pricing or cost breakdown tailored to the instant acquisition to provide information for a more thorough and complete cost analysis; and

(*5*) A request for explicit instructions on pricing of options and individual line items.

However, care should be taken to request additional information only when necessary, to prevent excessive proposal preparation costs for offerors.

(C) The following are required statements which must be included in the RFP.

Your proposal must stipulate that it is predicated upon all the terms and conditions of this RFP. In addition, it must contain a statement to the effect that it is firm for a period of at least (insert number) days from the date of receipt by the Government.

It is HHS policy that contractors provide all equipment and facilities necessary for performance of contracts; however, in some instances, an exception may be granted to furnish Government-owned property or to authorize purchase with contract funds. If additional equipment must be acquired, you must include in your proposal the description and estimated cost of each item, and whether you propose to furnish the item with your own funds.

You must identify all Government-owned property in your possession and all property acquired from Federal funds, to which you have title, that is proposed to be used in the performance of the prospective contract.

The management and control of Government property must be in accordance with HHS Publication (OS) 686 entitled, ''Contractor's Guide for Control of Government Property (1990),'' a copy of which will be provided upon request.

(c) *Section M, Evaluation factors for award*—(1) *General.* (i) The evaluation criteria must be developed by the

project officer and submitted to the contracting officer in the request for contract (RFC) for inclusion in the RFP. Development of these criteria and the assignment of the relative importance or weight to each criterion require the exercise of judgment on a case-by-case basis because they must be tailored to the requirements of the individual acquisition. Since the criteria will serve as a standard against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical in the selection of a contractor.

(ii) The finalized evaluation criteria and indications of their relative importance or weights, as included in the RFP, cannot be changed except by a formal amendment to the RFP issued by the contracting officer. No factors other than those set forth in the RFP shall be used in the evaluation of proposals.

(2) *Review of evaluation criteria.* (i) The evaluation criteria should be reviewed by the contracting officer in terms of the work statement. This review is not intended to dictate to the program office or project officer, but rather to ensure that the evaluation criteria are clear, concise, and fair so that all potential offerors are fully aware of the bases for proposal evaluation and are given an equal opportunity to compete.

(ii) The project officer and the contracting officer should then review the evaluation criteria together to ascertain the following:

(A) The criteria are described in sufficient detail to provide the offerors (and evaluators) with a total understanding of the factors to be involved in the evaluation process;

(B) The criteria address the key programmatic concerns which the offerors must be aware of in preparing proposals;

(C) The criteria are specifically applicable to the instant acquisition and are not merely restatements of criteria from previous acquisitions which are not relevant to this acquisition; and

(D) The criteria are selected to represent only the significant areas of importance which must be emphasized rather than a multitude of factors. (All criteria tend to lose importance if too many are included. Using too many criteria will prove as detrimental as using too few.)

(3) *Examples of topics that form a basis for evaluation criteria.* Typical examples of topics that form a basis for the development of evaluation criteria are listed in the following paragraphs. These examples are intended to assist in the development of actual evaluation criteria for a specific acquisition and should only be used if they are applicable to that acquisition. They are not to be construed as actual examples of evaluation criteria to be included in the RFP.

(i) Understanding of the problem and statement of work;

(ii) Method of accomplishing the objectives and intent of the statement of work;

(iii) Soundness of the scientific or technical approach for executing the requirements of the statement of work (to include, when applicable, preliminary layouts, sketches, diagrams, other graphic representations, calculations, curves, and other data necessary for presentation, substantiation, justification, or understanding of the approach);

(iv) Special technical factors, such as experience or pertinent novel ideas in the specific branch of science or technology involved;

(v) Feasibility and/or practicality of successfully accomplishing the requirements (to include a statement and discussion of anticipated major difficulties and problem areas and recommended approaches for their resolution);

(vi) Availability of required special research, test, and other equipment or facilities;

(vii) Managerial capability (ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources, and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previouis experience).

(viii) Availability, qualifications, experience, education, and competence of

professional, technical, and other personnel, to include proposed subcontractors and consultants (as evidenced by resumes, endorsements, and explanations of previous efforts); and

(ix) Soundness of the proposed staff time or labor hours, propriety of personnel classifications (professional, technical, others), necessity for type and quantity of material and facilities proposed, validity of proposed subcontracting, and necessity of proposed travel.

(4) *Relative importance or weight.*

(i) A statement or indication of the relative importance or weight must be assigned to each evaluation criterion to inform prospective offerors (and evaluators) of the specific significance of each criterion in comparsion to the other criteria. Similarly, if a criterion is subdivided into parts, each of the parts must be assigned a statement or indication of the relative importance or weight.

(ii) The two principal methods used to indicate the relative importance or weight are the numerical score and adjective description. The Department does not prescribe a single method for determining the relative importance or weight, but recommends the use of the numerical score method because it is more precise and informative. However, it is recognized that in some instances the use of the adjective description method be more appropriate and, hence, may be used when that determination is made.

(iii) Cost or price is not generally included as one of the evaluation criteria and is not assigned an indication of relative importance or weight. However, a statement must be included in the RFP to reflect the relationship of cost or price in comparison to the other criteria. The contracting officer must ensure that this statement accurately reflects the appropriate balance between cost or price and the technical factors. The contracting officer and project officer should work together in arriving at the final determination regarding the relationship. The following are examples of statements that may be used to reflect this relationship. However, since these examples represent only the two extremes and the middle position, another statement may be developed to reflect the relationship which applies to the instant acquisition.

(A) You are advised that paramount consideration shall be given to the evaluation of technical proposals rather then cost or price.

(B) You are advised that paramount consideration shall be given to cost or price rather than the evaluation of technical proposals.

(C) You are advised that the evaluation of technical proposals and cost or price are of approximately equal value.

[49 FR 13979, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984, as amended at 53 FR 43207, Oct. 26, 1988; 54 FR 24343, June 7, 1989; 54 FR 43966, Oct. 30, 1989; 56 FR 47003, Sept. 17, 1991]

315.407 Solicitation provisions.

(c)(2) The referenced provision (FAR 52.215–6, Type of Business Organization) is a representation, has been included under Section K (see 315.406–5(a)(2)(iii)), and need not be restated again.

(8) The provision at 352.215–12 shall be used in place of that specified at FAR 52.215–12.

(g) The referenced provision (FAR 52.215–20, Place of Performance) is to be considered a certification and is included under section K (see 315.406–5(a)(2)(iv)); it need not be restated again.

(n) The contracting officer shall insert the provision at FAR 52.233–2, Service of Protest, in solicitations as required by FAR 33.106(a).

[49 FR 13979, Apr. 9, 1984, as amended at 54 FR 43966, Oct. 30, 1989; 57 FR 11690, Apr. 7, 1992]

315.408 Issuing solicitations.

The minimum proposal preparation or response time between the date of distribution of a RFP and the date set for receipt of proposals shall not be less than 30 calendar days.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 43208, Oct. 26, 1988]

315.409 Pre-proposal conferences.

If a pre-proposal conference is to be held, the provision at 352.215–72 shall be included in the solicitation.

315.410 Amendment of solicitations before closing date.

For additional information on amendments to solicitations, see FAR 15.606.

315.413 Disclosure and use of information before award.

315.413–1 Alternate I.

The Department shall not use Alternate I procedures.

315.413–2 Alternate II.

The Department shall use the Alternate II procedures as modified in this subsection and shall use the provision at 352.215–12, Restriction on Disclosure and Use of Data, rather than the similar provision at FAR 15.215–12 (see 315.407(c)(8)). Any reference in the FAR to the provision at FAR 52.215–12 shall apply to the provision at 352.215–12.

(b) The term *data,* as used in this section and in 352.215–12, refers to trade secrets, business data, and technical data. Trade secrets, within the meaning of 18 U.S.C. 1905, include, for example, processes, formulas, and chemical compositions. Business data includes, for example, commercial information, financial information, and cost and pricing data. Technical data includes, for example, plans, designs, suggestions, improvements and concepts.

The Department recognizes that requests for proposals may require the offeror, including its prospective subcontractor(s), if any, to submit data which the offeror does not want used or disclosed for any purpose other than for evaluation of the proposal. Each proposal containing data which the offeror desires to restrict must be marked on the cover sheet by the offeror with the legend set forth at 352.215–12. Proposals, or portions of proposals, so marked shall be handled in accordance with the provisions of the legend.

(c) Contracting officers receiving proposals which contain restrictive statements or legends not conforming to the referenced provision at 352.215–12 must carefully evaluate the form and substance of the restriction before making a determination to reject the proposal. Deviations in form which do not compromise the Government's rights may be accepted if approved by the activity's FOI official and the Office of General Counsel, Business and Administrative Law Division.

(e) The Government notice shown in FAR 15.413–2(e) shall be used by this Department and is to be placed on the cover sheet of each proposal or quotation upon its receipt. The Government notice shall be completed by adding the following to the end of the last sentence: ''HHSAR paragraph 315.608–72.''

(f) The Department sometimes finds it necessary (and in some instances is required by law) to seek evaluation of proposals outside the Department (see 315.608(d)(6)). All conditions required by FAR 15.413–2(f) have been met and are covered in 315.608–72, Procedures for handling and disclosing proposals. In regard to item (f)(1) of FAR 15.413–2, the Department has found that the procedure stated in the first sentence of paragraph 315.608–72 is best and considers it in compliance with the FAR requirement.

(g) See subpart 324.2 for detailed procedures concerning FOIA requests.

[49 FR 13979, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984, as amended at 51 FR 44294, Dec. 9, 1986]

315.470 Review of RFP.

The principal official responsible for acquisition shall establish procedures to ensure that an independent review of the RFP is made between the time the synopsis is sent to the Commerce Business Daily announcing the availability of the RFP and the release date of the RFP. The individual selected to conduct the review must possess the acquisition knowledge necessary to readily ascertain whether the RFP contains the required information to be in conformance with all laws, regulations, and internal procedures and instructions. The individual selected to conduct the review must be a person other than the preparer of the RFP.

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.471 Annual submission of representations and certifications.

Each Principal Official Responsible for Acquisition (PORA) shall determine whether to allow the use of the annual

submission of representations and certifications by offerors. If allowed, the provisions of FAR 14.213 shall be followed.

[55 FR 13536, Apr. 11, 1990]

Subpart 315.5—Unsolicited Proposals

315.505 Content of unsolicited proposals.

(d) Certification by offeror—To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.504 resulting in an unfair advantage to an offeror, the principal official responsible for acquisition (or designee) shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.506 Agency procedures.

(a) The principal official responsible for acquisition is responsible for establishing procedures to comply with FAR 15.506(a).

(b) The principal official responsible for acquisition or his/her designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals. Contacts made outside the contracting activity shall be promptly coordinated with the principal official responsible for acquisition or the designee.

315.506–1 Receipt and initial review.

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the ground that they lack scientific merit.

315.509 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.509(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with FAR 15.504(b)(7):

The Government will attempt to comply with the ''Use and Disclosure of Data'' legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

Subpart 315.6—Source Selection

315.602 Applicability.

(b) This subpart does not apply to contracts for architect-engineer services or contracts awarded to the Small Business Administration under section 8(a) of the Small Business Act.

315.604 Responsibilities.

(d) Personnel participating in the evaluation process must not discuss or

reveal information concerning the evaluations except to an individual participating in the same evaluation proceedings, and then only to the extent that the information is required in connection with the proceedings. Divulging information during the evaluation, selection, and negotiation phases of the acquisition to offerors or to personnel not having a need to know could jeopardize the resultant award. Therefore, the contracting officer must instruct personnel participating in the evaluations to observe these restrictions and insure that all personnel understand that unauthorized disclosure of information, no matter how innocent, could compromise the acquisition process and is prohibited.

(e) Only the contracting officer or his/her authorized representative within the contracting office shall conduct discussions with offerors relative to any aspect of the acquisition.

315.605 Evaluation factors.

(e) The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated. Prospective offerors rely upon the evaluation criteria in the solicitation in developing proposals, and they must be assured that the evaluation is conducted in accordance with those criteria. All personnel involved in the evaluation process must make sure that the evaluation criteria contained in the solicitation are the *only* criteria used in conducting the evaluation. See FAR 15.406–5(c) and 315.406–5(c) for detailed guidance on evaluation criteria.

315.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that offerors' clarifications are in writing.

(c)(3) The chief of the contracting office is authorized to make the written determination permitting a correction of a mistake in a proposal.

315.608 Proposal evaluation.

(a)(1) *Cost of price evaluation.* (See 315.608–77.)

(2) *Technical evaluation.* (See 315.608–75 and 76.)

(b) The determination required by FAR 15.608(b) shall be made by the chief of the contracting office.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 51 FR 44294, Dec. 9, 1986]

315.608–70 Technical evaluation plan.

(a) A technical evaluation plan may be required by the contracting officer, at his/her discretion, when an acquisition is sufficiently complex as to warrant a formal plan.

(b) The technical evaluation plan should include at least the following:

(1) A list of technical evaluation panel members, their organizations as well as a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if available);

(2) A justification for using non-Government technical evaluation panel members. (Justification is not required if non-Government evaluators will be used in accordance with standard contracting activity procedures or policies);

(3) A statement that there is no apparent or actual conflict of interest regarding any panel member;

(4) A copy of each rating sheet, approved by the contracting officer, to be used to assure consistency with the evaluation criteria; and

(5) A brief description of the general evaluation approach.

(c) The technical evaluation plan must be signed by an official within the program office in a position at least one level above the project officer or in accordance with contracting activity procedures.

(d) The technical evaluation plan should be submitted to the contracting officer for review and approval before the solicitation is issued. The contracting officer shall make sure that the principal factors relating to the evaluation are reflected in the evaluation criteria when conducting the review of the plan.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608–71 Technical evaluation panel.

(a) *General.* (1) A technical evaluation panel is required for all acquisitions

applicable to this subpart which are expected to exceed $300,000. The contracting officer has the discretion to require a technical evaluation panel for acquisitions not exceeding $300,000 based on the complexity of the acquisition.

(2) The technical evaluation process requires careful consideration regarding the size, composition, expertise, and function of the technical evaluation panel. The efforts of the panel can result in the success or failure of the acquisition.

(b) *Role of the project officer.* (1) The project officer is the contracting officer's technical representative for the acquisition action. The project officer may be a voting member of the technical evaluation panel, and may also serve as the chairperson of the panel, unless prohibited by law or contracting activity procedures.

(2) The project officer is responsible for recommending panel members who are knowledgeable in the technical aspects of the acquisition and who are competent to identify strengths and weaknesses of the various proposals. The program training requirements specified in 307.170 must be adhered to when selecting prospective panel members.

(3) The project officer shall ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and handicapped discrimination be included as panel members in acquisitions which address those issues. The intent is to balance the composition of the panel so that qualified and concerned individuals may provide insight to other panel members regarding ideas and approaches to be taken in the evaluation of proposals.

(4) The project officer is to submit the recommended list of panel members to an official within the program office in a position at least one level above the project officer or in accordance with contracting activity procedures. This official will review the recommendations, appoint the panel members, and select the chairperson.

(5) The project officer shall arrange for adequate and secure working space for the panel.

(c) *Role of the contracting officer.* (1) The contracting officer is the Department's official representative with delegated acquisition authority to enter into and administer contracts. The term ''contracting officer,'' as used in this subpart, may be the contracting officer or his/her designated representative within the contracting office.

(2) The contracting officer shall not serve as a member of the technical evaluation panel but should be available to:

(i) Address the initial meeting of the technical evaluation panel (see 315.608–74(c));

(ii) Provide assistance to the evaluators as required; and

(iii) Ensure that the scores adequately reflect the written technical evaluation report comments (see 315.608–76).

(d) *Conflicts of interest.* (1) If a panel member has an actual or apparent conflict of interest related to a proposal under evaluation, he/she shall be removed from the panel and replaced with another evaluator. If a suitable replacement is not available, the panel shall perform the review without a replacement.

(2) For the purposes of this subpart, conflicts of interest are defined in the Department's Standards of Conduct set forth in 45 CFR part 73 which incorporates 5 CFR part 737, Post Employment Conflict of Interest. The Standards of Conduct shall be applicable to both in-house personnel and outside evaluators serving on the technical evaluation panel.

(e) *Continuity of evaluation process.* (1) The technical evaluation panel is responsible for evaluating the original proposals, making recommendations to the chairperson regarding clarifications and deficiencies of proposals, and, if required by the contracting officer, assisting the contracting officer during discussions and negotiations, and reviewing supplemental, revised and/or ''best and final'' offers. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. The following are examples of circumstances when it

would *not* be necessary for the technical evaluation panel to evaluate revised proposals submitted during the acquisition:

(i) The answers to questions do not have a substantial impact on the proposal (see 315.609(i));

(ii) The ''best and final'' offers are not materially different from the original proposals; or

(iii) The rankings of the offerors are not affected because the revisions to the proposals are relatively minor.

(2) The chairperson, with the concurrence of the contracting officer, may decide not to have the panel evaluate the revised proposals. Whenever this decision is made, it must be fully documented by the chairperson and approved by the contracting officer.

(3) When technical evaluation panel meetings are considered necessary by the contracting officer, the attendance of evaluators is mandatory. When the chairperson determines that an evaluator's failure to attend the meetings is prejudicial to the evaluation, the chairperson shall replace the individual after discussing the situation with the contracting officer and obtaining his/her concurrence and the approval of the program official responsible for appointing the panel members (see 315.608–71(b)(4)).

(4) Whenever continuity of the evaluation process is not possible, and either new evaluators are selected or a reduced panel is decided upon, each proposal which is being reviewed at any stage of the acquisition shall be reviewed at that stage by all members of the revised panel unless it is impractical to do so because of the receipt of an unusually large number of proposals.

(f) *Use of outside evaluators.* (1) The technical evaluation panel shall be composed of Government employees except when outside evaluators possess a required expertise which is not available within the Government, or as required by law.

(2) The National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) are required to have a peer review of research and development contracts in accordance with Pub. L. (Pub. L.) 93–352 as amended by Pub. L. 94–63; 42 U.S.C. 289 1–4. This legislation requires peer review of projects and proposals, and not more than one-fourth of the members of a peer review group may be officers or employees of the United States. NIH and ADAMHA are therefore exempt from the provisions of 315.608–71 to the extent that 42 U.S.C. 289 1–4 applies.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 53 FR 15563, May 2, 1988]

315.608–72 Procedures for handling and disclosing proposals.

(a) The procedures and notice specified in FAR 15.413–2 and 315.413–2 shall be used in handling solicited proposals and for disclosing proposals outside the Government for evaluation purposes. (For unsolicited proposals, see FAR 15.509 and 315.509.)

(b) Decisions to disclose proposals outside the Government for evaluation purposes shall be made by the chief official having programmatic responsibility for the acquisition, after consultation with the contracting officer and in accordance with operating division procedures. The decision to disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(c) When it is determined to disclose a solicited proposal outside the Government for evaluation purposes, the following or similar conditions shall be included in the written agreement with the evaluator(s) prior to disclosure (see FAR 15.413–2(f) and 315.413–2(f)). Also, a review must be made to ensure that the notice required by FAR 15.413–2(e) is affixed to the proposal before it is disclosed to the evaluator(s).

CONDITIONS FOR EVALUATING PROPOSALS

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

This requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return the Government-furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any apsects of its contents.

The evaluator will be obligated to obtain commitments from its employees and subcontractors, if any, in order to effect the purposes of these conditions.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608–73 Receipt of proposals.

(a) After the closing date set by the solicitation for the receipt of proposals, the contracting officer will use a transmittal memorandum to forward the technical proposals to the project officer or chairperson for evaluation. The business proposals will be retained by the contracting officer for evaluation (see 315.608–77).

(b) The transmittal memorandum to the chairperson shall include at least the following:

(1) A list of the names of the organizations submitting proposals;

(2) A reference to 315.604(d) on the need to preserve the integrity of the source selection process;

(3) A requirement for a technical evaluation report in accordance with 315.608–76; and

(4) The establishment of a date for receipt of the technical evaluation report.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608–74 Convening the technical evaluation panel.

(a) Normally, the technical evaluation panel will convene to evaluate the proposals. However, there may be situations when the contracting officer determines that it is not feasible for the panel to convene. Whenever this decision is made, care must be taken to assure that the technical review is closely monitored to produce acceptable results.

(b) When a panel is convened, the chairperson is responsible for the control of the technical proposals provided to him/her by the contracting officer for use during the evaluation process. The chairperson will generally distribute the technical proposals at the initial panel meeting and will establish procedures for securing the proposals whenever they are not being evaluated to insure their confidentiality. After the evaluation is complete, all proposals must be returned to the contracting officer, destroyed or filed in an appropriate manner to maintain the confidential nature of the data.

(c) The contracting officer shall address the initial meeting of the panel and state the basic rules for conducting the evaluation. The contracting officer shall provide written guidance to the panel if he/she is unable to attend the initial panel meeting. The guidance should include:

(1) An explanation of conflicts of interest (see 315.608–71(d));

(2) The necessity to read and understand the solicitation, especially the statement of work and evaluation criteria, prior to reading the proposals;

(3) The need for evaluators to restrict the review to only the solicitation and the contents of the technical proposals;

(4) The need for each evaluator to review all the proposals;

(5) The need to watch for ambiguities, inconsistencies, errors, and deficiencies which should be surfaced during the evaluation process;

(6) An explanation of the evaluation process and what will be expected of the evaluators throughout the process;

(7) The need for the evaluators to be aware of the requirement to have complete written documentation of the individual strengths and weaknesses which affect the scoring of the proposals; and

(8) An instruction directing the evaluators that, until the award is made, information concerning the acquisition must not be disclosed to any person not directly involved in the evaluation process.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608–75 Rating and ranking of proposals.

The evaluators will individually read each proposal, describe tentative strengths and weaknesses, and develop preliminary scores in relation to each evaluation criterion set forth in the solicitation. The evaluators will use the rating sheets either in the technical evaluation plan or approved by the contracting officer when a technical evaluation plan is not required (see 315.608–70). After this has been accomplished, the evaluators shall discuss in detail the individual strengths and weaknesses described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). Each evaluator will score each proposal, and then the technical evaluation panel will collectively rank the proposals. Generally, ranking will be determined by adding the numerical scores assigned to the evaluation criteria and finding the average for each offeror. The evaluators should then identify whether each proposal is acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608–76 Technical evaluation report.

A technical evaluation report shall be prepared and furnished to the contracting officer by the chairperson and maintained as a permanent record in the contract file. The report must reflect the ranking of the proposals and identify each proposal as acceptable or unacceptable in accordance with 315.608–75. The report must also include a narrative evaluation specifying the strengths and weaknesses of each proposal, a copy of each rating sheet, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal must be included. The report should also include specific points and questions which are to be raised in discussions or negotiations.

[50 FR 23132, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608–77 Evaluation of business proposals.

(a) The contracting officer shall evaluate the business proposals concurrently with the evaluation of the technical proposals. The contracting officer must adhere to the requirements for cost or price analysis included in FAR 15.805–1 for each business proposal in the competitive range. An audit report may be required in accordance with FAR 15.805–5 and 315.805–5. The contracting officer must determine the extent of analysis in each case depending on the amount of the proposal, the technical complexity and related cost or price, and cost realism. The contracting officer should request the project officer to analyze such items as the number of labor hours proposed for various labor categories; the mix of labor hours and categories of labor in relation to the technical requirements of the project; the kinds and quantities of material, equipment, and supplies; types, numbers, and hours/days of proposed consultants; logic of proposed subcontracting; analysis of the travel proposed including number of trips, locations, purpose, and travelers; and kinds and quantities of data processing. The project officer shall provide his/her opinion as to whether these elements are necessary and reasonable for efficient contract performance. Exceptions to proposed elements shall be supported by adequate rationale to allow for effective negotiations. The contracting officer should also request the assistance of a cost/price analyst when considered necessary. In all cases, the negotiation memorandum (see 315.672) must include the rationale used in determining that the price or cost is fair and reasonable.

(b) The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, the contracting officer should consider factors such as the offeror's management organization,

past performance, reputation for reliability, availability of the required facilities, and cost controls. This information is to be used by the contracting officer to determine the offeror's responsibility.

[50 FR 23132, May 31, 1975, and 50 FR 38004, Sept. 19, 1985]

315.609 Competitive range.

(a) A proposal must be included in the competitive range unless there is no real possibility that it can be improved to the point where it becomes the *most* acceptable.

(e) In certain circumstances, when deciding which proposals should be included in the competitive range, the contracting officer may request that the technical evaluation panel review the cost or price data. Typical situations which may necessitate this review include a suspected ''buy-in,'' large differences in cost or price among the proposals, proposals receiving high technical ratings which have relatively high costs, and proposals receiving low technical ratings which have relatively low costs. The resultant comparison of cost or price to technical factors and the determination of cost or price realism should assist the contracting officer in deciding which proposals are to be included in the competitive range.

(f) All determinations regarding the inclusion or exclusion of proposals in the competitive range must be completely documented, including the salient reasons for the determinations, and set forth in the negotiation memorandum.

(g) Some of the factors which the contracting officer should consider in determining the competitive range are:

(1) The relative importance of cost or price as compared to technical factors in accordance with the solicitation provisions required in 315.406–5(c);

(2) The susceptibility of significantly reducing a proposal with an unreasonable high price or cost without undermining the technical merit if the offeror otherwise has a reasonable chance to receive an award; and

(3) The likelihood of reducing cost or price of a proposal which exceeds the Government's requirements.

(h) The contacting officer shall conduct a thorough review of the technical evaluation report to be assured that:

(1) All determinations of unacceptability are supported by concrete and comprehensive statements that are factual and convincing and are consistent with the evaluation criteria set forth in the solicitation. Every statement should be reviewed carefully to eliminate any doubts as to the unacceptability of a proposal;

(2) All recommendations to exclude proposals from the competitive range are supported by persuasive rationale and sufficient facts to substantiate a judgment that meaningful discussions are not possible or there is no reasonable chance of the proposal being selected for award;

(3) Those cases where only one organization is found to be technically acceptable are fully scrutinized; and

(4) Unacceptable proposals contain ''information'' deficiencies which are so material as to preclude any possibility of upgrading the proposal to a competitive level except through major revisions and additions which would be tantamount to the submission of another proposal.

(i) The contracting officer and project officer should discuss the uncertainties and/or deficiencies that are included in the technical evaluation report for each proposal in the competitive range. Technical questions should be developed by the project officer and/or the technical evaluation panel and should be included in the technical evaluation report. The management and cost or price questions should be prepared by the contracting officer with assistance from the project officer and/or panel as required. The method of requesting offerors in the competitive range to submit the additional information will vary depending on the complexity of the questions, the extent of additional information requested, the time needed to analyze the responses, and the time frame for making the award. However, to the extent practicable, all questions and answers should be in writing. Each offeror in the competitive range shall be given an equitable period of time for preparation of responses to questions to the extent practicable. The questions

should be developed so as to disclose the ambiguities, uncertainties, and deficiencies of the offeror (see FAR 15.610(c)).

315.610 Written or oral discussions.

(b) The contracting officer, with the support of personnel who evaluated the technical proposals, and, if necessary, cost analysts, attorneys, etc., must conduct written or oral discussions with all responsible offerors within the competitive range.

(d) Careful judgment must be exercised in determining the extent of discussions. In some cases, more than one round of discussions with all the offerors within the competitive range may be required. The time available, the expense and administrative limitations, and the complexity, size, and significance of the acquisition should all be considered in deciding on the type, duration, and depth of the discussions.

315.611 Best and final offers.

(b)(5) Notice that confirmation of a prior offer should be specifically stated as a final offer; and

(6) Notice that all revisions to former offers should be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, and should be fully documented.

(c) ''Best and final'' offers are subject to a final evaluation of price or cost and other salient factors by the contracting officer and project officer with assistance from a cost/price analyst, and an evaluation of technical factors by the technical evaluation panel, as necessary. Proposals may be technically rescored and reranked by the technical evaluation panel and a technical evaluation report prepared. To the extent practicable, the evaluation shall be performed by the same evaluators who reviewed the original proposals (see 315.670—).

(e) Of particular importance in the award of research or development contracts, including those with educational institutions, is the competence of key personnel in the specific field of science or technology involved, as reflected in the proposal. However, awards should not be made for research and development capabilities that exceed those needed for the successful performance of the particular project.

315.670 Negotiation with the selected source.

(a) After selection of the successful proposal, a limited negotiation with the selected offeror may be conducted if deemed necessary. However, no factor which could have any effect on the selection process may be introduced into the negotiation after the common cutoff date for receipt of best and final offers. The negotiation shall not in any way prejudice the competitive interests or right of the unsuccessful offerors. Negotiations with the selected offeror shall be restricted to definitizing the final agreement on terms and conditions; e.g., assuming none of these factors were involved in the selection process, negotiation could include such topics as payment provisions, patent rights, rights in data, property provisions, labor rates, indirect cost rates, and fees. Prior to conducting the limited negotiation, the contracting officer shall approve a written determination citing both the specific issues to be discussed and the rationale showing that the negotiations shall not have any effect on the selection process.

(b) Caution must be exercised by the contracting officer to insure that the negotiation is not used to change the requirement contained in the solicitation, nor to make any other changes which would impact on the source selection decision. Whenever a material change occurs in the requirements as a result of the negotiation, the competition must be reopened and all offerors submitting ''best and final'' offers must be given an opportunity to resubmit proposals based on the revised requirements. Whenever there is a question as to whether a change is material, the contracting officer should obtain the advice of technical personnel and legal counsel before reopening the competition. Significant changes in the offeror's cost proposal may also necessitate a reopening of competition if such changes alter the factors involved in the original selection process.

(c) Should negotiations beyond those specified in (a) above be required for

any reason, discussions must be reopened with all offerors submitting ''best and final'' offers.

(d) Upon completion of the negotiation, the contracting officer shall obtain a confirmation letter from the successful offeror which includes any revisions to the technical proposal, the agreed to price or cost, and, as applicable, a certificate of current cost or pricing data.

[49 FR 13979, Apr. 9, 1984, 49 FR 36110, Sept. 14, 1984]

315.671 Post negotiation contract preparation and award.

(a) The contracting officer must perform the following actions after negotiations have been completed:

(1) Prepare the negotiation memorandum in accordance with 315.672;

(2) Prepare the contract containing all agreed to terms and conditions and clauses required by law or regulation;

(3) Include in the contract file the pertinent documents referenced in FAR 4.803; and

(4) Obtain the appropriate approval of proposed contract awards in accordance with subpart 304.71 and contracting activity procedures.

(b) After receiving the required approvals, the contract should be transmitted to the prospective contractor for signature. The prospective contractor must be informed that the contract is not effective until accepted by the contracting officer.

(c) The contract shall not be issued until the finance office certifies that the funds are available for obligation.

315.672 Preparation of negotiation memorandum.

The negotiation memorandum or summary of negotiations is a complete record of all actions leading to award of a contract and is prepared by the contract negotiator. It should be in sufficient detail to explain and support the rationale judgments, and authorities upon which all actions were predicated. The memorandum will document the negotiation process and reflect the negotiator's actions, skills, and judgments in concluding a satisfactory agreement for the Government. Negotiation memorandums shall contain discussion of the following or a statement of nonapplicability; however, information already contained in the contract file need not be reiterated. A reference to the document which contains the required information is satisfactory.

(a) *Description of articles and services and period of performance.* A description of articles and services, quantity, unit price, total contract amount, and period of contract performance should be set forth (if Supplemental Agreement—show previous contract amount as revised, as well as information with respect to the period of performance).

(b) *Acquisition planning.* Summarize any acquisition planning activities that have taken place. Include items such as meetings with program and staff personnel and the development of acquisition planning schedules.

(c) *Synopsis of proposed acquisition.* A statement as to whether the acquisition has or has not been publicized in accordance with FAR subpart 5.2. A brief statement of explanation should be included with reference to the specific basis for exemption under the FAR, if applicable.

(d) *Contract type.* Provide sufficient detail to support the type of contractural instrument recommended for the acquisition and cite any required D & F. If the contract is a cost-sharing type, explain the essential cost-sharing features.

(e) *Extent of competition.* The extent to which full and open competition was solicited and obtained must be discussed. The discussion shall include the date of solicitation, sources solicited, and solicitation results. If a late proposal was received, discuss whether or not the late proposal was evaluated and the rationale for the decision. If the acquisition is to be awarded without full and open competition, discuss the rationale for the decision.

(f) *Technical evaluation.* Summarize the results presented in the technical evaluation report and delineate the basis of acceptability or unacceptability of the proposals from a technical standpoint. Discussion should be in nontechnical terms.

(g) *Business evaluation.* Summarize the results presented in the business report and delineate the basis for the determination of acceptability or

unacceptability of the business proposals.

(h) *Competitive range.* If full and open competition, describe how the zone of consideration or competitive range was determined and state the offerors who were included in the competitive range and the ones who were not. Explain why any offeror who submitted a technically acceptable proposal was not included in further discussions. Comment on any changes made in the offeror's proposal as a result of the discussions.

(i) *Cost breakdown and analysis.* Include a complete cost breakdown together with the negotiator's analysis of the estimated cost by individual cost elements. The negotiator's analysis should contain such information as:

(1) A comparison of cost factors proposed in the instant case with actual cost factors used in earlier contracts, using the same cost centers of the same supplier or cost centers or other sources having recent contracts for the same or similar item.

(2) Any pertinent Government-conducted audit of the proposed contractor's records of any pertinent cost advisory report (see FAR 15.805).

(3) Any pertinent technical evaluation inputs as to necessity, allocability and reasonableness of labor, material and other direct expenses.

(4) Any other pertinent information to fully support the basis for and rationale of the cost analysis.

(5) If the contract is an incentive type, discuss the rationale for the following:

(i) Cost-plus-award-fee.

(A) Base fee.

(B) Maximum fee.

(C) Award fee.

(ii) Cost-plus-incentive-fee.

(A) Minimum fee.

(B) Target fee.

(C) Maximum fee.

(D) Incentives relative to performance and/or delivery.

(E) Sharing ratios.

(iii) Fixed-price incentives.

(A) Target profit.

(B) Target price.

(C) Ceiling price.

(D) Sharing rations.

(E) Incentives relative to performance and/or delivery.

(6) A justification of the reasonableness of the proposed contractor's estimated profit or fixed fee, considering such factors as any competitive elements, established efficiency or performance, extent of the risk assumed by the proposed contractor, character of the proposed contractor's normal business, the extent of subcontracting in the instant case and the reasons, capital employed, and other factors as are appropriate, including type of organization.

(j) *Government-furnished property and Government-provided facilities.* With respect to Government-furnished material or Government-provided facilities, equipment, tooling, or other property, include the following: (A separate D & F is required for facilities construction.)

(1) Where no property is to be provided, a statement to that effect.

(2) Where property is to be provided, a full description, the estimated dollar value, the basis of price comparison with competitors, and the basis of rental charge, if rental is involved.

(3) Where the furnishing of any property or the extent has not been determined and is left open for future resolution, a detailed explanation.

(k) *Negotiations.* Include a statement as to the date and place negotiations were conducted, and identify members of both the Government and contractor negotiating teams by area of responsibility. Include negotiation details relative to the statement of work, terms and conditions, and special provisions. The results of cost or price negotiations must include the information required by FAR 31.109 and 15.808. In addition, if cost or pricing data was required to be submitted and certified, the negotiation record must also contain the extent to which the contracting officer relied upon the factual cost or pricing data submitted and used in negotiating the cost or price.

(l) *Other considerations.* Include coverage of areas such as:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility.

(3) Details as to why the method of payment, such as progress payment,

advance payment, etc., is necessary. Also cite any required D & F's.

(4) Information with respect to obtaining of a certificate of current cost or pricing data.

(5) Other required special approvals, such as those referenced in 307.105–2.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s) should be reflected. Also, a determination should be made that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor. (Project officer should furnish the necessary information.)

(7) If the contract was awarded by full and open competition state where the unsuccessful offerors' proposals are filed.

(8) State that equal opportunity provisions of the proposed contract have been explained to the contractor, and it is aware of its responsibilities. Also state whether or not a clearance is required.

(9) If the contract is for services, a statement must be made, in accordance with FAR 37.103 and 337.103, that the services to be acquired are nonpersonal in nature.

(m) *Terms and conditions.* Identify the general provisions and any special clauses and conditions that are contained in the contract, such as option arrangements, incremental funding, anticipatory costs, deviations from the standard clauses, etc. The basis and rationale for inclusion of any special terms and conditions must be stated and, where applicable, the document which granted approval for its use identified.

(n) *Recommendation.* A brief statement setting forth the recommendations for award.

(o) *Signature.* The memorandum must be signed by the contract negotiator who prepared the memorandum.

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 315.8—Price Negotiation

315.804 Cost or pricing data.

315.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) *Waiver for exceptional cases.* The authority referenced in FAR 15.804–3(i) may be delegated to the principal official responsible for acquisition.

[51 FR 44294, Dec. 9, 1986]

315.805 Proposal analysis.

315.805–5 Field pricing support.

(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained by phone from the cognizant audit agency, contracting officers may request less-than-complete field pricing support (specifying in the request the information needed) or may waive in writing the requirement for audit and field pricing support by documenting the file to indicate what information is to be used instead of the audit report and the field pricing report.

(c)(1) When initiating audit and field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO), with an information copy to the cognizant audit office. When field pricing support is not available, the contracting officer shall initiate an audit by sending, in accordance with agency procedures, two (2) copies of the request to the OIG Office of Audits' Regional Audit Director. In both cases, the contracting officer shall, in the request:

(i) Prescribe the extent of the support needed;

(ii) State the specific areas for which input is required;

(iii) Include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitations, particularly those describing requirements and delivery schedules);

(iv) Provide the complete address of the location of the offeror's financial records that support the proposal;

(v) Identify the office having audit responsibility if other than an HHS Regional Audit Office; and

(vi) Specify a due date for receipt of a verbal report to be followed by a written audit report. (If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the contracting officer and indicate the additional time needed.) Normally, the Office of Audits will need 30 days after receipt of the proposal for submission of oral results. However, the Office of Audits' ability to conduct reviews by the due date will be influenced by the OPDIV's ability to properly plan its acquisitions. If the Office of Audits requires additional time to conduct the review, the contracting officer has the option, at the time the auditor acknowledges receipt of the request, to accept the revised due date or cancel the request and use cost advisory services within the agency to satisfy the requirement. In such cases, the contracting officer shall immediately advise the OIG/OA/Regional Audit Director and the OIG/OA/Division of Audit Coordination (OIG/OA/DAC) of the revised due date or cancellation of the request.

(4) One copy of the audit request letter that was submitted to the Regional Audit Director and a complete copy of the contract price proposal shall be submitted to OIG/OA/DAC.

(5) Whenever, an audit review has been conducted by the Office of Audits, two (2) copies of the memorandum of negotiation shall be forwarded to OIG/OA/DAC by the contracting officer (see FAR 15.808(b)).

Subpart 315.9—Profit

315.900 Scope of subpart.

This subpart—

(c) Prescribes a structured approach for establishing the profit or fee portion of the Government prenegotiation objective in all contracts requiring cost analysis except as stated in 315.905–70(b). The profit analysis factors set forth at FAR 15.905 shall be used in all excepted contracts requiring cost analysis.

315.905–70 Structured approach.

(a) *General.* (1) The structured approach for determining profit or fee (hereafter referred to as profit) provides contracting officers with a technique that will ensure consideration of the relative value of the appropriate profit factors described in 315.905–71 in the establishment of a profit objective for the conduct of negotiations. The contracting officer's analysis of these profit factors is based on information available to him/her prior to negotiations. Such information is furnished in proposals, audit data, assessment reports, preaward surveys and the like. The structured approach also provides a basis for documentation of this objective, including an explanation of any significant departure from this objective in reaching an agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed acquisition.

(2) The negotiation process does not require agreement on either estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the cost objective and any proposed sharing arrangement. Since profit is merely one of several interrelated variables, the Government negotiator generally should not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual profit factors is not required and should not be attempted.

(b) *Exceptions.* (1) The profit-analysis factors set forth at FAR 15.905 shall be used for establishing profit objectives under the following listed circumstances. Generally, it is expected that this method will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of the profit objective); however, factors within FAR 15.905 considered inapplicable to the acquisition will be excluded from the profit objective.

(i) Contracts not expected to exceed $100,000;

(ii) Architect-engineer contracts;

(iii) Management contracts for operation and/or maintenance of Government facilities;

(iv) Construction contracts;

(v) Contracts primarily requiring delivery of material supplies by subcontractors;

(vi) Termination settlements; and

(vii) Cost-plus-award-fee contracts (However, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement).

(2) Other exceptions may be made in the negotiation of contracts having unusual pricing situations. Such exceptions shall be justified in writing by the contracting officer in situations where the structured approach is determined to be unsuitable.

(c) *Limitation.* The maximum profit objective shall be the percentage allowed pursuant to statute or regulation (see FAR 15.903(d)).

(d) *Profit objective.* (1) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, constitutes an appropriate amount of profit for the acquisition being considered. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor.

(2) Development of a profit objective should not begin until the following actions have been accomplished:

(i) A thorough review of proposed contract work;

(ii) A review of all available knowledge regarding the contractor pursuant to FAR subpart 9.1, including audit data, preaward survey reports and financial statements, as appropriate; and

(iii) An analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

315.905–71 Profit factors.

(a) The following factors shall be considered in all cases in which profit is to be negotiated. The weight ranges listed after each factor shall be used in all instances where the structured approach is used.

Profit factors	Weight ranges (percent)
Contractor effort:	
Material acquisition	1 to 5
Direct labor	4 to 15
Overhead	4 to 9
General management (G&A)	4 to 8
Other costs	1 to 5
Other factors:	
Cost risk	0 to 7
Investment	−2 to +2
Performance	−1 to +1
Socioeconomic programs	−.5 to +.5
Special situations	.....

(b) Under the structured approach, the contracting officer shall first measure ''Contractor Effort'' by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included for the computation of profit as part of the cost base.

(c) The suggested categories under ''Contractor Effort'' are for reference purposes only. Often individual proposals will be in a different format, but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for ''Contractor Effort,'' the contracting officer shall then calculate the specific profit dollars assigned for cost risk, investment, performance, socioeconomic programs, and special situations. This is accomplished by multiplying the total Government Cost Objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the ''Other Factors'' category. Form HHS–674, Structured Approach Profit/Fee Objective, should be used, as appropriate, to facilitate the calculation of this profit objective. Form HHS–674 is illustrated in 353.370–674.

(e) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth in 315.905–72 and 315.905–73.

(f) The structured approach was designed for arriving at profit objectives for other than nonprofit organizations. However, if appropriate adjustments

are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at profit objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (f)(2) below, shall be used to establish profit objectives for nonprofit organizations.

(1) For purposes of this section, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where profit is involved, an adjustment of up to 3 percentage points will be subtracted from the total profit objective percentage. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits;

(ii) Granting of financing through advance payments; and

(iii) Other pertinent factors which may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988; 56 FR 47003, Sept. 17, 1991]

315.905–72 Contractor effort.

(a) *General.* Contractor effort is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirement in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and material into the final service or product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing technology and/or equipment or only refinements to these items. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(1) *Material acquisition.* (Subcontracted items, purchased parts, and other material.) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required subcontracted items, purchased parts, material or services. The contracting officer shall determine whether the contractor will obtain the items or services by routine order from readily available sources or by detailed subcontracts for which the prime contractor will be required to develop complex specifications. Consideration shall also be given to the managerial and technical efforts necessary for the prime contractor to select subcontractors and to perform subcontract administration functions. In application of this criterion, it should be recognized that the contribution of the prime contractor to its purchasing program may be substantial. Normally, the lowest unadjusted weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(2) *Direct Labor* (Professional, service, manufacturing and other labor). Analysis of the various labor categories of the cost content of the contract should include evaluation of the comparative quality and quantity of professional and semiprofessional talents, manufacturing and service skills, and experience to be employed. In evaluating professional and semiprofessional labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or

unusual or scarce talent needed in contrast to nonprofessional effort. The assessment should consider the contribution this talent will provide toward the achievement of contract objectives. Since nonprofessional labor is relatively plentiful and rather easily obtained by the contractor and is less critical to the successful performance of contract objectives, it cannot be weighted nearly as high as professional or semiprofessional labor. Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional type skills and lower weights to semiprofessional or other type skills required for contract performance. Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (i.e., quality control, receiving and inspection, etc.) which do not fall within the definition for professional, service or manufacturing labor may be categorized as appropriate. However, the same evaluation considerations as outlined above will be applied.

(3) *Overhead and general management* (G&A). (i) Analysis of these overhead items of cost should include the evaluation of the makeup of these expenses and how much they contribute to contract performance. To the extent practicable, analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit considerations that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses, such as utilities and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(ii) It is not necessary that the contractor's accounting system break down overhead expenses within the classifications of research overhead, other overhead pools, and general administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system reflects only one overhead rate on all direct labor need not change its system (if CAS exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate which could be classified as research overhead, other overhead pools, and general and administrative expenses, and follow the appropriate evaluation technique.

(iii) Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a contract for a new program for research or an item which is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward because many of the problems should have been solved. In any event, an evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each acquisition action for substantially the same project with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future acquisitions with the same contractor until there is a change in the cost composition of the overhead

pool or the contract circumstances, or the factors discussed in (iii) above are involved.

(b) *Other costs.* Analysis of this factor should include all other direct costs associated with contractor performance (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include:

(1) The significance of the cost of contract performance;

(2) Nature of the cost; and

(3) How much they contribute to contract performance. Normally, travel costs require minimal administrative effort by the contractor and, therefore, usually receive a weight no greater than 1 percent. Also, the contractor may designate individuals as ''consultants'' but in reality these individuals may be obtained by the contractor to supplement its workforce in the performance of routine duties required by contract. These costs would normally receive a minimum weight. However, there will be instances when the contractor may be required to locate and obtain the services of consultants having expertise in such fields as medicine or human services. In these instances, the contractor will be required to expend greater managerial and technical effort to obtain such services and, consequently, such costs should receive a much greater weight.

315.905–73 Other factors.

(a) *Contract cost risk.* The contract type employed basically determines the degree of cost risk assumed by the contractor. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit should be less than where the contractor assumes all the risk. In developing the prenegotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated therewith when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This factor should be one of the most important in arriving at prenegotiation profit objectives.

(1) Evaluation of this risk requires a determination of:

(i) The degree of cost responsibility the contractor assumes;

(ii) The reliability of the cost estimates in relation to the task assumed; and

(iii) The complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, risk of losing potential profits in other fields, or any risk which falls on the contracting office such as the risk of not acquiring a satisfactory report, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-a-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a service or a complex item. A cost-plus-a-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas a firm fixed-price contract would reflect a complete assumption of cost responsibility. Where proper contract selection has been made, the regard for risk by contract type would usually fall into the following percentage ranges:

	Percent
Cost-reimbursement type contracts	0–3
Fixed-price type contracts	2–7

(3) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new acquisitions for similar related efforts. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult

or easy, regardless of the type of contract.

(5) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm fixed-price contract justify a reward of less than the minimum in the structured approach. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(i) Type of contract and percentage ranges for profit objectives developed by using the structured approach for research and development and manufacturing contracts:

	Percent
Cost-plus-fixed fee	0 to 0.5
Cost-plus-incentive fee:	
With cost incentive only	1 to 2
With multiple incentives	1.5 to 3
Fixed-price-incentive:	
With cost incentive only	2 to 4
With multiple incentives	3 to 5
Prospective price redetermination	3 to 5
Firm fixed-price	5 to 7

(ii) Type of contract and percentage ranges for profit objectives developed by using the structured approach for service contracts:

	Percent
Cost-plus-fixed fee	0 to 0.5
Cost-plus-incentive fee	1 to 2
Fixed-price incentive	2 to 3
Firm fixed-price	3 to 4

(6) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(7) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk.

(8) In making a contract cost risk evaluation in an acquisition action that involves definitization of a letter contract, unpriced change orders, and unpriced orders under BOA's, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances—not just the portion of costs incurred or percentage

of work completed prior to definitization.

(9) Time and material and labor hour contracts will be considered to be cost-plus-a-fixed-fee contracts for the purpose of establishing profit weights unless otherwise exempt under 315.905–70(b) in the evaluation of the contractor's assumption of contract cost risk.

(b) *Investment.* HHS encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor should include an analysis of the following:

(1) *Facilities* (Including equipment). To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. On the other hand, contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Cases between the above examples should be evaluated on their merits with either positive or negative adjustments, as appropriate, in profit being made. However, where a highly facilitized contractor is to perform a contract which does not benefit from this facilitization or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted. When applicable, the prospective contractor's computation of facilities capital cost of money for pricing purposes under CAS 414 can help the contracting officer identify the level of facilities investment to be employed in contract performance.

(2) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for advance payments and payments more frequent than monthly with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for a capital turn-over-rate on the contract which is less than the contractor's or the industry's normal capital turn-over rate.

(c) *Performance.* (Cost-control and other past accomplishments.) The contractor's past performance should be evaluated in such areas as quality of service or product, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit. Conversely a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit.

(d) *Federal socioeconomic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of a contractor's successful participation in the Government sponsored programs such as small business, small disadvantaged business, labor surplus area, and energy conservation efforts. The contractor's policies and procedures which energetically support Government socioeconomic programs and achieve successful results should be given positive considerations. Conversely, failure or unwillingness on the part of the contractor to support Government socioeconomic programs should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(e) *Special situations.* (1) *Inventive and developmental contributions.* The extent

and nature of contractor-initiated and financed independent development should be considered in developing the profit objective, provided that the contracting officer has made a determination that such effort will benefit the contract. The importance of the development in furthering health and human services purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(2) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to cost ceilings, e.g., a ceiling on overhead rates for conditions other than those discussed at FAR 42.707. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

(3) *Negative factors.* Special situations need not be limited to those which only increase profit levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products or services with commercial application).

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

315.905–74 Facilities capital cost of money.

When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of-Money Cost Principal. If the contractor does not propose this cost, a provision must be inserted in the contract that facilities capital cost of money is not an allowable cost.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

Subpart 315.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

315.1000 General.

Once a contract action has progressed through the evaluation process, and even after the selection of a contractor, all queries as to the relative merits of the submitted proposals shall be courteously but firmly directed to the contracting officer. All other personnel will avoid any exchange of comments with offerors.

[49 FR 13979, Apr. 9, 1984. Redesignated and amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.1003 Debriefing of unsuccessful offerors.

(a) Any HHS employee who receives either a written or oral request for a debriefing from an unsuccessful offeror shall immediately, without any discussion regarding the merits or deficiencies of the unsuccessful offeror's proposal, refer the request to the contracting officer. If the request is made orally, the contracting officer shall require that the request be made in writing. The contracting officer or his/her designee shall be present at all debriefings and shall review written debriefings prior to release.

(b) A debriefing is intended to:

(1) Tell an unsuccessful offeror which areas of its proposal were judged to be weak and deficient and whether the weaknesses or deficiencies were factors in its not having been selected; and

(2) Identify the factors which were the basis for selection of the successful contractor. If the quality of the successful offeror's proposal to satisfy the mission requirement was the basis, the unsuccessful offeror should be so informed, and given a general comparison of significant areas, but not a point-by-point comparison of all the elements considered in the evaluation criteria. If the successful offeror was selected on the basis of cost, the unsuccessful offeror should be told that was the case. If selection was based on other factors, they should be specified.

(d) If an unsuccessful offeror feels that its failure to obtain the award was not justified, it will rely, at least in part, on the information given in the debriefing to determine whether it should seek recourse. Accordingly, it is essential that a debriefing be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the unsuccessful offeror be absolutely factual and consistent with the findings of the contracting officer and the basis on which the award was made.

(e) In some cases, it may be necessary to arrange informal debriefings for an unsuccessful offeror's personnel by departmental technical evaluators. This determination will be made by, and meeting arrangements will be the responsibility of, the contracting officer.

(f) It is very important that all departmental personnel engaged in the evaluation and selection processes be aware of the policies and procedures in FAR subpart 15.10 and this subpart 315.10. Detailed and complete records of the acquisition will be maintained by key technical and contracting personnel in a manner which will facilitate either a written or an oral debriefing of any unsuccessful offeror.

[49 FR 13979, Apr. 9, 1984. Redesignated and amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.1004 Protests against award.

See subpart 333.1.

[49 FR 13979, Apr. 9, 1984. Redesignated and amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.1005 Discovery of mistakes.

See 314.406 and 315.607.

[49 FR 13979, Apr. 9, 1984. Redesignated at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 315.70—Requests for Contract

315.7000 Scope of subpart.

This subpart prescribes the format and contents of the request for contract and provides procedures for the preparation and submission of the request for contract document.

315.7001 General.

The program office's preparation of the request for contract (RFC) and submission to the contracting activity finalizes the presolicitation phase of the acquisition planning process and commences the solicitation phase. The RFC is the formal document which initiates the preparation of the request for proposals by the contracting activity and sets the acquisition process in motion. It represents the results of planning by the project officer and contract negotiator and contains much of the pertinent information necessary for the development of a sound, comprehensive RFP.

315.7002 Procedures.

(a) Requests for contract are required to be prepared by the program office for all proposed negotiated acquisitions estimated to exceed the small purchase limitation.

(b) The program office should submit the RFC as early as possible to the contracting activity. The proposed period of time between the date of submission of the RFC and the date of contract award (or date of delivery of the product, service, study, etc.) should be determined by the project officer, contract negotiator, and, if necessary, the contracting officer. The amount of leadtime should be determined on a case-by-case basis and should reflect the characteristics and complexities of the individual acquisition. When lengthy and/or involved clearances or special approval are required, for example, they must be taken into account when the leadtime is determined. If a formal acquisition planning document is used, (see subpart 307.1), the RFC should be submitted in accordance with the timetable set forth in that document. OPDIV, agency, and regional office contracting activities may prescribe specific leadtimes for submission of RFC's in their implementation of this subpart.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988; 56 FR 47003, Sept. 17, 1991]

315.7003 Responsibilities.

It is the responsibility of the project officer to prepare the RFC so that it

complies with the requirements of this subpart and any OPDIV, agency, or regional office guidance issued in accordance with this subpart. Prior to the submission of the RFC to the contracting activity, the head of the program office sponsoring the project shall review the RFC to ensure that all required information is provided in the prescribed format and a technical review of the statement of work has been made. The level and extent of the technical review is to be commensurate with the estimated cost, importance, and complexity of the proposed acquisition, and must be thorough enough to ensure that vague and ambiguous language is eliminated, the statement of work is structured by phases or tasks, if appropriate, and methods are available for assessing the contractor's technical, cost, and delivery performances.

315.7004 Transmittal.

The RFC will be conveyed to the contracting activity by use of a covering memorandum or other form of transmittal. The transmittal document must be signed by the head of the sponsoring program office and include both a statement attesting to the conclusiveness of the review discussed in the preceding section and a list identifying all attachments to the RFC. A standard format for the transmittal document may be prescribed by the OPDIV, agency, or regional office contracting activity.

315.7005 Format and content.

The Department does not prescribe a standard format for the RFC document, but recommends the use of a format similar to what is provided in this section. The subject areas addressed in paragraphs (a) and (b) must be included in every RFC document, whereas the areas addressed in paragraph (c) need only be included if applicable. An OPDIV, agency, or regional office contracting activity may prescribe a standard format for the RFC document and may include additional subject areas that are pertinent to that activity's needs. Some of the information to be furnished in the RFC document may be repetitive of that found in the acquisition planning document. If this information has not changed since the development of the acquisition planning document, the RFC document may either restate the information as it appears in the acquisition planning document or cross reference the applicable portion where the information appears.

(a) The RFC document must contain the following:

(1) *Purpose of contract.* A brief, general description of requirements, including the citation of the legislation which authorizes the program or project, is to be provided, along with a statement as to the intended purpose/use of the proposed contract.

(2) *Background and need.* The background history and necessity for the proposed contract are to be described. This section is to include prior, present, and planned efforts by the program office in the same or related areas, and a description of efforts by other departmental activities and Federal agencies in the same or related program areas, if known. In addition, specific project information such as the relevance or contribution to overall program objectives, reasons for the need, priority, and project overlap are to be provided.

(3) *Period of performance.* The number of months (or other time period) required for total performance, and, if applicable, for each phase of work indicated in the statement of work, is to be specified. The program office must indicate the proposed starting date and the required date of delivery for each deliverable.

(4) *Estimated cost and fund citation.* The project officer's estimate of the total cost of the proposed contract, and, if applicable, the estimate for each phase indicated in the statement of work, is to be provided. The project officer must provide a cost breakdown of all contributing cost factors, to include an estimate of the technical staff hours, direct materials, subcontracting, travel, etc. The project officer may consult with contracting and cost advisory personnel in developing this information. This section must include the certification of funds availability for the particular proposed acquisition, along with the appropriation and accounting information citations. When funds are not currently available

but are anticipated, a statement indicating that the financial plan includes provision for the funds for the proposed acquisition but the funds are not yet available for obligation shall be included in lieu of the certification of funds availability. (Contracts cannot be awarded unless funds are available, but see FAR 32.703–2.)

(5) *Reference material.* A list, by title and description, of study reports, plans, drawings, and other data to be made available to prospective offerors for use in preparation of proposals and/or the contractor for use in performance of the contract is to be provided. The project officer must indicate whether this material is currently available or when it will be available.

(6) *Technical evaluation criteria and instructions.* The project officer is to include the technical evaluation criteria, which have been developed based on the requirements of the specific project, and any instructions and information which will assist in the preparation of prospective offerors' technical proposals. For example, critical areas discussed in the statement of work and the relative order of importance and weights assigned to each of these areas for technical evaluation purposes must be identified. These areas may include understanding of the problem, technical approach, experience, personnel, facilities, etc.

(7) *Sources for solicitation.* The project officer is to develop and include a list of known potential sources by name and mailing address. The project officer is encouraged to use trade and professional journals and publications to identify new prospective sources to supplement the list of known sources. Efforts to identify set-aside possibilities, i.e., small, disadvantaged, and labor surplus areas, and women-owned businesses, must be explained.

(8) *Special approvals, clearances, and requirements.* All special approvals, clearances, and requirements pertinent to the proposed acquisition are to be listed in this section. Copies of the actual documents are to be attached to the RFC. If the approval, clearance, or requirement has been requested and is being processed, a footnote to this effect, including all pertinent details, must be included in this section. A list of Government-wide and Department imposed approvals, clearances, and requirements is set forth in 307.105–2. Comprehensive checklists of these and any OPDIV, agency, regional office, etc. special approvals, clearances, and requirements shall be provided for reference purposes to program offices by the servicing contracting activity.

(9) *Identification and disposition of data.* The project officer must identify the data expected to be generated by the acquisition and specify the data to be delivered to the Department (see 315.7005(b)(2)) and that to be retained by the contractor. The project officer must also include information relative to the use, maintenance, disclosure, and disposition of data. The project officer must include a statement as to whether or not another acquisition, based upon the data generated by the proposed acquisition, is anticipated. The project officer must also include a statement indicating whether the proposed acquisition is or is not subject to the Privacy Act (see FAR subpart 24.1 and subpart 324.1).

(10) *Project officer and alternate.* The project officer's name, title, organization, mailing address, and telephone number are to be provided in this section, along with the same data for the project officer's alternate. In addition, a statement that the project officer has completed the Department's project officer training course is to be provided (see 307.170).

(b) The following must be submitted with every RFC but are to be prepared as separate attachments so they may be readily adopted into the request for proposal format:

(1) *Statement of work or specification.* The statement of work describes the requirements to be performed and may describe the methods to be used (see 307.105–3 and FAR 35.005 for a detailed explanation). A specification is used in lieu of a statement of work when a clear and accurate description of the technical requirements for a product, material, or service can be provided along with the procedure to determine that the requirements have been met. It is essential that a complete and comprehensive statement of work or specification be provided by the project officer.

(2) *Schedule of deliverables or reporting requirements.* The project officer must specifically describe what is to be delivered and when it is to be delivered to ensure proper contract monitoring. Usually, technical and financial progress reports and the final report are prescribed in this section. These reports should be tailored to the instant acquisition and should avoid unnecessary and burdensome reporting requirements.

(c) The following may not be applicable to all RFC's but must be included as attachments whenever any do apply:

(1) *Government property.* The project officer must identify, as referenced in the statement of work, the types, individual items, and quantities of Government property to be furnished to or allowed to be acquired by, the resultant contractor, if known. The project officer must specify when the Government property is to be made available to the resultant contractor.

(2) *Special terms and conditions.* The project officer may suggest inclusion of any special terms and conditions applicable to the proposed acquisition not already covered in the statement of work or the applicable contract general provisions.

(3) *Justification for other than full and open competition.* If the proposed acquisition is to be awarded using other than full and open competition, a justification, prepared in accordance with FAR subpart 6.3 and subpart 306.3, must be submitted as an attachment to the RFC.

(4) *Privacy Act ''system notice.''* When the project officer has determined that the requirements of the Privacy Act are applicable to the proposed acquisition, a copy of the ''system notice'' must be attached to the RFC (see 324.103(d)).

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.7006 Review.

Upon receipt of the RFC, the contracting activity shall review the contents to ensure that all pertinent information has been provided by the program office. If pertinent information is missing or if there are discrepancies in previously agreed upon information, such as significant alterations in the statement of work, the contracting activity shall obtain or clarify the information so that the acquisition schedule is met. If the program office delays furnishing the information or clarification, the acquisition schedule may have to be changed. When this circumstance arises, the contracting activity should notify the head of the sponsoring program office of the problem, in writing, of the possible slippage in the acquisition schedule, and the need for an expeditious remedy. If the head of the sponsoring program office is not responsive to the request for expediency, the matter should be referred to higher management authorities for resolution.

[49 FR 13979, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984]

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-Reimbursement Contracts

Sec.
316.301 General.
316.301–3 Limitations.
316.303 Cost-sharing contracts.
316.306 Cost-plus-fixed-fee contracts.
316.307 Contract clauses.

Subpart 316.4—Incentive Contracts

316.403 Fixed-price incentive contracts.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.601 Time-and-materials contracts.
316.603 Letter contracts.
316.603–2 Application.
316.603–3 Limitations.
316.603–70 Information to be furnished when requesting authority to issue a letter contract.
316.603–71 Approval for modifications to letter contracts.

Subpart 316.7—Agreements

316.702 Basic agreements.
316.770 Unauthorized types of agreements.
316.770–1 Letters of intent.
316.770–2 Memorandums of understanding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14004, Apr. 9, 1984, unless otherwise noted.

Subpart 316.3—Cost-Reimbursement Contracts

316.301 General.

316.301–3 Limitations.

(c) The following format shall be used and executed by the contracting officer as the determination and findings authorizing the use of a cost-reimbursement contract and establishing the fee:

DEPARTMENT OF HEALTH AND HUMAN SERVICES—DETERMINATION AND FINDINGS

Authority to Use Cost-Reimbursement Contract

I hereby find that:

(1) The (agency title) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($_____) (if contract is CPFF type, insert, ''plus a fixed fee of ($_____) which is ___ percent of the estimated cost exclusive of fee'').

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.) I hereby determine that:

On the basis of the above findings, and in accordance with FAR 16.301–3, it is impracticable to secure the property or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed fee*) type of contract, *or* the (cost, cost-sharing, or cost-plus-a-fixed fee*) method of contracting is likely to be less costly than other methods.

Date _____

Signature _____

[49 FR 14004, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44294, Dec. 9, 1986]

316.303 Cost-sharing contracts.

For detailed information concerning the use of cost-sharing contracts, see 335.070.

316.306 Cost-plus-fixed-fee contracts.

(c)(2) The determination and findings (D&F) required by FAR 16.306(c)(2) has been combined with the D&F required by FAR 16.301–3(c) authorizing the use of cost-reimbursement contract, and is shown in 316.301–3(c). The contracting officer is responsible for executing the D&F and is authorized to make both determinations required by the FAR.

[51 FR 44294, Dec. 9, 1986]

316.307 Contract clauses.

(a) If the contract is with a hospital (profit or nonprofit), modify the ''Allowable Cost and Payment'' clause at FAR 52.216–7 by deleting from paragraph (a) the words ''subpart 31.2 of the Federal Acquisition Regulation (FAR)'' and substituting ''45 CFR part 74 appendix E.''

(j) The contracting officer shall insert the clause at 352.216–72, Additional Cost Principles, in solicitations and resultant cost-reimbursement contracts with nonprofit organizations, as identified in OMB Circular A–122.

[55 FR 42197, Oct. 18, 1990]

Subpart 316.4—Incentive Contracts

316.403 Fixed-price incentive contracts.

(c) The determination and findings required by FAR 16.403(c) shall be executed by the chief of the contracting office after it is prepared by the contracting officer.

[51 FR 44294, Dec. 9, 1986]

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.601 Time-and-materials contracts.

(c) *Limitations.* The format prescribed in 316.301–3(c) shall be used and executed by the contracting officer as the determination and findings authorizing the use of either a time-and-materials contract or a labor-hour contract, except that the final paragraph shall be changed to read as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the acquisition of the required work or services.

316.603 Letter contracts.

316.603–2 Application.

It is the policy of the Department to refrain from issuing letter contracts.

*Use applicable word, words, or statement.

Exceptions to this policy will be permitted only in those cases where all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon.

316.603–3 Limitations.

The principal official responsible for acquisition shall be the approving official who executes the prescribed written statement. However, if the principal official responsible for acquisition is to sign the letter contract as the contracting officer, the approving official becomes the head of the contracting activity.

[49 FR 14004, Apr. 9, 1984, as amended at 51 FR 44294, Dec. 9, 1986]

316.603–70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.).

(i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(j) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included which would indicate the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of the proposed letter contract. If more than 180 days, complete justification must be given.

(l) Statement of any substantive matters that need to be resolved.

316.603–71 Approval for modifications to letter contracts.

All letter contract modifications (amendments) must be approved by the principal official responsible for acquisition. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and indicate approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased beyond 180 days, if applicable.

(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 316.603–70(j) must be included.

Subpart 316.7—Agreements

316.702 Basic agreements.

(b) *Application.*

(2) Basic agreements shall continue in effect until termination, supersession, or expiration of the term.

(d) *Contracts incorporating basic agreements.*

(2) Any provision of a contract which conflicts with the terms of a basic agreement must be approved by the Director, Division of Acquisition Policy, OAGM.

(4) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. Where negotiated overhead rates are included, the bases to which the rates apply and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs shall also be included as appropriate.

(e) *Content and format.* A basic agreement shall consist of an execution page(s), contents page, special provisions, and general provisions. The following is illustrative of an execution page:

Basic Agreement Number Page 1 of— pages

Basic Agreement

Between the United States of America, as represented by the Department of Health and Human Services, and (Name of Contractor), this agreement, effective (Insert Date) by and between the United States of America, hereinafter called the ''Government,'' as represented by the Department of Health and Human Services, and (Name of Contractor), a corporation organized and existing under the laws of the (State/Commonwealth) of _____ with its principal office in (City, State), hereinafter called the ''Contractor''.

WITNESSETH THAT

Whereas, the Government and the Contractor desire to enter into a single basic agreement for use only in connection ith negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination; and

Whereas, the parties understand that this Agreement shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the Contractor.

Now therefore, the Government and the Contractor agree that the provisions and clauses of the Special Provisions, as set forth herein, and the General Provisions, as set forth and modified herein, shall be incorporated in and constitute the terms and conditions applicable to all negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

United States of America

Name of Contractor _____

_____

Signature of Contracting Officer

By _____

Signature of Authorized Official

Typed name _____

Typed name _____

Date _____

(f) *Procedures.* (1) Negotiation of basic agreements may be undertaken by OPDIV contracting activities on behalf of the Department. When an OPDIV contracting activity decides to negotiate a basic agreement with an organization, prior authorization must be requested, in writing, from the Director, Division of Acquisition Policy (DAP). When the Director, DAP, gives written authorization to the OPDIV contracting activity designated to conduct negotiations on behalf of the Department, all other OPDIVs will be notified of this designation. If another OPDIV elects, it may attend the negotiation or furnish special terms and conditions or provisions for inclusion in the proposed basic agreement by advising the designated negotiating activity in writing within ten (10) days from the date of the authorization. After review and resolution of all requests for inclusion of special terms and conditions or provisions, the designated negotiating activity will invite those OPDIVs which expressed an interest in attending the negotiations and make the necessary arrangements for the negotiation of the basic agreement.

(2) Prior to the conclusion of negotiations, the designated negotiating activity shall furnish the OPDIVs a draft copy of the proposed basic agreement together with:

(i) A resume of all salient features of the basic agreement which will facilitate review;

(ii) Any of the negotiating OPDIV's guides or procedures which are being considered for incorporation into the basic agreement by reference;

(iii) A listing of nonstandard clauses used, the genesis of such clauses, and the reasons for such clauses in the basic agreement; and

(iv) The contractor's comments, including the basis for requesting any deviation from the HHSAR and the designated negotiating activity's position with respect thereto.

(3) The OPDIVs shall have fifteen (15) days from the date of the memorandum transmitting the information to submit comments on the draft copy of the basic agreement. After receipt, analysis, and resolution of the comments of the OPDIVs, the designated negotiating activity will proceed to conclude the negotiation of the basic agreement.

(4) After conclusion of the negotiation, but prior to execution of the basic agreement, a copy of the basic agreement, together with the information specified in paragraph (f)(2) above, the comments of the OPDIVs, the designated negotiating activity's analysis of the OPDIV comments, and the basis for the action taken will be furnished to the Director, DAP for review by DPP and the Office of General Counsel. Approval by the Director, DAP must be given prior to the execution of the basic agreement. After approval and execution of the basic agreement, the designated negotiating activity will distribute the executed document to the OPDIVs, Office of General Counsel, and the Director, DAP. The basic agreement is mandatory for use by all activities of the Department for all acquisitions falling within the scope of the basic agreement.

[49 FR 14004, Apr. 9, 1984, as amended at 50 FR 23126, 23133, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24343 June 7, 1989; 54 FR 24343, June 7, 1989]

316.770 Unauthorized types of agreements.

316.770–1 Letters of intent.

A letter of intent is an informal unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities. Letters of intent are often solicited by prospective contractors or may be originated by Government personnel. Letters of intent are not authorized by the FAR and are prohibited for use by Department personnel.

316.770–2 Memorandums of understanding.

A ''memorandum of understanding'' is an unauthorized agreement, usually drafted during the course of negotiations, to modify mandatory FAR and HHSAR provisions in such a manner as to make them more acceptable to a prospective contractor. It may be used to bind the contracting officer in attempting to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document. Use of such memorandums of understanding is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested.

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.2—Options

Sec.
317.201 Definition.
317.202 Use of options.
317.203 Solicitations.
317.206 Evaluation.

Subpart 317.70—Consolidated Acquisitions

317.7001 General.
317.7002 Policy.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.
317.7101 Applicable regulations.
317.7102 Acquisition of training.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14006, Apr. 9, 1984, unless otherwise noted.

Subpart 317.2—Options

317.201 Definition.

(a) An option must:

(1) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;

(2) Establish a price or specify a method of calculation which will make the price certain;

(3) Be agreed to and included in the initial contract award; and

(4) Permit the Government the right to exercise the option unilaterally.

(b) Contract provisions which provide the Government the right to buy additional requirements, subject to the written agreement of the contractor, do not meet the requirements of paragraph (a)(4) of this section and are not authorized. Further, any contract provision which merely extends the initial contract period without requiring delivery of additional supplies or services is not an option.

317.202 Use of options.

(c)(6) The primary purpose for inclusion would be the achievement of administrative convenience.

317.203 Solicitations.

(g)(2) When unusual circumstances exist, the principal official responsible for acquisition (not delegable) may approve a greater percentage (but see FAR 17.205).

317.206 Evaluation.

The determination referenced in FAR 17.206(b) shall be made by the chief of the contracting office.

[49 FR 14006, Apr. 9, 1984, as amended at 53 FR 43208, Oct. 26, 1988]

Subpart 317.70—Consolidated Acquisitions

317.7001 General.

Studies have indicated that substantial savings can be realized through centralized and consolidated acquisitions of common use supplies, services, and equipment. The Department has identified common use items and has applied the principle of consolidated acquisition to these items.

317.7002 Policy.

(a) The following supplies, services, and equipment have been indentified as common use items and are to be acquired by the centralized contracting activity identified in paragraph (b):

(1) Administrative supplies, equipment, and services (i.e., general use office items or related services), as distinguished from functional or program requirements.

(2) Automated data processing services (but see ADP Systems Manual, Chapter 4).

(3) Stenographic reporting services.

(4) Visual arts, graphics, and supplementing services.

(5) Press clipping services.

(b) Activities within the metropolitan Washington, DC area are required to submit purchase requests for the above items to the applicable centralized contracting activity as follows:

(1) Activities located in the Southwest Washington complex; Procurement Branch, Division of Contract Operations, Office of Acquisition and Grants Management, Office of the Secretary.

(2) Parklawn Complex, Rockville, Maryland (Montgomery and Prince Georges Counties area); Division of Acquisition Management, Administrative Services Center, Office of Management, Public Health Service.

(3) National Institutes of Health; Division of Procurement, National Institutes of Health.

(c) Activities outside the metropolitan Washington, DC area are encouraged to establish centralized points to conduct acquisitions for common use items.

[49 FR 14006, Apr. 9, 1984, as amended at 54 FR 24343, June 7, 1989; 55 FR 13536, Apr. 11, 1990]

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

SOURCE: 53 FR 43208, Oct. 26, 1988, unless otherwise noted.

317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training in non-Government facilities under the Government Employees Training Act, 5 U.S.C. chapter 41.

317.7101 Applicable regulations.

Basic policy, standards, and delegations of authority to approve training are contained in HHS Personnel Manual Instruction 410–1.

317.7102 Acquisition of training.

(a) The acquisition of interagency training courses and non-governmental off-the-shelf training courses, whether for individual employees or for groups of employees, is the responsibility of the Assistant Secretary for Personnel Administration.

(b) Non-governmental training must be acquired through the contracting office if there are costs for training course development or for modification of off-the-shelf training courses.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 319.2—Policies

Sec.
319.201 General policy.
319.201–70 Small and disadvantaged business utilization specialist.
319.270 Federal acquisition conferences.

Subpart 319.5—Set-Asides for Small Business

319.501 General.
319.503 Setting aside a class of acquisitions.
319.503–70 Small business class set-aside for construction, repair, and alteration work.
319.505 Rejecting set-aside recommendations.
319.506 Withdrawing or modifying set-asides.
319.570 Contract payments.

Subpart 319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

319.705 Responsibilities of the contracting officer under the subcontracting assistance program.
319.705–2 Determining the need for a subcontracting plan.
319.705–3 Preparing the solicitation.
319.705–4 Reviewing the subcontracting plan.
319.705–5 Awards involving subcontracting plans.
319.705–6 Postaward responsibilities of the contracting officer.
319.706 Responsibilities of the cognizant administrative contracting officer.

Subpart 319.8—Contracting With the Small Business Administration (the 8(a) Program)

319.800 General.
319.803 Selecting acquisitions for the 8(a) Program.
319.812 Contract administration.
319.870 Liaison with the Small Business Administration.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14007, Apr. 9, 1984, unless otherwise noted.

Subpart 319.2—Policies

319.201 General policy.

(c) The functional management responsibilities for the Department's small business, disadvantaged business, and labor surplus area programs are delegated to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).

(1) The Director, OSDBU is responsible for:

(i) Recommending to the Under Secretary overall Department-wide operating concepts and policies relating to the Department's small business, disadvantaged business, and labor surplus area programs;

(ii) Implementing policy decisions through the issuance of operating procedures (Operating Divisions (OPDIVs) may develop alternative procedures for achieving departmental policy goals, and objectives. However, any change in procedures must be approved by the Under Secretary);

(iii) Reviewing and evaluating the Department's policies, practices, and procedures pertaining to the disadvantaged business, small business, and labor surplus area programs, as well as recommending changes or corrective actions to the OPDIV heads or to the Under Secretary, as appropriate;

(iv) Providing the Under Secretary with regular appraisals of performance and quality of effort, including timely notification of significant problems, events, and accomplishments, and the need for changes in Department-wide objectives and policies; and

(v) Providing technical assistance and support to the small and disadvantaged business utilization specialists.

(2) The Director, OSDBU is authorized to:

(i) Establish standards, procedures and operating guidelines controlling the manner in which the small business, disadvantaged business, and labor surplus area programs are conducted throughout the Department;

(ii) Provide advice on proposed allocations of personnel, funds, and other resources in light of the total needs of the Department;

(iii) Prescribe, after coordination with appropriate concerned personnel, reporting requirements necessary to preserve openness in reporting, identifying emerging problems, monitor Department-wide activity, and provide a basis for appraisal and evaluation of performance. To the maximum extent, these reporting requirements will be satisfied through existing Department-wide reporting systems or by making modifications to them;

(iv) Conduct surveys and review of operating practices in the OPDIVs and regional offices; and

(v) Communicate directly with the small and disadvantaged business utilization specialists to assist them in carrying out their individual and collective responsibilities.

319.201–70 Small and disadvantaged business utilization specialist.

(a) The Head of each OPDIV shall appoint a qualified full time small and disadvantaged business utilization specialist (SADBUS) in the following activities: Office of Human Development Services (OHDS), Health Care Financing Administration (HCFA), Social Security Administration (SSA), Public Health Service (PHS), to include the Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA) (and each regional Office of Engineering Services), Indian Health Service (IHS), National Institutes of Health (NIH), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Centers for Disease Control (CDC), and Administrative Services Center (ASC). A SADBUS shall also be appointed for the Office of the Secretary (OS) and for each Regional Office. As deemed necessary, additional small and disadvantaged business utilization specialists may be appointed in larger contracting activities.

(b) When the volume of contracting does not warrant assignment of a full-time SADBUS, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over other responsibilities. The specialist shall be responsible directly to the appointing authority and shall be at an organizational level outside the direct acquisition chain of command, i.e., should report directly to the principal official responsible for acquistion, where appropriate.

(c) The Director, OSDBU will exercise functional management authority over small and disadvantaged business utilization specialist regarding small business, disadvantaged business, and labor surplus area matters. Appointments of SADBUS's shall only be made after consultation with the Director, OSDBU. A copy of each appointment and termination of appointment of specialists shall be forwarded to the Director, OSDBU.

(d) The SADBUS shall perform the following duties, as determined to be appropriate to the activity by the appointing official or by the Director, OSDBU. The SADBUS shall:

(1) Maintain a program designed to locate capable small business, disadvantaged business, women-owned business and labor surplus area business sources for current and future acquisitions, through SBA or by using other methods, establish appropriate source lists for each category, and work closely with contracting and small purchasing offices to ensure offers are solicited from firms on the source lists;

(2) Coordinate inquiries and requests for advice from small business, disadvantaged business, women-owned business, and labor surplus area business concerns on acquisition matters, and counsel them with respect to business opportunities to enhance their potential participation in the Department's acquisition program;

(3) Prior to the issuance of solicitations (or contract modifications for additional supplies or services) in excess of the small purchase limitation, which have not been reviewed, reserved, or set-aside by the contracting officer, review the contracting officer's justification for such action;

(4) Assure that small business, disadvantaged business, women-owned business, and labor surplus area concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or

drawings for current and future acquisitions, as appropriate, are available;

(5) Review proposed requirements for possible breakout of items suitable for acquisitions from small business, disadvantaged business, women-owned business, and labor surplus area concerns;

(6) Assure that financial assistance, available under existing regulations, is offered, and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(7) Participate in determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participate in the evaluation of a prime contractor's small business, labor surplus area, and disadvantaged business subcontracting plans;

(9) Advise and assist contracting officers in discharging their responsibilities by:

(i) Monitoring and reviewing contractor performance to determine compliance with small and small disadvantaged business subcontracting plans, and

(ii) Developing and maintaining records and reports that reflect such compliance or noncompliance;

(10) Review and make appropriate recommendations to the contracting officer on proposals to furnish Government-owned facilities to contractors if this action may enhance the small business program;

(11) Assure that the participation of small businesses, disadvantaged businesses, women-owned business, and labor surplus area concerns is accurately reported;

(12) Make available to SBA copies of solicitations when so requested;

(13) When a bid or offer from a small business, disadvantaged business, women-owned business, or labor surplus area concern has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(14) Participate in government-industry conferences to assist small business, disadvantaged business, women-owned business, and labor surplus area concerns, including Business Opportunity/ Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars, and Business Opportunity Committee meetings;

(15) Advise potential sources how they can obtain information about sealed bid and negotiated acquisitions;

(16) Brief the head of the contracting activity at least once quarterly concerning the status of the activity's small business, disadvantaged business, women-owned business, and labor surplus area programs in relation to goals and objectives established;

(17) Participate in the development, implementation, and review of automated source systems to assure that the interests of small business, disadvantaged business, women-owned business, and labor surplus area concerns are fully considered;

(18) Assure that the organization maintains a list of products and services which are categorized as repetitive small business set-aside;

(19) Provide small business, disadvantaged business, women-owned business, and labor surplus area concerns information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor, and others, including State agencies and trade associations;

(20) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, disadvantaged business, women-owned business, and labor surplus areas programs; and

(21) Participate in interagency programs relating to small business, disadvantaged business, women-owned business, and labor surplus area matters as authorized by the Director, OSDBU.

[49 FR 14007, Apr. 9, 1984, as amended at 50 FR 23126, 23133, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24343, June 7, 1989; 57 FR 11690, Apr. 7, 1992]

319.270 Federal acquisition conferences.

The Department of Commerce is responsible for coordinating the participation of Federal civilian agencies in a continuing series of conferences which are sponsored by members of Congress. The objectives of these conferences are:

(a) Location of additional acquisition sources to broaden the acquisition base of Federal agencies;

(b) Stimulation of local, regional, and national economic growth, national security, and cost reduction;

(c) Location of underutilized production capacity;

(d) Prevention or elimination of pockets of underemployment; and

(e) Assistance of small and small disadvantaged business concerns.

As notified by the OSDBU, contracting activities shall provide appropriate SADBUS or acquisition personnel to participate in person-to-person counseling at these conferences. Ordinarily, participation by contracting activities will be restricted to conferences held within the geographical areas adjacent to their officers. The brochure, ''How To Do Business With DHHS'' should be of great assistance in this counseling as it has been specifically prepared to assist individuals, firms, and institutions who may wish to do business with this Department. It contains a brief description of the mission and programs of HHS and its Operating Divisions and provides a listing of contracting offices and the types of services and commodities acquired by each.

Subpart 319.5—Set-Asides for Small Business

319.501 General.

(c) Prior to the contracting officer's review, the SADBUS shall review each proposed acquisition to determine the feasibility of recommending award to the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act. When it cannot be awarded to SBA pursuant to section 8(a), the SADBUS shall review the proposed acquisition to determine if it can be recommended as a set-aside under one of the set-aside priorities stated in FAR 19.504. The SADBUS's recommendation shall be entered on Form HHS–653, Small Business-Labor Surplus Set-Aside Review Form, with the reasons for the type of set-aside recommended, or the reasons for not recommending a set-aside, and provided to the contracting officer. Upon receipt of the Form HHS–653, the contracting officer shall promptly concur or nonconcur with the SADBUS's recommendation. The contracting officer will make the final determination as to whether the proposed acquisition will be set-aside or not. If the contracting officer approves the SADBUS's set-aside recommendation, the proposed acquisition will be set-aside as specified. However, if the contracting officer disapproves the SADBUS's set-aside recommendation, the reasons must be documented on the Form HHS–653, and the form signed. (See 319.505 for options available to the SADBUS regarding the contracting officer's disapproval of a set-aside recommendation.) In all cases, the completed Form HHS–653 is to be retained by the contracting officer and placed in the contract file.

[57 FR 11690, Apr. 7, 1992]

319.503 Setting aside a class of acquisitions.

319.503–70 Small business class set-aside for construction, repair, and alteration work.

A small business class set-aside is considered to have been made for each proposed acquisition for construction, repair, and alteration work in an estimated amount ranging from $2,500 to $2 million. Accordingly, the contracting officer shall set aside for small business each proposed acquisition. If, in his/her judgment, the particular acquisition falling within the dollar limits specified above is unsuitable for a set-aside for exclusive small business participation, the procedure set forth in FAR 19.506 shall apply. Proposed acquisitions for construction, repair, and alteration work in an estimated amount of more than $2 million shall be processed on a case by case basis.

319.505 Rejecting set-aside recommendations.

(a) If the contracting officer rejects the SADBUS's recommendation for a

set-aside and an SBA procurement center representative (PCR) is not assigned or available, the SADBUS may appeal, in writing, to the head of the contracting activity (HCA) or his/her designee. The SADBUS shall provide the HCA or designee all the pertinent information concerning the set-aside disagreement, and the HCA shall respond in writing within seven business days. The HCA's decision is final and not appealable. The decision by the HCA shall be attached to the Form HHS–653 and placed in the contract file. After receipt of a final decision by the HCA, and if the decision approves the action of the contracting officer, the SADBUS shall forward, for information and management purposes, complete documentation of the case to the OSDBU Director. Documentation transmitted shall include, as a minimum, a copy of the appeal memorandum submitted to the HCA, a copy of the IFB or RFP, a list of proposed sources, a copy of the Form HHS–653 and attachments completed by the SADBUS and the contracting officer, a copy of the HCA's decision, and all other written material considered by the HCA in arriving at the decision. The SADBUS' transmittal memorandum shall contain an affirmative statement that the attachments constitute the complete file reviewed and considered by the HCA in making the final decision.

If an SBA PCR is assigned or available and the SADBUS refers the case to that person, the SBA PCR may either concur with the decision of the contracting officer not to set-aside the proposed acquisition or recommend to the contracting officer that it be set-aside. For the SBA PCR to make a comprehensive review, at least the following should be provided as attachments to the Form HHS–653: the statement of work, evaluation criteria, Government cost estimate, source list including size of firms, and a copy of any justification for other than small business considerations that may be applicable. Once the case has been referred to the SBA PCR, no further appeal action shall be taken by the SADBUS. (Refer to FAR 19.505 for the procedures available to the SBA PCR if the contracting officer rejects the set-aside recommendation.)

[49 FR 14007, Apr. 9, 1984, as amended at 57 FR 11690, Apr. 7, 1992]

319.506 Withdrawing or modifying set-asides.

(b) If an SBA PCR is not assigned, the disagreement between the contracting officer and the SADBUS shall be referred to the HCA for resolution.

(d) Immediately upon notice from the contracting officer, the SADBUS shall provide telephone notification regarding all set-aside withdrawals to the OSDBU Director.

319.570 Contract payments.

Contract payments to small business concerns must be made on a timely basis. Payment of an invoice or voucher must be made within 30 days after receipt of the invoice or voucher or from acceptance of the goods or services. Each invoice or voucher from a small business concern not sent directly to the servicing finance office, but received by the contracting activity, shall be stamped or otherwise identified for expedited payment before it is forwarded to the servicing finance office.

Subpart 319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

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

319.705–2 Determining the need for a subcontracting plan.

The dollar value of all proposed incremental funding actions shall be included in determining whether the acquisition meets the dollar threshold requiring a subcontracting plan. The subcontracting plan shall be based on the total value of the acquisition which will include the value of all option quantities or funding actions.

319.705–3 Preparing the solicitation.

The SBA PCR should be allowed a period of one to five business days for the review of the solicitation, depending

upon the circumstances and complexity of the individual acquisition.

[49 FR 14007, Apr. 9, 1984, as amended at 57 FR 11690, Apr. 7, 1992]

319.705–4 Reviewing the subcontracting plan.

The offeror's/bidder's subcontracting plan for small business concerns shall be judged independently of the subcontracting plan for small disadvantaged business concerns. If a subcontracting plan is not obtained, the contracting officer must document the contract file to substantiate the reasons why the plan was not obtained. The contracting officer must obtain a satisfactory subcontracting plan prior to awarding the contract.

(d) If the contracting officer determines that the subcontracting plan submitted reflects the best effort by the offeror/bidder to award subcontracts to small and small disadvantaged business concerns, but the SADBUS disagrees with the contracting officer's determination, a final determination shall be made by the principal official responsible for acquisition. The SADBUS shall submit this final determination to the Director, OSDBU with the appropriate supporting documentation.

(1) The contracting officer may accept the terms of an overall or ''master'' company subcontracting plan if it is incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bidder for a specific contract, if:

(i) The master plan contains all the elements required by the statute;

(ii) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory thresholds;

(iii) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification;

(iv) The contracting officer has copies of the entire plan; and

(v) The SBA PCR has had an opportunity to comment on the master plan.

(2) If the prime contract is for a commercial product, the required subcontracting plan may relate to the company's production of the item generally (both for the Government contract and for regular commercial sale) rather than solely to the item being acquired under the Government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year. The approved plan will remain in effect for the entire fiscal year and is applicable to all deliveries made under contracts entered into during the contractor's fiscal year, even though these deliveries are made in a succeeding fiscal year. The contractor shall submit a new plan to the first agency with which it enters into a contract (over the statutory threshold) during a succeeding fiscal year. The new plan shall apply to all deliveries made under contracts entered into during the succeeding fiscal year, no matter when the deliveries are made.

[49 FR 14007, Apr. 9, 1984, as amended at 57 FR 11690, Apr. 7, 1992]

319.705–5 Awards involving subcontracting plans.

(a)(3) The SBA PCR shall be allowed a period of one to five business days to review the contract award package, depending upon the circumstances and complexity of the individual acquisition.

319.705–6 Postaward responsibilities of the contracting officer.

The SADBUS shall perform the distribution requirements stated in paragraphs (a) through (c) of FAR 19.705–6. A copy of any company-wide plans and associated approvals shall also be sent to the Director, OSDBU by the SADBUS. In addition, the SADBUS is responsible for summarizing and reporting to the Director, OSDBU, on a quarterly basis, all prime contracts $500,000 and over ($1 million for construction) using the following reporting format:

(a) Name of the OPDIV and program office;

(b) Number and dollar amount of contracts requiring subcontracting plans;

(c) Number of contracts with subcontracting plans;

(d) Number of contracts without subcontracting plans;

(e) Small and small disadvantaged business subcontracting goals; and

(f) Statements citing reasons why small and small disadvantaged business subcontracting plans were not included in the contracts.

319.706 Responsibilities of the cognizant administrative contracting officer.

(a) The contracting officer shall comply with the requirements of FAR 19.706(a), and shall use the Standard Form 294, Subcontracting Report for Individual Contracts, to monitor the contractor's progress in achieving both the small business and small disadvantaged business subcontracting goals. The contracting officer shall require the contractor to provide in the Remarks block of each Standard Form 294 submitted a narrative of the progress in fulfilling the small business and small disadvantaged business subcontracting goals. The contracting officer shall require the contractor to report any difficulties in achieving the goals and the actions being taken by the contractor to overcome the difficulties. The contracting officer shall document the contract file whenever the contractor is experiencing difficulties in achieving the planned subcontracting goals, and shall indicate the actions taken by the contractor to resolve the difficulties and the actions taken by the contracting officer to remedy the situation. A copy of this documentation shall be provided to the SADBUS.

(b) At the time of physical completion of the contract, the contracting officer shall prepare a memorandum for record for inclusion in the contract file indicating whether or not the contractor complied with the subcontracting plan and subcontracting provisions of the contract.

(1) If the contractor achieved its subcontracting dollar goals for both small business and small disadvantaged business, the memorandum shall state that the contractor complied with the subcontracting plan and provisions of the contract. No other documentation is needed.

(2) If the contractor failed to achieve its subcontracting dollar goals for either small business or small disadvantaged business, or both, the contracting officer shall indicate this failure in the memorandum and determine whether the contractor did or did not exercise its best efforts in attempting to achieve the goals.

(i) If determined that the contractor exercised its best efforts, the contractor shall be found to have complied with the subcontracting plan and provisions of the contract. The rationale for this determination shall be documented in the memorandum.

(ii) If determined that the contractor did not exercise its best efforts, the contractor shall be found to have not complied with the subcontracting plan and provisions of the contract. The reasons for this determination shall be documented in the memorandum, along with a description of specific actions taken by the contracting officer during the performance of the contracting to attempt to remedy the failure.

(c) A copy of the memorandum pertaining to either situation described in paragraph (b)(2) (i) or (ii) of this section shall be sent to the Director, Office of Small and Disadvantaged Business Utilization.

[50 FR 46299, Nov. 7, 1985]

Subpart 319.8—Contracting With the Small Business Administration (the 8(a) Program)

SOURCE: 55 FR 13536, Apr. 11, 1990, unless otherwise noted.

319.800 General.

(c) The signing of the contract document may be accepted as the Small Business Administration's (SBA) certification that SBA is competent to perform a specific HHS requirement.

319.803 Selecting acquisitions for the 8(a) Program.

(c) Brochures of 8(a) concerns which have been interviewed by the Office of Small and Disadvantaged Business Utilization (OSDBU) are forwarded to each small and disadvantaged business utilization specialist (SADBUS). These brochures are to be reviewed by the SADBUS to match HHS requirements

with the capabilities of these concerns. The SADBUS will make the capabilities of these concerns known to program personnel and will obtain information, as needed, by contacting OSDBU or SBA.

319.812 Contract administration.

(b) The responsibility for subcontract administration and field inspection will, in most cases, be delegated by SBA to the contracting activity. The contracting activity may develop a tripartite agreement for execution by SBA, the 8(a) subcontractor, and the contracting activity instead of developing separate modifications for the SBA contract and the 8(a) subcontract.

(c) Some 8(a) concerns may need additional management expertise for optimal performance and completion of a particular contract. Therefore, when subcontract administration is delegated to HHS by SBA, the contracting activity shall promptly apprise the SBA, the SADBUS, and OSDBU whenever the contractor is experiencing problems. SBA should provide necessary technical assistance so the contractor can successfully complete the contract.

(d) The OSDBU, SADBUS, and SBA are to be notified prior to initiating final action to terminate an 8(a) contract.

319.870 Liaison with the Small Business Administration.

(a) Contracting activities will maintain a continuous liaison with the SBA to ensure that the overall goals of each activity are achieved. In the event there is a dispute between the contracting activity and a SBA representative regarding any aspect of 8(a) contracting, the contracting activity must promptly notify OSDBU.

(b) The business development responsibility of SBA requires them to assist in and monitor the growth and development of all 8(a) concerns. Therefore, it is incumbent upon HHS to assist SBA in this effort by utilizing the source selection process in a manner that would make use of the largest possible number of 8(a) concerns.

PART 320—LABOR SURPLUS AREA CONCERNS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 320.1—General

320.102 General policy.

Contracting activities should obtain appropriate publications and other information identifying labor surplus areas from:

U.S. Department of Labor, Employment and Training Administration, Office of Policy Evaluation and Research, Division of Labor Market Information, Washington, D.C. 20530.

Contracting officers shall use the ''Directory of Labor Surplus Area Contractors,'' provided by the Office of Small and Disadvantaged Business Utilization, as a source to identify labor surplus area concerns and to augment other labor surplus area source lists. Contracting officers should also seek to identify concerns from labor surplus areas by placing sources sought synopses in the Commerce Business Daily. Small and disadvantaged business utilization specialists shall assist contracting officers in developing and maintaining source lists of small business and other concerns in labor surplus areas. Department of Commerce and SBA regional and field offices should be contacted for assistance in identifying labor surplus area concerns.

[49 FR 14012, Apr. 9, 1984]

PART 322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 322.6—Walsh-Healey Public Contracts Act

Sec.

322.604 Exemptions.
322.604–2 Regulatory exemptions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 322.6—Walsh-Healey Public Contracts Act

322.604 Exemptions.

322.604–2 Regulatory exemptions.

(c)(1) The actions required by FAR 22.604–2(c)(1) shall be exercised by the Director, Office of Acquisition and Grants Management (DOAGM). Contracting offices requiring exemptions shall forward requests through normal acquisition channels to the DOAGM.

[51 FR 44294, Dec. 9, 1986; 51 FR 47353, Dec. 31, 1986, as amended at 54 FR 24343, June 7, 1989]

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Sec.
324.100 Scope of subpart.
324.102 General.
324.103 Procedures.

Subpart 324.2—Freedom of Information Act

324.202 Policy.

Subpart 324.70—Confidentiality of Information

324.7001 General.
324.7002 Policy.
324.7003 Applicability.
324.7004 Required clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14013, Apr. 9, 1984, unless otherwise noted.

Subpart 324.1—Protection of Individual Privacy

324.100 Scope of subpart.

This subpart implements 45 CFR part 5b, Privacy Act Regulations, and FAR subpart 24.1, Protection of Individual Privacy, which implement the Privacy Act of 1974 (Pub. L. 93–579, December 31, 1974; 5 U.S.C. 552a) and OMB Circular No. A–108, July 9, 1975.

324.102 General.

(a) It is the Department's policy to protect the privacy of individuals to the maximum possible extent while permitting the exchange of records required to fulfill the Department's administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the Department's implementation under 45 CFR part 5b apply ''when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function . . .'' The key factor is whether a departmental function is involved. Therefore, the Privacy Act requirements apply to a departmental contract when, under the contract, the contractor must maintain or operate a system of records to accomplish a departmental function.

(e) The program official, and, as necessary, the official designated as the activity's Privacy Act Coordinator and the Office of General Counsel, shall determine the applicability of the Act to each proposed acquisition. The program official is required to include a statement in the request for contract indicating whether the Privacy Act is or is not applicable to the proposed acquisition.

(f) Whenever the contracting officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the contracting officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records (see subpart 324.70).

324.103 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. If applicable, the contracting officer shall include the solicitation notification and contract clause required by FAR 24.104 in the solicitation, and the contract clause in the resultant contract. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this subpart are included in any contract modification

which results in the Privacy Act requirements becoming applicable to a contract.

(b)(1) The contracting officer shall identify the system(s) of records on individuals in solicitations, contracts, and contract modifications to which the Privacy Act and the implementing regulations are applicable.

(2) The contracting officer shall include a statement in the contract notifying the contractor that the contractor and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as employees of the Department. The statement shall require that the contractor assure that each contractor employee knows the prescribed rules of conduct, and each contractor employee is aware that he/she can be subjected to criminal penalties for violations of the Act. The contracting officer shall provide the contractor with a copy of the rules of conduct and other requirements set forth in 45 CFR 5b.

(c) The contracting officer shall include in the contract the disposition to be made of the system(s) of records on individuals upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to the Department, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(d) Whenever an acquisition is determined to be subject to the Privacy Act requirements, a ''system notice,'' prepared by the program official and describing the Department's intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system, is required to be published in the FEDERAL REGISTER. A copy of the ''system notice'' shall be attached to the request for contract or purchase request. If a ''system notice'' is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the program official for inclusion in the contract file. If a ''system notice'' has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the acquisition but shall not award the contract until the ''system notice'' is published, and publication is verified by the contracting officer.

Subpart 324.2—Freedom of Information Act

324.202 Policy.

(a) The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR part 5.

(b) The contracting officer, upon receiving a FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) Officer and the Business and Administrative Law Division of the Office of General Counsel. The contracting officer must remember that only the FOI Officer has the authority to release or deny release of records. While the contracting officer should be familiar with the entire FOIA regulation in 45 CFR part 5, particular attention should be focused on sections 5.65 and 5.66; also of interest are sections 5.32, 5.33, and 5.35.

[54 FR 24343, June 7, 1989]

Subpart 324.70—Confidentiality of Information

324.7001 General.

In the performance of certain HHS contracts, it is necessary for the contractor to generate data, or be furnished data by the Government, which is about individuals, organizations, or Federal programs. This subpart and the accompanying contract clause require contractors to prudently handle disclosure of certain types of information not subject to the Privacy Act or the HHS human subject regulations set forth in 45 CFR Part 46. This subpart and contract clause address the kinds of data to be generated by the contractor and/or data to be furnished by the Government that are considered confidential and how it should be treated.

324.7002 Policy.

It is the policy of HHS to protect personal interests of individuals, corporate interests of non-governmental organizations, and the capacity of the Government to provide public services when information from or about individuals, organizations, or Federal agencies is provided to or obtained by contractors in performance of HHS contracts. This protection depends on the contractor's recognition and proper handling of such information. As a result, the ''Confidentiality of Information'' contract clause was developed.

324.7003 Applicability.

(a) The ''Confidentiality of Information'' clause, set forth in 352.24–70, should be used in solicitations and resultant contracts whenever the need exists to keep information confidential. Examples of situations where the clause may be appropriate include:

(1) Studies performed by the contractor which generate information or invlove Government-furnished information that is personally identifiable, such as medical records, vital statistics, surveys, and questionnaires;

(2) Contracts which involve the use of salary structures, wage schedules, proprietary plans or processes, or confidential financial information of organizations other than the contractor's; and

(3) Studies or research which may result in preliminary or unvalidated findings which, upon disclosure to the public, might create erroneous conclusions which, if acted upon, could threaten public health or safety.

(b) With regard to protecting individuals, this subpart and contract clause are not meant to regulate or control the method of selecting subjects and performing studies or experiments involving them. These matters are dealt with in the HHS regulation entitled ''Protection of Human Subjects,'' 45 CFR part 46. If a system of records under contract, or portions thereof, is determined to be subject to the requirements of the Privacy Act, in accordance with FAR 24.1 and 324.1 and Title 45 CFR part 5b, the procedures cited in those references are applicable and the Privacy Act contract clause shall be included in the contract. If the contract also involves confidential information, as described herein, which is not subject to the Privacy Act, the contract shall include the ''Confidentiality of Information'' clause in addition to the Privacy Act clause.

324.7004 Required clause.

The clause set forth in 352.224–70 shall be included in any RFP and resultant contract(s) where it has been determined that confidentiality of information provisions may apply. Any REP announcing the intent to include this clause in any resultant contract(s) shall indicate, as specifically as possible, the types of data which would be covered and requirements for handling such data.

PART 325—FOREIGN ACQUISITION

Subpart 325.1—Buy American Act—Supplies

Sec.

325.102 Policy.
325.108 Excepted articles, materials, and supplies.
325.108–70 Formats for nonavailability determinations.

Subpart 325.3—Balance of Payments Program

325.302 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14015, Apr. 9, 1984, unless otherwise noted.

Subpart 325.1—Buy American Act—Supplies

325.102 Policy.

(b) The head of the contracting activity shall make the determinations required by FAR 25.102(a) (1) through (5) and FAR 25.102(b).

[51 FR 44294, Dec. 9, 1986; 51 FR 47353, Dec. 31, 1986]

325.108 Excepted articles, materials, and supplies.

(b) Articles, materials, and supplies not listed in FAR 25.108(d) may be excepted only after a written determination has been made by the head of the contracting activity. These determinations are required only in instances

where it has been determined that only suppliers of foreign source end items shall be solicited. However, approvals and determinations covering individual acquisitions in the following categories may be made by the contracting officer:

(1) Acquisition of spare and replacement parts for foreign manufactured items, if the acquisition must be restricted to the original manufacturer or its supplier; and

(2) Acquisition of foreign drugs when it has been determined, in writing, by the responsible program official, that only the requested foreign drug will fulfill the requirement.

Formats for the above referenced written determinations are shown in 325.108–70.

325.108–70 Formats for nonavailability determinations.

(a) The following is the format for a nonavailability determination made by a contracting officer:

DETERMINATION OF NONAVAILABILITY

Pursuant to the authority contained in section 2, Title III, of the Act of March 3, 1933, popularly called the Buy American Act (41 U.S.C. 10(a–d)), and authority delegated to me by 325.108(b), I hereby find that:

(a) (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Enter the name and address of the proposed contractor or supplier, and country of origin of the item or items.)

(c) (Include a statement of the necessity for the acquisition.)

(d) (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin. If there is no known domestic item or items which can be used as a reasonable substitute, a statement to this effect will be made.)

Based upon these findings, it is determined that the above-described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that acquisition be made from domestic sources and that it be of domestic origin is not applicable to this acquisition, since the referenced acquisition is within the nonavailability exception stated in the Buy American Act. Authority is granted to acquire the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $_____, including duty and transportation cost to destination.

(Date) _____

_____

(Contracting Officer)

(b) The following is the format for a nonavailability determination made by the head of the contracting activity. Part 1 of the determination shall be signed by the preparing authority (contracting officer of official with contracting authority), and Part 2 shall be signed by the approving authority.

DETERMINATION OF NONAVAILABILITY

Part 1

Date _____

Pursuant to the authority contained in Section 2, Title III, of the Act of March 3, 1933, popularly called the Buy American Act (41 U.S.C. 10(a–d)), I hereby find:

(a) (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Insert a brief statement of the necessity for the acquisition.)

(c) (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin.)

Based upon the above showing of fact, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(Signature) _____

Part 2

The requirement of the Buy American Act that acquisition be made from domestic sources and that it be of domestic origin is not applicable to the above described acquisition, since the referenced acquisition is within the nonavailability exception stated in the Act. The feasibility of foregoing the requirement or providing a United States substitute has been considered. Authority is granted to acquire the above described item(s) of foreign origin (country of origin) at an estimated total cost of $_____, including duty and transportation costs to destination.

(Signature) _____

Subpart 325.3—Balance of Payments Program

325.302 Policy.

All determinations addressed in FAR 25.302 shall be made by the principal official responsible for acquisition (not delegable).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 328—BONDS AND INSURANCE

Subpart 328.3—Insurance

Sec.
328.301 Policy.
328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
328.311–2 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 56 FR 58316, Nov. 19, 1991, unless otherwise noted.

Subpart 328.3—Insurance

328.301 Policy.

(a) It is the policy of this Department to limit the Government's reimbursement of its contractors' liability to third persons for claims not covered by insurance in cost-reimbursement contracts to the Limitation of Funds or Limitation of Cost clause of the contract.

(b) In addition to the limitations in paragraph (a) of this section, the amount of the Government's reimbursement will be limited to final judgments or settlements approved in writing by the Government.

328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

328.311–2 Contract clause.

(a) The contracting officer shall insert the clause at 352.228–7, Insurance—Liability to Third Persons, in all solicitations and resulting cost-reimbursement contracts, in lieu of the clause at FAR 52.228–7.

PART 330—COST ACCOUNTING STANDARDS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 330.2—CAS Program Requirements

330.201–5 Waiver.

(c) The requirements of FAR 30.201–5 shall be exercised by the Director, Office of Acquisition and Grants Management (DOAGM). Requests for waivers shall be forwarded through normal acquisition channels to the DOAGM.

[54 FR 24344, June 7, 1989]

PART 332—CONTRACT FINANCING

Subpart 332.4—Advance Payments

Sec.
332.402 General.
332.403 Applicability.
332.406 Letters of credit.
332.407 Interest.
332.409 Contracting officer action.
332.409–1 Recommendation for approval.

Subpart 332.5—Progress Payments Based on Costs

332.501 General.
332.501–2 Unusual progress payments.

Subpart 332.7—Contract Funding

332.702 Policy.
332.703 Contract funding requirements.
332.703–1 General.
332.704 Limitation of cost or funds.
332.705 Contract clauses.
332.705–2 Clauses for limitation of costs or funds.

Subpart 332.9—Prompt Payment

332.902 Definitions.
332.905 Invoice payments.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14018, Apr. 9, 1984, unless otherwise noted.

Subpart 332.4—Advance Payments

332.402 General.

(e) The determination that the making of an advance payment is in the public interest (See FAR 32.402(c)(1)(iii)(A)) shall be made by the

respective principal official responsible for acquisition (PORA).

[52 FR 27560, July 22, 1987, as amended at 55 FR 42197, Oct. 18, 1990]

332.403 Applicability.

All contracts for research work with educational institutions located in the United States shall provide for financing by use of advance payments, in reasonable amounts, unless otherwise prohibited by law.

332.406 Letters of credit.

(c)(1) A blanket determination and findings authorizing interest free advance payments under a single letter of credit has been executed and remains in effect for each of the nonprofit organizations listed in Attachment I ''Single Letter of Credit Recipients and Central Point Addressees.'' These determinations and findings are applicable to all existing and future contracts entered into by the Department, its operating divisions, OS staff offices, and regional offices. All contracts with the listed organizations which require advance payments (whether under section 305 of the Federal Property and Administrative Services Act of 1949, as amended, or other statutory authority) shall provide for payment to be made under the appropriate letter of credit. The clause set forth in 352.232–73 shall be included in all such contracts and the cognizant fiscal office shall be apprised of its inclusion.

(2) In those instances where it is practical and feasible to finance an advance payment under a letter of credit other than one which is incorporated under a single letter of credit described in paragraph (c)(1) above, a determination and findings shall be executed by the PORA if the cited authority is to be section 305 of the Federal Property and Administrative Services Act. In cases where an authority other than section 305 is to be used, a determination and findings shall be submitted to the appropriate official authorized by the cited statute to approve the advance payment.

(3) The Treasury Department's letter of credit method of financing advance payments shall be employed, whenever feasible. Department-wide blanket letters of credit, which apply to the financing of research contracts and grants between the institution and all activities of the Department, shall be utilized to the maximum extent practicable. Where a particular educational institution is supported by research contracts and grants with only one operating division of the Department, a single letter of credit, applicable to all research contracts and grants between the institution and that operating division may be employed.

[49 FR 14018, Apr. 9, 1984, as amended at 50 FR 23133, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44294, Dec. 9, 1986; 55 FR 42197, Oct. 18, 1990]

332.407 Interest.

(d) The PORA is authorized to make the determinations in FAR 32.407(d) and as follows. In addition to the interest-free advance payments for the types of contracts listed in FAR 32.407(d), advance payments without interest may be approved for nonprofit contracts which are without fee with educational institutions and other nonprofit organizations, whether public or private, which are for the performance of work involving health services, educational programs, or social service programs, including, but not limited to, programs such as:

(1) Community health representative services for an Indian Tribe or Band;

(2) Narcotic addict rehabilitative services;

(3) Comprehensive health care service program for Model Neighborhood programs;

(4) Planning and development of health maintenance organizations;

(5) Dissemination of information derived from educational research;

(6) Surveys or demonstrations in the field of education;

(7) Producing or distributing educational media for handicapped persons including captioned films for the deaf;

(8) Operation of language or area centers;

(9) Conduct of biomedical research and support services;

(10) Research surveys or demonstrations involving the training and placement of health manpower and health professionals, and dissemination of related information; and

(11) Surveys or demonstrations in the field of social service.

[49 FR 14018, Apr. 9, 1984, as amended at 51 FR 44294, Dec. 9, 1986; 52 FR 27560, July 22, 1987; 55 FR 42197, Oct. 18, 1990]

332.409 Contracting officer action.

332.409–1 Recommendation for approval.

The information in FAR 32.409–1 (or FAR 32.409–2) shall be transmitted to the PORA in the form of a briefing memorandum.

[49 FR 14018, Apr. 9, 1984, as amended at 51 FR 44294, Dec. 9, 1986; 52 FR 27560, July 22, 1987; 55 FR 42197, Oct. 18, 1990]

Subpart 332.5—Progress Payments Based on Costs

332.501 General.

[51 FR 44294, Dec. 9, 1986]

332.501–2 Unusual progress payments.

(a)(3) The approval of an unusual progress payment shall be made by the appropriate principal official responsible for acquisition (PORA).

[51 FR 44294, Dec. 9, 1986, as amended at 52 FR 27560, July 22, 1987; 55 FR 42197, Oct. 18, 1990]

Subpart 332.7—Contract Funding

332.702 Policy.

An incrementally funded contract is a contract in which the total work effort is to be performed over multiple time periods and funds are allotted to cover discernible phases or increments of performance.

(a) Incremental funding may be applied to cost-reimbursement type contracts for the acquisition of research and development and other types of nonpersonal, nonseverable services. It shall not be applied to contracts for construction services, architect-engineer services, or severable services. Incremental funding allows nonseverable cost-reimbursement contracts, awarded for more than one year, to be funded from succeeding fiscal years.

(b) It is departmental policy that contracts for projects of multiple year duration be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

(1) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are not currently available to cover the entire project;

(2) The project represents a valid need of the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which additional funds may be obligated by increasing the allotment to the contract;

(3) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(4) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

[49 FR 14018, Apr. 9, 1984, as amended at 57 FR 35473, Aug. 10, 1992]

332.703 Contract funding requirements.

332.703–1 General.

(b) The following general guidelines are applicable to incrementally funded contracts:

(1) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the requirements which must be met before entering into the contract; i.e., justification for noncompetitive acquisition, approval of award, etc.

(2) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(3) Offerors will be expected to respond to RFPs with technical and cost proposals for the entire project indicating distinct break-outs of the planned phases or increments.

(4) Negotiations will be conducted based upon the total project, including

all planned phases or increments, and the multiple year period of performance.

(5) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the contracting officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project, and the contract period shall be reduced accordingly.

(6) Because of the magnitude of the scope of work and multiple year period of performance under an incrementally funded contract, there is a critical need for careful program planning. Program planning must provide for appropriate surveillance of the contractor's performance and adequate controls to ensure that projected funding will not impinge on the program office's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(7) An incrementally funded contract must contain precise requirements for progress reports to enable the project officer to effectively monitor the contract. The project officer should be required to prepare periodic performance evaluation reports to facilitate the program office's ultimate decision to allot additional funds under the contract.

332.704 Limitation of cost or funds.

For detailed instruction regarding administrative actions in connection with anticipated cost overruns, see subpart 342.71.

332.705 Contract clauses.

332.705–2 Clauses for limitation of costs or funds.

(c) (1) When using the Limitation of Funds clause (FAR 52.232–22) in the solicitation and resultant incrementally funded contract, the contracting officer shall insert the following legend between the clause title and the clause text:

(This clause supersedes the Limitation of Cost clause found in the General Provisions of this contract.)

(2) The contracting officer shall also include a clause reading substantially as that shown in 352.232–74 in the Special Provisions of the resultant incrementally funded contract.

(3) The request for proposals must inform prospective offerors of the Department's intention to enter into an incrementally funded contract. Therefore, the contracting officer shall include the provision at 352.232–75 in the request for proposals whenever the use of incremental funding is contemplated.

Subpart 332.9—Prompt Payment

332.902 Definitions.

Fiscal office means the office responsible for: (a) Determining whether interest penalties are due a contractor and, if so, the amount, (b) determining whether an invoice offers a financially advantageous discount, (c) maintaining records for and submission of prompt payment reports to the Deputy Assistant Secretary, Finance (DASF), ASMB, OS, and (d) processing payments to the Treasury Department to allow for payment to a contractor when due. The fiscal office shall fulfill the roles of the ''designated billing office'' and the ''designated payment office.''

[53 FR 43208, Oct. 26, 1988]

332.905 Invoice payments.

(a)(1)(ii), (b)(4), (c)(5). In most instances, the contracting officer will use the seven (7) day constructive acceptance period (specified in paragraph (a)(6)(i) of the Prompt Payment clause at FAR 52.232–25, paragraph (a)(5)(i) of the Prompt Payment clause at FAR 52.232–26, and paragraph (a)(4)(i) of the Prompt Payment clause at FAR 52.232.–27) for solicitations and resultant contracts as the basis for the fiscal office's computation of interest penalties. However, where the contracting officer extends the constructive acceptance period, under the conditions described in FAR 32.905, the extension shall be coordinated with the fiscal office. A constructive acceptance period of less than seven (7) days is not authorized.

(j) When the contracting officer mistakenly receives an invoice first, or is specified in the contract as the first recipient of the invoice, and the contract requires payment with thirty (30) days from receipt of a ''proper invoice'' (as defined by FAR 32.902), the contracting officer shall review the invoice to determine whether or not it is proper; and, if so, shall approve the invoice and submit it to the fiscal office within sixteen (16) days from the date of receipt. When the contracting officer is the first recipient of the invoice and the contract establishes a payment due date of more than thirty (30) days after receipt, the contracting officer shall review, approve, and submit the ''proper invoice'' to the fiscal office at least fourteen (14) days prior to the payment due date (unless the contracting officer and fiscal office agree, prior to contract award, to a longer period).

[54 FR 43966, Oct. 30, 1989]

PART 333—PROTESTS, DISPUTES, AND APPEALS

Subpart 333.1—Protests

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 333.1—Protests

SOURCE: 50 FR 23133, May 31, 1985, unless otherwise noted.

333.101 Definitions.

Filed, as used in this subpart, means receipt in the contracting office, the immediate Office of the Secretary, the General Accounting Office (GAO), or the General Services Board of Contract Appeals (GSBCA), as the case may be.

333.102 General.

(a) Contracting officers shall consider all protests or objections regarding the award of a contract, whether submitted before or after award, provided the protests are filed in a timely manner and are submitted by interested parties. To be considered timely, protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, alleged improprieties which do not exist in initial solicitations, but which are subsequently incorporated by amendment, must be protested not later than the next closing date for receipt of proposals following the incorporation. In other cases, protests shall be filed not later than ten (10) Federal Government working days after the basis for protest is known or should have been known, whichever is earlier. Provided a timely protest has been filed initially with the contracting officer, any subsequent protest to the Secretary or GAO filed within ten (10) Federal Government working days of notification of adverse action will be considered. Written confirmation of all oral protests shall be requested from protestants and must be timely filed.

(d)(1) Office of Acquisition and Grants Management (OAGM) has been designated as the headquarters office to serve as the liaison for protests lodged with GAO. Within OAGM, the Departmental Protest Control Officer (DPCO) has been designated as the individual to be contacted by GAO.

(2) The Office of General Counsel—Business and Administrative Law Division (OGC–BAL) has been designated to serve as the liaison for protests lodged with the GSBCA.

(3) Each contracting activity shall designate a protest control officer to serve as an advisor to the contracting officer and to monitor protests from the time of initial notification until the protest has been resolved. The protest control officer should be a senior

acquisition specialist in the headquarters acquisition staff office. In addition, contracting activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers shall be forwarded to the Director, OAGM.

[50 FR 23133, May 31, 1985, as amended at 54 FR 24344, June 7, 1989; 56 FR 47003, Sept. 17, 1991]

333.103 Protests to the agency.

(a)(2) The contracting officer is authorized to make the determination, using the criteria in FAR 33.103(a), to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and OGC–BAL. If the protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, approval shall also be obtained from the Director, OAGM before making the award.

(3) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with the applicable provisions in 333.102(a). In the following cases, written protests received by the contracting officer before award shall be forwarded, through acquisition channels, to the DPCO for processing. Files concerning these protests shall be submitted, in duplicate, by the most expeditious means, marked ''IMMEDIATE ACTION—PROTEST BEFORE AWARD'', and contain the documentation referenced in 333.104(a)(3).

(i) The protestant requests referral to the Secretary of Health and Human Services;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary, or is addressed to either; or

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General.

Otherwise, submissions of protests to the DPCO may be dispensed with by the contracting officer if he/she is reasonably satisfied that the protest is groundless. In this instance, the contracting officer, with the concurrence of the contracting activity's protest control officer and OGC–BAL, may disallow the protest.

(4) Protests received after award shall be treated as indicated in 333.103(a)(3), above; however, if the files are to be submitted to the DPCO for action, they shall be marked ''IMMEDIATE ACTION—PROTEST AFTER AWARD''.

[50 FR 23133, May 31, 1985, as amended at 54 FR 24344, June 7, 1989; 56 FR 47003, Sept. 17, 1991; 57 FR 35473, Aug. 10, 1992]

333.104 Protests to GAO.

(a) *General.* (1) A protestor shall be required to furnish a copy of its complete protest to the contracting officer no later than the first working day after the protest is filed with GAO. Immediately upon receiving a copy of the complete protest, the contracting officer shall telephonically notify the contractng activity's protest control officer, who, in turn, shall immediately notify the DPCO. The contracting officer shall provide the name of the protestor, the solicitation number, the date and time the protest was received from the protestor, and any other significant information.

(3) Protests lodged with GAO, whether before or after award, shall be processed by the DPCO. Protest files shall be prepared by the contracting office and distributed as follows: two copies to the DPCO, one copy to the contracting activity's protest control officer, and one copy to OGC–BAL. Files shall include the following documentation:

(i) The contracting officer's statement of facts and circumstances, including a discussion of the merits of the protest, and conclusions and recommendations, including documentary evidence on which they are based.

(ii) A copy of the IFB or RFP.

(iii) A copy of the abstract of bids or proposals.

(iv) A copy of the bid or proposal of the successful offeror to whom award

has been made or is proposed to be made.

(v) A copy of the bid or proposal of the protestant, if any.

(vi) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(vii) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate (see FAR 33.104(c)(4)).

(viii) Copies of the notice of protest given offerors and other parties when the notice is appropriate (see FAR 33.104(a)(4)).

(ix) A copy of the technical evaluation report required by 315.608–76, when applicable, and a copy of each evaluator's rating for all proposals.

(x) A copy of the negotiation memorandum, when applicable (see 315.672).

(xi) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest, and

(xii) Any document which is referred to in the contracting officer's statement of facts.

The files shall be assembled in an orderly manner and shall include an index of enclosures.

(4) The contracting officer is responsible for making the necessary notifications referenced in FAR 33.104(a)(4). Copies of the views of interested parties submitted in response to the notifications shall be immediately provided to the DPCO upon receipt by the contracting officer.

(5) The contracting officer shall furnish the protest file containing the documentation specified in 333.104(a)(3), except item (i), to the DPCO within twelve (12) work days from receipt of the protest. The contracting officer shall provide the documentation required by item (i) of 333.104(a)(3) to the DPCO within nineteen (19) work days from receipt of the protest. (The contracting activity's protest control officer may provide a written opinion and recommendation on the protest to the DPCO within nineteen (19) work days from receipt of the protest by the contracting officer.) The contracting officer shall clearly identify any documents or portions of documents he or she desires to withhold from the protester, and shall include justification for the withholding of each document or portion of a document in the contracting officer's statement of facts. Since the statute allows only a short time period in which to respond to protests lodged with GAO, the contracting officer shall handle each protest on a priority basis.

The DPCO shall prepare the report and submit it and the protest file to GAO in accordance with FAR 33.104(a)(5).

(6)(i) The DPCO shall take the necessary actions specified in FAR 33.104(a)(6)(i) after receiving all the documentation required by 333.104(a)(3) from the contracting officer.

(ii) Since the DPCO will furnish the report to GAO, the protestor, and other interested parties, comments on the report from the protester and other interested parties will be requested to be sent to the DPCO.

(7) The Office of Acquisition and Grants Management (OAGM) has been designated as the headquarters office, and the DPCO as the individual, that GAO should contact concerning all protests lodged with GAO.

(b) *Protests before award.* (1) To make an award notwithstanding a protest, the contracting officer shall prepare a finding using the criteria in FAR 33.104(b)(1), have it executed by the principal official responsible for acquisition (PORA), and forward it, along with a written request for approval to make the award, to the Director, OAGM.

(2) If the request to make an award notwithstanding the protest is approved by the Director, OAGM, the DPCO shall notify GAO. Whether the request is approved or not, the DPCO shall telephonically notify the contracting activity's protest control officer of the decision by the Director, OAGM, and the contracting activity's protest control officer shall immediately notify the contracting officer. The DPCO shall confirm the decision by memorandum to the contracting activity's protest control officer.

(4) The contracting office shall prepare the protest file in accordance with 333.104(a)(2), and forward it, in duplicate, to the DPCO (see 333.104(a)(4)).

The file shall be marked ''IMMEDIATE ACTION—PROTEST BEFORE AWARD.''

(c) *Protests after award.* (2) If the contracting officer believes performance should be allowed to continue notwithstanding the protest, a finding shall be prepared by the contracting officer, executed by the PORA, and forwarded, along with a written request for approval, to the Director, OAGM. The same procedures for notification stated in 333.104(b)(2), above shall be followed.

(6) The contracting officer shall prepare the protest file in accordance with 333.104(a)(3), and forward it, in duplicate, to the DPCO (see 333.104(a)(5)). The file shall be marked ''IMMEDIATE ACTION—PROTEST AFTER AWARD.''

(d) *Findings and notice.* The contracting officer shall perform the actions required by FAR 33.104(d); however, notification to GAO shall be made by the DPCO.

(g) *Notice to GAO.* The Director, Office of Acquisition and Grants Management shall be the official to comply with the requirements of FAR 33.104(g).

(i) *Express option.* When GAO invokes the express option, the contracting officer shall prepare the complete protest file as described in 333.104(a)(3), to include item (i), and deliver it (hand-carry, if necessary) to the DPCO no later than the close of business on the ninth work day after the express option is invoked. The contracting officer shall involve OGC–BAL as early as possible after receiving notification of the invocation of the express option, and obtain the concurrence of the cognizant OGC–BAL attorney prior to transmitting the protest file to the DPCO. The DPCO shall prepare the report and submit it and the protest file to GAO.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985; 54 FR 24344, June 7, 1989; 55 FR 42197, Oct. 18, 1990; 56 FR 47003, Sept. 17, 1991]

333.105 Protests to GSBCA.

(a)(1) The contracting officer shall give telephone notification to the DPCO, OGC–BAL, and the contracting activity's protest control officer immediately upon notification of the protest.

(2)(i) The contracting officer is responsible for complying with the requirement in FAR 33.105(a)(2)(i).

(ii) The cognizant OGC–BAL attorney is responsible for complying with the requirement stated in FAR 33.105(a)(2)(ii).

(b) As soon as possible but no later than six (6) work days after the filing of the protest, a copy of the protest file containing *all* documents (see FAR 33.105(b), especially (b)(7)), and labeled on the cover ''FOR USE BY DPCO ONLY'', shall be in the hands of the DPCO for review. Simultaneously, two copies of the same protest file provided to the DPCO shall be provided to the cognizant OGC–BAL attorney. These two copies shall be labeled on the cover ''FOR USE BY OGC–BAL.'' After consultation with the cognizant OGC–BAL attorney, the DPCO shall transmit the protest file to the GSBCA.

(1) Rather than furnishing a decision, the contracting officer shall include a statement of facts and circumstances and a discussion of the merits of the protest, as well as conclusions and recommendations and documentary evidence on which they are based. These statements shall be reviewed by the cognizant OGC–BAL attorney before being finalized.

(7) The DPCO shall provide all parties with a list of documents furnished to the GSBCA for *in camera* review.

(10) The copies of the protest files to be provided to the DPCO and OGC–BAL shall also contain the documents or information specified in 333.104(a)(3)(vii) through (xii). The file shall be assembled in an orderly manner and include an index of enclosures.

(c) The cognizant OGC–BAL attorney is responsible for complying with the requirement stated in FAR 33.105(c).

(d)(1) If the protest requests a suspension of acquisition authority, the contracting officer must make this known to the DPCO, OGC–BAL, and the contracting activity's protest control officer at the time of the initial telephone notification of the filing of the protest to afford an opportunity for the DPCO, OGC–BAL, principal official responsible for acquisition (PORA), and contracting officer to take appropriate action.

(2) If it can be established that the conditions stated in FAR 33.105(d)(1)(i) and (ii) are present, the contracting officer shall prepare a D&F setting forth the circumstances. The D&F shall be concurred in by the cognizant OGC–BAL attorney before being executed by the PORA (not delegable).

(g) If an appeal is to be made by the Department regarding a final decision issued by the GSBCA, it shall be made by OGC–BAL.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985; 56 FR 47003, Sept. 17, 1991]

333.106 Solicitation provision and contract clause.

(a) The provision at FAR 52.233–2, Service of Protest, shall be completed by entering the name and complete mailing address of the contracting officer.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985]

Subpart 333.2—Disputes and Appeals

SOURCE: 53 FR 15563, May 2, 1988, unless otherwise noted.

333.203 Applicability.

(c) The Armed Services Board of Contract Appeals (ASBCA) has been designated by the Secretary as the authorized ''Board'' to hear and determine disputes for the Department.

333.209 Suspected fraudulent claims.

The contracting officer shall submit any instance of a contractor's suspected fraudulent claim to the Office of the Inspector General for investigation.

333.210 Contracting officer's authority.

The contracting officer shall refer a proposed final decision to the Office of General Counsel, Business and Administrative Law Division (OGC–BAL), or the Regional Attorney in the HHS regional office servicing the region in which the contracting officer is located, for advice as to the legal sufficiency and format before sending the final decision to the contractor. The contracting officer shall provide OGC–BAL or the Regional Attorney with the pertinent documents with the submission of each proposed final decision.

333.211 Contracting officer's decision.

(a)(2) See 333.210.

(a)(4)(v) When using the paragraph in FAR 33.211(a)(4)(v), the contracting officer shall insert the words ''Armed Services'' before each mention of the term ''Board of Contract Appeals''.

(c)(2) The contracting officer does not have jurisdiction to consider a claim from the contractor over $50,000, unless that claim has been certified.

(h) At any time within the period of appeal, the contracting officer may modify or withdraw his/her final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his/her recommended action to OGC–BAL or the cognizant Regional Attorney with the supplement to the contract file which supports the recommended correction or amendment.

333.212 Contracting officer's duties upon appeal.

(a) Appeals shall be governed by the rules set forth in the ''Rules of the Armed Services Board of Contract Appeals'', or by the rules established by the U.S. Claims Court, as appropriate.

(b) OGC–BAL or the cognizant Regional Attorney is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. A decision by the ASBCA will be transmitted by the Government Trial Attorney to the appropriate contracting officer for compliance in accordance with the ASBCA's decision.

(c) If an appeal is filed with the ASBCA, the contracting officer shall assemble a file within 30 days of receipt of an appeal, or advice that an appeal has been filed, that consists of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claims in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

The contracting officer shall furnish the appeal file to the Government Trial Attorney for review and approval. After approval, the contracting officer shall prepare four copies of the file, one for the ASBCA, one for the appellant, one for the Government Trial Attorney, and one for the contracting office.

(d) At all times after the filing of an appeal, the contracting officer shall render whatever assistance is requested by the Government Trial Attorney. When an appeal is set for hearing, the concerned contracting officer, acting under the guidance of the Government Trial Attorney, shall be responsible for arranging for the presence of Government witnesses and specified physical and documentary evidence at both the pre-hearing conference and the hearing.

(e) If a contractor which has filed an appeal with the ASBCA elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the Government Trial Attorney or the concerned contracting officer, the Government Trial Attorney will notify the ASBCA of the disposition of the dispute in accordance with Rule 27 of the ASBCA.

(f) If the contractor has elected to appeal to the U.S. Claims Court, the U.S. Department of Justice will represent the Department. However, the contracting officer shall still coordinate all actions through OGC–BAL.

333.212–70 Formats.

(a) The following format is suggested for use in transmitting appeal files to the ASBCA:

Your reference:

(Docket No.)

(Name)

Recorder, Armed Services Board of Contracts Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, Virginia 22041.

Dear (Name):

Transmitted herewith are documents relative to the appeal under Contract No._____ with the (name of contractor), in accordance with the procedures under Rule 4.

The Government Trial Attorney for this case is (Insert Division of Business and Administrative Law, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Washington, DC 20201, or Regional Attorney and office address, as appropriate).

The request for payment of charges resulting from the processing of this appeal should be addressed to: (Insert name and address of cognizant finance office.)

Sincerely yours,

Contracting Officer

Enclosures

(b) The following format is suggested for use in notifying the appellant that the appeal file was submitted to ASBCA:

(Contractor Address)

Dear _____:

An appeal file has been compiled relative to the appeal under Contract No. _____, and has been submitted to the Armed Services Board of Contract Appeals (ASBCA). The enclosed duplicate of the appeal file is identical to that submitted to the Board, except that contract documents which you already have may have been excluded.

You may furnish or suggest any additional information deemed pertinent to the appeal to the Armed Services Board of Contract Appeals according to their rules.

The ASBCA will provide you with further information concerning this appeal.

Sincerely yours,

Contracting Officer

Enclosure

333.213 Obligation to continue performance.

(a) The Disputes clause at FAR 52.233–1 shall be used without the use of Alternate I. However, if the contracting officer determines that the Government's interest would be better served by use of paragraph (h) in Alternate I, he/she must request approval for its use from the Director, Division

of Acquisition Policy (through normal acquisition channels).

[53 FR 15563, May 2, 1988, as amended at 54 FR 24344, June 7, 1989]

333.214 Contract clause.

The clause at FAR 52.233–1 shall be used in all circumstances except as indicated in 333.213.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 334—MAJOR SYSTEM ACQUISITION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

334.003 Agency head responsibilities.

The Department's implementation of OMB Circular No. A–109 may be found in Chapter 1–150 of the General Administration Manual.

[49 FR 14020, Apr. 9, 1984]

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
335.070 Cost-sharing.
335.070–1 Policy.
335.070–2 Amount of cost-sharing.
335.070–3 Method of cost-sharing.
335.070–4 Institutional cost-sharing agreements.
335.070–5 Contract clauses.
335.070–6 Contract award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14020, Apr. 9, 1984, unless otherwise noted.

335.070 Cost-sharing.

335.070–1 Policy.

(a) In addition to utilizing cost-sharing type contracts when required by statute, the desirability of utilizing this type of contract, when authorized should also be considered under certain circumstances when not required by statute. Contractors should be encouraged to contribute to the cost of performing research where there is a probability that the contractor will receive present or future benefits from participation, such as, increased technical know-how, training to employees, acquisition of equipment, use of background knowledge in future contracts, etc. Cost-sharing is intended to serve the mutual interest of the Government and the performing organization by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by the performing organization. If cost-sharing is not required by statute, encouragement should be given to organizations to contribute to the cost of performing research under research contracts unless the contracting officer determines that a request for cost-sharing would not be appropriate because of the following circumstances:

(1) The particular research objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government requests for proposals for a specific project.

(2) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to the Government.

(3) The organization has little or no non-Federal sources or funds from which to make a cost contribution. Cost-sharing should generally not be requested if cost-sharing would require the Government to provide funds through some other means (such as fees) to enable the organization to cost-share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b) Cost-sharing may be negotiated in either of two ways. When cost-sharing is negotiated on a contract by contract basis, the responsibility for negotiating the cost-sharing arrangement is that of the contracting officer. In the case of institutional cost-sharing arrangements (see 335.070–4), the responsibility for negotiating cost-sharing is that of the Office of the Assistant Secretary for Health. Each research contract file should show whether the contracting officer considered cost-sharing appropriate for that particular contract and, except when an institutional cost-sharing agreement is applicable, in what amount. If cost-sharing was not considered appropriate, the file must indicate the factual basis for that decision, e.g., ''Because the contractor will derive no

benefits from this award that can be applied to its commercial activities, cost-sharing is not considered appropriate.'' The contracting officer may wish to coordinate with the project officer before documenting this decision.

(c) If the contracting officer considers cost-sharing to be appropriate for a research contract and the contractor refuses to accept this type of contract, the award may be made without cost-sharing, except when cost-sharing is required by statute, if the contracting officer concludes that payment of the full cost of the research effort is necessary in order to obtain the services of that particular contractor.

[49 FR 14020, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984]

335.070–2 Amount of cost-sharing.

When cost-sharing is required by statute or determined to be appropriate, the following guidelines shall be utilized in determining the amount of cost participation by the contractor, except where an institutional cost-sharing agreement is applicable:

(a) Cost participation by educational institutions and other not-for-profit or nonprofit organizations should normally be at least 1 percent of the total project cost. In many cases, cost-sharing of less than 5 percent of the total project cost would be appropriate in view of the organizations' nonprofit status and their normally limited ability to recover the cost of such participation from non-Federal sources. However, in some cases, it may be appropriate for educational institutions to provide a higher degree of cost-sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members (or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities). The percentages stated above are not intended as a substitution for those set forth in any legislation and are not to be used in lieu of those contained in that legislation.

(b) The amount of cost participation by commercial or industrial organizations should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, cost participation by commercial or industrial organizations could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of the total project cost.

(c) If the performing organization will not acquire title to or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost-sharing than in cases in which the performer acquires such rights.

(d) When cost-sharing is required by statute, cost participation of less than 1 percent may be appropriate if consistent with the provisions of the statute, and:

(1) A formal request for proposal is issued;

(2) The contractor proposes to perform the research primarily as a service to the Government; or

(e) The contractor has little or no non-Federal sources of funds from which to make a cost contribution.

(3) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the project.

(f) The organization's participation may be considered over the total term of the project so that a relatively high contribution in one year may be offset

by a relatively low contribution in another.

(g) A relatively low degree of cost-sharing may be appropriate if, in the view of the operating divisions or their subordinate elements, an area of research requires special stimulus in the national interest.

(h) In the final analysis, the amount of cost participation should reflect the mutual agreement of the parties, provided that it is consistent with any statutory requirements.

335.070–3 Method of cost-sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocations to other grants or contracts as part of any independent research and development program).

[49 FR 14020, Apr. 9, 1984. Correctly designated at 49 FR 36110, Sept. 14, 1984]

335.070–4 Institutional cost-sharing agreements.

(a) An institutional cost-sharing agreement covers the aggregate of some or all of the research projects supported by HHS research contracts and grants at a given performing organization. With respect to contracts, these agreements will apply only to cost-sharing type contracts resulting from unsolicited proposals and awarded without fee or profit. Eligibility for institutional cost-sharing agreements is limited to nonprofit institutions of higher education and other public or private nonprofit or not-for-profit organizations. Usually, a single agreement will cover all applicable research projects at a given performing organization; however, in unusual cases, separate agreements for individual departments or locations of the performing organization may be negotiated if deemed advantageous.

(b) The institutional cost-sharing agreements establish an overall sharing ratio applicable to the aggregate of all covered projects. Individual awards will incorporate the institutional agreement by reference, but will not establish a specific sharing ratio for the individual project. The amount of sharing on any particular project will therefore be left to the discretion of the performing organization, and relatively high contributions on some projects may offset relatively low contributions on other projects, provided that the agreed aggregate contribution is made during each of the contractor's fiscal years, and a contribution, even if nominal, is made to each covered project.

(c) The Public Health Service shall be responsible for negotiating all HHS institutional cost-sharing agreements. Agreements, when negotiated, will be binding upon all HHS activities. Eligible contractors wishing to negotiate institutional cost-sharing agreements should contact the Division of Grants and Contracts, Office of Resource Management, Public Health Service, Room 18 A 19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(1) All necessary implementing instructions to cover matters such as content of proposals, format of agreements, documentation, etc. shall be issued by the Public Health Service, subject to the prior approval of the Office of Acquisition and Grants Management.

(2) The Public Health Service shall provide the Office of Acquisition and Grants Management, and the Department's operating divisions with current listings of all institutional cost-sharing agreements, indicating the date on which they became effective with respect to contracts. Copies of individual agreements will be made available to the Department's other activities upon request. Each activity shall designate only one individual who shall be authorized to make such requests.

(d) The amount of cost-sharing negotiated under an institutional cost-sharing agreement will be determined in accordance with the appropriate guidelines contained in ''A Guide to Institutional Cost Sharing Agreements'' issued by the Office of Resource Management, PHS. The extent to which the performing organization shared in the costs of HHS-sponsored research in the

past, and its anticipated ability to do so in the future, should also be taken into account.

[49 FR 14020, Apr. 9, 1984, as amended at 54 FR 24344, June 7, 1989]

335.070–5 Contract clauses.

Clauses for cost sharing in individually negotiated contracts or under institutional agreements are set forth in 352.232–71.

335.070–6 Contract award.

In consonance with the Department's objectives of competition and support of the small business program, award of contracts should not be made solely on the basis of ability or willingness to cost-share. Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible. The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

PART 337—SERVICE CONTRACTING

Subpart 337.1—Service Contracts—General

Sec.
337.101 Definitions.
337.103 Contracting officer responsibility.
337.104 Personal services contracts.
337.109 Services of quasi-military armed forces.

Subpart 337.2—Consulting Services

337.204 Policy.
337.270 Consulting services reporting.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14022, Apr. 9, 1984, unless otherwise noted.

Subpart 337.1—Service Contracts—General

337.101 Definitions.

Service contract. A contract may require the furnishing of both property and services, such as a research and development contract which requires a final report. In a case such as this, this subpart will apply to the extent that the furnishing of services is involved. Other examples of service contracts include training and education, surveys and data collection, data processing, medical services, and stenographic services.

337.103 Contracting officer responsibility.

(b) Contract actions for the services of experts and consultants are also exempt from the requirements of FAR Part 37.103(a)(3); they are to be certified in accordance with the provisions in General Administration Manual Chapter 8–15.

(c) For negotiated acquisitions, the determination shall be included as a statement in the negotiation memorandum. For sealed bid acquisitions, the determination shall be included as a separate statement in the contract file.

(d) In most cases, gathering the information and data on which to base the determination should be a joint effort between contracting and program personnel. The contracting officer shall request the advice of the Office of General Counsel and/or the personnel office before processing any request to acquire services if there is doubt as to whether an employer-employee relationship would be involved in performance of the contract.

[49 FR 14022, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

337.104 Personal services contracts.

(a) As indicated in FAR 37.104, the paramount consideration in determining if an employer-employee relationship exists is the presence of direction or supervision by Government personnel of contractor employees, as a result of either the inherent nature of the service or the manner in which the service is provided. A personal service relationship exists if this direction or supervision is necessary to:

(1) Adequately protect the Government's interest;

(2) Retain control of the function involved; and/or

(3) Retain full personal responsibility by a duly authorized Federal officer or employee for the function supported.

(c)(2) The degree of supervision necessary to establish an employer-employee relationship is relatively continuous, close supervision. Sporadic supervision is not sufficient to constitute an employer-employee relationship. (In determining whether the Government rather than the contractor exercises ''relatively continuous, close supervision'' of contractor personnel, the fact that an engineer, for example, may require less supervision and may exercise more independence of judgment than a food service worker is not itself determinative. If the Government takes over that degree of supervision that the contractor would otherwise exercise over either individual, the relationship created between the Government and either individual is tantamount to that of employer and employee.)

(d) The likelihood of the existence of an employer-employee relationship increases as the number and extent of the elements in FAR 37.104(d) increases. However, the mere existence of these elements does not constitute an employer-employee relationship unless continuous, close supervision exists. In determining the presence of the referenced elements, relevant factors including the following shall be considered:

(1) *The nature of the work.* (i) If the Government can use Federal personnel to perform the required work, or if the Government has rights to the specialized knowledge or equipment which is needed to perform the work;

(ii) Whether the services represent the discharge of a Government function which calls for the exercise of personal judgment and discretion on behalf of the Government. (This factor, if present in sufficient degree, may alone render the service personal in nature.); and/or

(iii) If the services are to be a one-time occurrence (or a continuing requirement of short term duration).

(2) *Contractual provisions concerning the contractor's employees.* (i) To what extent the Government specifies the qualifications of, or has the right to approve, individual contractor employees (other than the Government's right to approve or disapprove new key personnel, remove key personnel, grant or deny security clearances, and provide for necessary health qualifications). (Also, it is permissible for the Government to specify the technical and experience qualifications of contractor employees, if this is necessary to assure satisfactory performance.);

(ii) To what extent the Government can assign tasks to, and prepare work schedules for, contractor employees during performance of the contract. (This does not preclude inclusion in the contract of work schedules for the contractor—but not individual employees—or the establishment of a time of performance for orders issued under a requirement or other indefinite delivery-type contract.);

(iii) To what extent the Government can supervise or control the method in which the contractor performs the service, the number of people that will be employed, the specific duties of individual employees, and similar details. (However, it is permissible to require that contractor employees comply with regulations for the protection of life and property. Also, it is permissible to recommend a specific number of people the contractor may employ, if this is necessary to assure performance; but in that event, the contract must specify that this does not in any way minimize the contractor's obligation to use as many employees as are necessary for proper contract performance.);

(iv) If the Government can review performance of each individual contractor employee (as opposed to reviewing the final product after completion of the work.); and/or

(v) If the Government has the right to have contractor employees removed from the job for reasons other than misconduct or security.

(3) *Other provisions of the contract.* (i) Whether the contractor undertakes a specific task or project that is definable either at the inception of the contract or at some point during performance, or whether the work is defined on a day-to-day basis. (However, this does not preclude use of a requirement or other indefinite delivery-type contract, provided the nature of the work is specifically described in the contract, and orders are formally issued to the contractor rather than to individual employees.);

(ii) Whether payment will be for results accomplished or solely according to time worked. (This is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal.); and/or

(iii) Whether Government office or working space, facilities, equipment, and supplies will be used for contract performance. (This is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal.).

(4) *Administration of the contract.* (i) If contractor employees are used interchangeably with Government personnel; and/or

(ii) If contractor employees are integrated into the Government's organizational structure.

(e) and (f) Reserved.

(g) The following are examples of personal and nonpersonal services, but are illustrative only and are not to be used as the basis for determination in any specific case.

(1) The following are examples of personal services contracts:

(i) A contract to furnish ordinary, day-to-day, stenographic and secretarial services in a Government office under direct Government supervision.

(ii) A contract for the testing of a substance where the project officer visits the contractor's facility several times each week to consult with the principal investigator, review data, specify methods of quality control, specify testing to be done, and provide instruction to investigators.

(iii) A contract for the performance of a function which management must perform in order to retain essential control over the conduct of agency programs (e.g., negotiating contract amounts).

(2) The following are examples of nonpersonal services contracts:

(i) A contract for technical assistance work requiring specialized equipment and trained personnel unavailable to the Government. The contractor performs work described in the contract free of Government supervision, and does not act on behalf of the Government.

(ii) A contract with an individual for delivery of lectures without Government supervision (even if they are to be given on specific dates, or on specialized subjects, or if payment will be by the hour).

(iii) A fixed price contract for janitorial services which provides for specific tasks to be performed in specific places, free of Government direction, supervision, and control over the contractor's employees.

(iv) A research and development contract providing for a level of effort which will be performed by the contractor independent of Government direction, supervision, and control.

337.109 Services of quasi-military armed forces.

As distinguished in FAR 37.109, solicitations for protective services shall include the following certification:

> The bidder/offeror certifies it is not a detective agency, nor an employee of such agency as contemplated by 5 U.S.C. 3108.

Subpart 337.2—Consulting Services

337.204 Policy.

General Administration Manual Chapter 8–15 prescribes policies and procedures concerning approvals required before contracting for expert or consulting services.

(e) Services of experts or consultants may be acquired by contract only when:

(1) The services will be nonpersonal in nature, are critical to the planning, development, operation, or evaluation of a Department program, cannot be accomplished by Government employees, and are economically available from the private sector; or

(2) The performance of the work by a consultant is directed by statute.

337.270 Consulting services reporting.

The clause set forth in 352.237–70 shall be included in every contract for expert or consulting services.

PART 339—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Subpart 339.70—ADP Clearances and Systems Security

Sec.
339.7001 ADP Clearances.
339.7002 ADP systems security.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486 (c).

SOURCE: 49 FR 14023, Apr. 9, 1984, unless otherwise noted.

Subpart 339.70—ADP Clearances and Systems Security

339.7001 ADP clearances.

In accordance with Chapter 4–10 of the HHS Information Resources Management (IRM) Manual, the Office of Information Resources Management (OIRM), OASMB–OS, is responsible for the review and approval of all requests for proposed automatic data processing (ADP) systems and modifications to existing ADP systems which require the acquisition of ADP hardware, software packages, and services, and telecommunications equipment, which exceed the dollar thresholds stated in Chapter 4–10.

(a) It is the responsibility of the program office to obtain written approval from OIRM on proposed ADP acquisitions which exceed the thresholds stated in Exhibit 4–10–A of Chapter 4–10 prior to submitting the request for contract to the contracting activity.

(b) The OIRM approval document (delegation of procurement authority (DPA)) is to be attached to the request for contract when it is submitted by the program office to the contracting activity. The contracting activity shall not issue a solicitation based on the request for contract until a properly executed approval document (DPA) is obtained.

[49 FR 14023, Apr. 9, 1984, as amended at 53 FR 43208, Oct. 26, 1988]

339.7002 ADP systems security.

(a) *Program responsibilities.* Whenever a proposed contract action requires the design, development, maintenance, or use of an ADP system or the use of ADP resources, the program office is required to designate a responsible individual to serve as the ADP system manager who is to ensure, in coordination with the cognizant systems security officer, that ADP security requirements are met and that each contractor maintains an acceptable security program. The project officer is responsible for setting forth the specific portions of Part 6, ADP Systems Security, of the HHS IRM Manual which are applicable to the instant acquisition.

(b) *Contracting responsibilities.* (1) The contracting officer is responsible for ensuring that a certification of ADP systems security requirements, signed by both the ADP system manager and the ADP systems security officer, is submitted with the request for contract. The contracting officer shall not initiate action on the request for contract until the properly executed certification is received. The certification will state that the security requirements specified are reasonably sufficient for the intended application and that they comply with current Federal and HHS computer security policies, procedures, standards, and guidelines.

(2) When developing the request for proposals, the contracting officer shall include in the technical proposal instructions a statement requiring that the offeror present a detailed outline of its proposed ADP system security program which complies with the requirements of the statement of work and applicable portions of Part 6, ADP Systems Security, of the HHS IRM Manual.

(3) The contracting officer shall include a special provision reading substantially as follows in all applicable solicitations and resultant contracts:

> The Contractor agrees to comply with the ADP system security requirements set forth in the system of work and applicable portions of Part 6, ADP Systems Security, of the HHS IRM Manual. The Contractor further agrees to include this provision in any subcontract awarded pursuant to this prime contract.

(4) The contracting officer shall ensure that a properly executed certification confirming that the offerors comply with the necessary security requirements is attached to the technical evaluation report received from the evaluation panel before proceeding

with the acquisition process. This certification must be countersigned by the officials designated in paragraph (b)(1) above and must contain a similar statement of compliance.

[49 FR 14023, Apr. 9, 1984, as amended at 53 FR 43208, Oct. 26, 1988]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 342—CONTRACT ADMINISTRATION

Subpart 342.5—Postaward Orientation

Sec.
342.504 Postaward letters.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

Subpart 342.70—Contract Monitoring

342.7001 Purpose.
342.7002 Contract monitoring responsibilities.
342.7003 Withholding of contract payments.
342.7003–1 Policy.
342.7003–2 Procedures.
342.7003–3 Withholding payments.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.
342.7101 Applicability.
342.7102 General.
342.7103 Contract administration.
342.7103–1 General.
342.7103–2 Procedures.
342.7104 Contract modifications.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14024, Apr. 9, 1984, unless otherwise noted.

Subpart 342.5—Postaward Orientation

342.504 Postaward letters.

To the extent practicable, contracting officers should use letters to accomplish postaward orientation objectives. A postaward orientation conference should only be arranged when letters cannot resolve key issues.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

The Director, Division of Cost Allocation of the Regional Administrative Support Center within each HHS regional office has been delegated the authority to establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts and grants awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

Subpart 342.70—Contract Monitoring

342.7001 Purpose.

Contract monitoring is an essential element of contract administration and the acquisition process. This subpart describes the Department's operating concepts regarding contract monitoring, performed jointly by the project officer and the contracting officer, to ensure that the required monitoring is performed, timely remedial action is taken when necessary, and a determination is made that contract objectives have been met.

342.7002 Contract monitoring responsibilities.

(a) Upon execution of the contract, the mutual obligations of the Government and the contractor are established by, and limited to, the written stipulations in the contract. Unless authorized by the contracting officer, HHS personnel shall not direct or request the contractor to assume any obligation or take any actions not specifically required by the contract. Only the contracting officer may impose a requirement which will result in a change to the contract. All contract changes must be directed in writing or confirmed in writing by the contracting officer.

(b) The contracting officer is responsible for assuring compliance with all terms of the contract, especially the statutory, legal, business, and regulatory provisions. Whether or not a postaward conference is held, the contracting officer shall inform the contractor by letter (if not already stipulated by contract provisions) of the authorities and responsibilities of the Government personnel with whom the contractor will be dealing throughout the life of the contract.

(c) The contracting officer must depend on program, technical, and other

personnel for assistance and advice in monitoring the contractor's performance, and in other areas of postaward administration. The contracting officer must assure that responsibilities assigned to these personnel are understood and carried out. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract to assist or advise the contracting officer (or act as his/her representative when so designated by the contracting officer) in activities such as:

(i) Providing technical monitoring during contract performance, and issuing letters to the contractor and contracting officer relating to delivery acceptance, or rejection in accordance with the terms of the contract;

(ii) Assessing contractor performance, including inspection and testing of products and evaluation of reports and data;

(iii) Recommending necessary changes to the schedule of work and period of performance in order to accomplish the objectives of the contract. This shall be accomplished by a written request to the contracting officer, together with an appropriate justification and funds availability citation;

(iv) Reviewing invoices/vouchers and recommending approval/disapproval action by the contracting officer, to include comments regarding anything unusual discovered in the review;

(v) Reviewing and recommending approval or disapproval of subcontracts, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The role of the project officer in performing required aspects of the contract monitoring process. In addition to those applicable activities set forth in (c)(1) above, the project officer shall:

(i) Submit periodic reports to the contracting officer that concisely explain the status of the contract, and include recommended actions for any problems reported. Provide the contracting officer with written notification of evaluation and approval/disapproval of contract deliverables and of completion of tasks or phases. The contracting officer will, in turn, provide the contractor with written notification of approval or disapproval unless the responsibility has been delegated by the contracting officer, in which case the person responsible for such action will notify the contractor and provide a copy to the contracting officer for inclusion in the contract file;

(ii) Monitor the technical aspects of the contractor's business and technical progress, identify existing and potential problems that threaten performance, and immediately inform the contracting officer of deviations from contract objectives, or from any technical or delivery requirements, so that remedial measures may be instituted accordingly;

(iii) Provide immediate notification to the head of the program office responsible for the program whenever it is determined that program objectives are not being met, together with specific recommendations of action to be taken. A copy of the project officer's report and recommendations shall be transmitted to the contracting officer for appropriate action;

(iv) Submit, within 120 days after contract completion, a final assessment report to the contracting officer. The report should include an analysis of the contractor's performance, including the contract and program objectives achieved and missed. A copy of the final assessment report shall be forwarded to the head of the program office responsible for the program for management review and followup, as necessary; and

(v) Accompany and/or provide, when requested, technical support to the HHS auditor in the conduct of floor checks.

(3) The role of the contract administrator, auditor, cost analyst, and property administrator in assisting or advising the contracting officer in postaward administration activities such as:

(i) Evaluation of contractor systems and procedures, to include accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary

plans and rate structures, personnel policies and practices, etc.;

(ii) Processing of disputes under the Disputes clause and any resultant appeals;

(iii) Modification or termination of the contract; and

(iv) Determination of the allowability of cost charges to incentive or cost-reimbursement type contracts and progress payments under fixed-price contracts. This is especially important when award is made to new organizations or those with financial weaknesses.

(d) The contracting officer is responsible for assuring that contractor performance and contract monitoring are carried out in conformance with contract provisions. If performance is not satisfactory or if problems are anticipated, it is essential that the contracting officer take immediate action to protect the Government's rights under the contract. The contracting officer shall notify his/her immediate supervisor of problems that cannot be resolved within contract limitations and whenever contract or program objectives are not met. The notification shall include a statement of action being taken by the contracting officer.

(e) Contract cost and manpower reporting shall be required on all cost-reimbursement type contracts financed under letter of credit or Departmental Federal Assistance Financing System (DFAFS) methods of payment regardless of dollar value, and on all other cost-reimbursement type contracts of $100,000 or more. Financial reporting may be required on cost-reimbursement contracts under $100,000, when financed by other than the letter of credit or DFAFS methods, but only if it is necessary for effective contract administration. Financial and manpower information may be submitted either as a separate contract financial report or as an addendum to a public voucher, as prescribed by the contracting officer. Frequency, format (including instructions), extent, structure (including cost elements and labor categories), and distribution of reporting fall within the discretion of the contracting officer. The contracting officer shall set forth financial reporting requirements in all applicable RFPs and contracts, shall limit the requirements to those necessary for effectual cost and manpower management of the contract, and shall avoid the use of reporting requirements that are unduly burdensome on the contractor.

[49 FR 14024, Apr. 9, 1984, as amended at 54 FR 43966, Oct. 30, 1989; 54 FR 47750, Nov. 16, 1989]

342.7003 Withholding of contract payments.

342.7003–1 Policy.

(a) All solicitations and resultant contracts shall contain a withholding of contract payments clause and an excusable delays clause or a clause which incorporates the definition of excusable delays. These clauses are contained in the Department's contract general provisions.

(b) The transmittal letter used to convey the contract to each contractor shall contain a notice which highlights the contractor's agreement with the withholding of contract payments clause.

(c) No contract payment shall be made when any report required to be submitted by the contractor is overdue, or the contractor fails to perform or deliver work or services as required by the contract.

(d) The contracting officer shall issue a ten-day cure notice or initiate appropriate termination action for any failure in the contractor's performance as stated in the preceding paragraph (c).

342.7003–2 Procedures.

(a) The contracting officer is responsible for initiating immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting provisions of the contract. Compliance with the reporting provisions includes those reports to be submitted directly to the payment office. If such a report is not submitted on time, the contracting officer is to be notified promptly by the payment office.

(b) When the contract contains a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a

default in performance. In either circumstance, the contracting officer is to immediately issue a formal ten-day cure notice pursuant to the default clause. The cure notice is to follow the format prescribed in FAR 49.607 and is to include a statement to the effect that contract payments will be withheld if the default is not cured or is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a failure to perform. In either circumstance, the contracting officer is to immediately issue a written notice to the contractor specifying the failure and providing a period of ten days, or a longer period as determined necessary by the contracting officer, in which the contractor is to cure the failure or establish an excusable delay. The contracting officer is to include a statement in the written notice to the effect that contract payments will be withheld if the failure is not cured or is not determined to be excusable.

(1) If the failure is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the failure is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The contracting officer should consult FAR Subpart 49.4 for further guidance before taking any of the actions described in this section.

342.7003–3 Withholding payments.

(a) When making the determination that contract payments should be withheld in accordance with the Withholding of Contract Payments clause, the contracting officer is to immediately notify the servicing finance office in writing of the determination to suspend payments. The notice of suspension is to contain all elements of information required by the payment office to properly identify the contract and the applicable accounts involved.

(b) The contracting officer is to immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the contracting officer is to immediately notify, in writing, all recipients of the notice of suspension that the suspension is to be lifted and contract payments are to be resumed.

(d) When exercising actions regarding the withholding of payment procedures, the contracting officer must be careful not to waive any of the Government's rights when corresponding with the contractor or when taking any other actions.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.

This subpart sets forth the procedures to be followed when a cost overrun is anticipated; i.e., the allowable actual cost of performing a cost-reimbursement type contract is expected to exceed the total estimated cost specified in the contract.

342.7101 Applicability.

This subpart applies to the administration of cost-reimbursement type contracts and the cost-reimbursement portion of other types of contracts. Nothing in this subpart shall be construed to relieve contractors from compliance with the Limitation of Cost clause or any other provisions of contracts.

342.7102 General.

Reimbursement for costs incurred under cost-reimbursement contracts shall not exceed the amount of funds obligated by the contract, unless increased by the contracting officer. Cost overruns shall be held to an absolute minimum, compatible with accomplishment of the statement of work.

342.7103 Contract administration.

342.7103–1 General.

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the contracting officer shall coordinate immediately with the appropriate program office to determine whether the contract should be modified or terminated. If the contracting officer receives information from a source other than the contractor that a cost overrun is anticipated, the contracting officer shall verify the information with the contractor, and remind the contractor of the notification requirements of the Limitation of Cost clause.

342.7103–2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the contracting officer shall inform the contractor to submit a request for additional funds which is to include:

(1) Name and address of contractor.

(2) Contract number and expiration date.

(3) Contract item(s) and amount(s) creating the overrun.

(4) The elements of cost which changed from the original estimate (i.e., labor, material, travel, overhead, etc.) to be furnished in the following format:

(i) Original estimate,

(ii) Costs incurred to date,

(iii) Estimated cost to completion,

(iv) Revised estimate, and

(v) Amount of adjustment.

(5) The factors responsible for the increase, i.e., error in estimate, changed conditions, etc.

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits a notice of an impending overrun, the contracting officer shall:

(1) Immediately advise the appropriate program office and furnish a copy of the notice and any other data received;

(2) Request audit or cost advisory services, and technical support, as necessary, for evaluation of information and data received; and

(3) Maintain continuous follow-up with the program office in order to obtain a timely decision as to whether the work under the contract should be continued and additional funds provided, or the contract terminated. The decision of the program office must be supported by an appropriate written statement and funding authority, or a formal request for termination, when applicable. After a programming and funding decision is received from the program office, the contracting officer shall promptly notify the contractor in writing that:

(i) A specified amount of additional funds has been allotted to the contract by a contractual instrument; or

(ii) Work will be discontinued when the funds allotted to the contract have been exhausted, and that any work performed after that date is at the contractor's risk; or

(iii) The Government is considering whether additional funds should be allotted to the contract and will notify the contractor as soon as possible, but that any work performed after the funds then allocated to the contract have been exhausted is at the contractor's risk.

Timely, formal notification of the Government's intention is essential in order to preclude loss of contractual rights in the event of dispute, termination, or litigation.

(c) If program requirements permit, contracting officers should refrain from issuing any contractual documents which will require new work or an extension of time, pending resolution of an overrun or additional fund request.

342.7104 Contract modifications.

(a) Modifications to contracts containing the Limitation of Cost clause shall include either:

(1) A provision increasing the estimated or ceiling amount referred to in the Limitation of Cost clause of the contract and stating that the clause will thereafter apply in respect to the increase amount; or

(2) A provision stating that the estimated or ceiling amount referred to in the contract is not changed by the modification and that the Limitation of Cost clause will continue to apply with respect to the amount in effect prior to the modification.

(b) A fixed-fee provided in a contract shall not be changed when funding a cost overrun. Changes in fixed-fee will be made only to reflect changes in the scope of work which justify an increase or decrease in fee.

PART 345—GOVERNMENT PROPERTY

Subpart 345.3—Providing Government Property to Contractors

Sec.
345.370 Providing Government property (in general).

Subpart 345.4—Contractor Use and Rental of Government Property

345.405 Contracts with foreign governments or international organizations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14030, Apr. 9, 1984, unless otherwise noted.

Subpart 345.3—Providing Government Property to Contractors

345.370 Providing Government property (in general).

(a) A contractor may be provided Government property or allowed to acquire such property at Government expense upon determination that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements, etc.;

(2) The Government receives adequate consideration for providing the property; or

(3) Furnishing Government property is likely to result in substantially lower cost to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the cost to the Government of the contractor's use of privately-owned property.

(b) The determination that it is necessary to provide a contractor or subcontractor with property will be made by the contracting officer with the advice of the agency property official.

(c) If the program office is aware, prior to the submission of the request for contract, that it will be necessary to provide prospective contractors with property, a written justification must accompany the request for contract to the contracting activity.

Subpart 345.4—Contractor Use and Rental of Government Property

345.405 Contracts with foreign governments or international organizations.

Upon the request of a foreign government or international organization, or a contractor certifying that it is acting on behalf of a foreign government or international organization, the contracting officer, with advice from the agency property official cognizant of Government property located in the United States, its possessions, or Puerto Rico, may give written approval for its use without charge on contracts or subcontracts thereunder if:

(a) The foreign government or international organization would be authorized to place the contract with the activity concerned under the Foreign Assistance Act of 1961, as amended, or such use is authorized by an agreement with the foreign government;

(b) The foreign government's placement of the contract directly with the contractor is consistent with the best interests of the United States;

(c) It appears that the foreign government will place the contract with the contractor whether or not use is authorized, and no competitive pricing advantage will accrue to the contractor by virtue of its use;

(d) The contractor agrees that no charge for the use of the property will

be included in the price charged the foreign government under the contract; and

(e) The use will not interfere with foreseeable requirements of the United States.

SUBCHAPTER H—CLAUSES AND FORMS

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.2—Texts of Provisions and Clauses

Sec.
352.202–1 Definitions.
352.215–12 Restriction on disclosure and use of data.
352.215–71 [Reserved]
352.215–72 Pre-proposal conference.
352.216–70 Negotiated overhead rates—fixed.
352.216–72 Additional cost principles.
352.224–70 Confidentiality of information.
352.228–7 Insurance—Liability to third persons.
352.232–9 Withholding of contract payments.
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352.233–70 Litigation and claims.
352.237–70 Consulting services reporting.
352.242–71 Final decisions on audit findings.
352.242–72—352.242–79 [Reserved]
352.249–14 Excusable delays.
352.270–1 Accessibility of meetings, conferences, and seminars to persons with disabilities.
352.270–2 Indian preference.
352.270–3 Indian preference program.
352.270–4 Pricing of adjustments.
352.270–5 Key personnel.
352.270–6 Publication and publicity.
352.270–7 Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14031, Apr. 9, 1984, unless otherwise noted.

Subpart 352.2—Texts of Provisions and Clauses

352.202–1 Definitions.

Insert the following clause in all solicitations and resultant contracts instead of the clause in FAR 52.202–1 except when contemplating (a) a fixed price research and development contract that is expected to be $2,500 or less or (b) a purchase order.

DEFINITIONS (APR 1984)

(a) The term *Secretary* or *Head of the Agency* (also called *Agency Head*) means the Secretary, Under Secretary, or any Assistant Secretary, Administrator or Commissioner, of the Department of Health and Human Services; and the term ''his/her duly authorized representative'' means any person, persons, or board authorized to act for the Secretary.

(b) The term *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) The term *Project Officer* means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term *Department* means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term *subcontract* includes purchase order under this contract.

(End of clause)

Alternate I (APR 1984). For cost-reimbursement contracts other than purchase orders, delete paragraph (c) above and replace with the following paragraph (c):

(c) The term *Project Officer* means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost of this contract or a change in performance period of this contract. In addition, the Project Officer is not authorized to receive or act upon the Contractor's notification of a revised cost estimate pursuant to the Limitation of Cost or Limitation of Funds clause of this contract.

[49 FR 14031, Apr. 9, 1984, as amended at 53 FR 15564, May 2, 1988]

352.215–12 Restriction on disclosure and use of data.

Insert the following provision in all requests for proposals, and all requests for quotations other than those for information or planning purposes. This

provision shall be used in lieu of the provision in FAR 52.215–12.

RESTRICTION ON DISCLOSURE AND USE OF DATA (APR 1984)

The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; *provided,* that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act:

Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) Officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes. The offeror acknowledges that the Department may not be able to withhold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI Officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act.

The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).

In addition, the offeror should mark each page of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.

Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

(End of provision)

352.215–71 [Reserved]

352.215–72 Pre-proposal conference.

If a pre-proposal conference is to be held as indicated in FAR 15.409, insert the following provision in the affected solicitation:

PRE-PROPOSAL CONFERENCE (APR 1984)

A pre-proposal conference will be held with prospective offerors at (insert local prevailing time) on (insert date) in room (insert room number) at (insert name and location of building).

The pre-proposal conference will be held for the purpose of providing information concerning the Government's requirements which may be helpful in the preparation of proposals and for answering any questions which you have regarding this solicitation.

The success of this type of conference depends largely on the leadtime available to the Government for research in connection with questions submitted by prospective offerors. Therefore, you are requested to mail written questions concerning any areas of uncertainty which, in your opinion, require clarification or correction, in sufficient time to be received on or before (insert date).

Your questions should be submitted to the Contract-Officer, (insert name of Contracting Officer), and the envelope should be marked ''Pre-Proposal Conference, RFP No. (insert number of RFP).'' A set of questions and answers will be furnished to all prospective offerors whether or not they are in attendance.

Because of space limitations, each prospective offeror will be limited to a total of (insert number) representatives.

Attendance at the pre-proposal conference is recommended; however, attendance is not a prerequisite for proposal submission and will not be considered a factor in proposal evaluation.

(End of provision)

352.216–70 Negotiated overhead rates—fixed.

Insert the following clause in all cost-reimbursement contracts with educational institutions and nonprofit organizations when fixed rates subject to carryforward adjustments are used.

NEGOTIATED OVERHEAD RATES—FIXED (APR 1984)

(a) Notwithstanding the provisions of the clause entitled ''Allowable Cost and Payment,'' the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. When the application of the negotiated fixed rates against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for such period, such greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The Contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the Secretary or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the Contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carryforward adjustments, if any, by the Contractor and the Secretary, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR) as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify: (1) The agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed overhead rate or rates or to the amount of any carryforward adjustment under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the ''Disputes'' clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the ''Allowable Cost and Payment'' clause set forth in FAR 52.216–7, as in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the Contractor and the Secretary or the duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of paragraphs (b), (d), and (e), of this clause.

(End of clause)

352.216–72 Additional cost principles.

As prescribed in 316.307(j), insert the following clause in all solicitations and resultant cost-reimbursement contracts with nonprofit organizations, as identified in OMB Circular A–122.

ADDITIONAL COST PRINCIPLES (OCT 1990)

(a) *Bid and proposal costs.* (1) Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal contracts, grants, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications.

(2) Bid and proposal costs of the current accounting period are allowable as indirect costs.

(3) Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable.

(4) Bid and proposal costs do not include independent research and development costs covered by the following paragraph, or

preaward costs covered by paragraph 33 of Attachment B to OMB Circular A–122.

(b) *Independent research and development costs.* (1) Independent research and development is research and development conducted by an organization which is not sponsored by Federal or non-Federal contracts, grants, or other agreements.

(2) Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development.

(3) The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

[55 FR 42197, Oct. 18, 1990]

352.224–70 Confidentiality of information.

The following clause is covered by the policy set forth in subpart 324.70 and is to be used in accordance with the instructions set forth in 324.7004.

CONFIDENTIALITY OF INFORMATION (APR 1984)

(a) Confidential information, as used in this clause, means (1) information or data of a personal nature about an individual, or (2) proprietary information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary unvalidated findings could create erroneous conclusions which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the ''Disputes'' clause.

(d) If it is established elsewhere in this contract that information to be utilized under this contract, or a portion thereof, is subject to the Privacy, Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, that is information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization, shall not be disclosed without the prior written consent of the individual, institution, or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45-day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and the Contracting Officer will be settled pursuant to the ''Disputes'' clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor should obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) Contracting Officer determinations will reflect the results of internal coordination with appropriate program and legal officials.

(i) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

352.228–7 Insurance—Liability to third persons.

As prescribed in 328.311–2, contracting officers shall include the following clause in all cost-reimbursement contracts, in lieu of the clause at FAR 52.228–7:

INSURANCE—LIABILITY TO THIRD PERSONS (DEC 1991)

(a)(1) Except as provided in subparagraph (2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-

insurance program; *Provided* That, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with performance of this contract and for which the Contractor seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall be reimbursed—

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract, and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise within the funds available under the Limitation of Cost or the Limitation of Funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is limited to the amounts reflected in final judgments, or settlements approved in writing by the Government, but in no event to exceed the funds available under the Limitation of Cost or Limitation of Funds clause of this contract. Nothing in this contract shall be construed as implying that, at a later date, the Government will request, or the Congress will appropriate, funds sufficient to meet any deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

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

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause: *Provided,* That such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

Alternate I (APR 1984). If the solicitation includes the provision at 52.228–6, Insurance-Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution, add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; *provided,* that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, to liabilities to third persons for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

Alternate II (APR 1984). If the solicitation includes the provision at 52.228–6, Insurance-Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution, substitute the following paragraphs (a) and (b) for paragraphs (a) through (g) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[56 FR 58316, Nov. 19, 1991]

352.232–9 Withholding of contract payments.

Insert the following clause in all solicitations and contracts other than purchase orders:

WITHHOLDING OF CONTRACT PAYMENTS (APR 1984)

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, will result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled ''Excusable Delays'' or ''Default'', as applicable. The Government shall promptly notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.232–71 Cost sharing.

The policy relative to cost sharing is set forth in 335.070.

(a) In contracts for which cost-sharing has been individually negotiated, the clause set forth in FAR 52.232–20 shall be used. Also, an article reading substantially as follows, which includes a cost-sharing formula agreed upon by the contracting officer and the contractor that provides for the ratio of cost-sharing for both the originally established estimated cost and any increase pursuant to the FAR clause, shall be included in the contract.

COST SHARING (APR 1984)

The Contractor agrees to share in the cost of the work hereunder to the extent of not less than (indicate percent of the total cost or dollar amount, etc.) and shall maintain records of all costs so contributed, as well as costs to be paid by the Government. Such records shall be subject to audit. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

(b) In contracts for which cost-sharing will be in accordance with a previously negotiated institutional agreement, the clause set forth in FAR 52.232–20 shall also be used. However, instead of specifying a cost-sharing formula, the following shall be included as a special provision.

COST SHARING UNDER INSTITUTIONAL AGREEMENT (APR 1984)

This contract is subject to an Institutional Cost-Sharing Agreement which became effective with respect to HHS research contracts on (date), and the Contractor agrees that the Government shall not bear the entire cost of the work hereunder.

(End of clause)

352.232–73 Method of payment—letter of credit.

When authorized by an individual or blanket determination, findings, and authorization for advance payment, under a letter of credit, the following clause shall be used: (See 332.406 for further instructions regarding use of the clause.)

METHOD OF PAYMENT—LETTER OF CREDIT (APR 1984)

(a) The Contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No. ___, established by _____ Department of Health and Human Services, against which the Contractor will withdraw funds pursuant to Federal Reserve Letter of Credit procedures contained in Treasury Department Circular 1075 (31 CFR part 205).

(b) At the request of the Contractor and subject to the following conditions, the Government shall make an advance payment, or advance payments, from time to time, to the Contractor. No advance payment shall be made: (1) Without the approval of the office administering advance payments (hereinafter called the ''Administering Office'' and designated in paragraph (g)(2)) as to the financial necessity therefor (except in the case of educational institutions); (2) in an amount which, together with all advance payments made, exceeds the contract amount; and (3) without a properly certified invoice. The Contractor shall (1) initiate cash drawdowns only when actually needed for its disbursements, (2) report timely the case disbursements and balances as required by the Administering Office, and (3) impose the same standards of timing and amount upon any subcontractors including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered an event under paragraph (f) of this clause.

(c) The funds drawn by the Contractor against the Federal Reserve Letter of Credit shall be only for current allowable expenditures necessary for the performance of this contract.

(d) When requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of the advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs or in excess of the contract price.

(e) If, upon completion or termination of this contract, all amounts obtained by the Contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(f) Upon the happening of any of the following events of default: (1) A finding by the Administering Office that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provisions of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of an act of bankruptcy; the Government, without limiting any rights it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Payment can also be stopped for lack of submission of timely and accurate reports in accordance with contract requirements. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 80 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; and/or

(3) Take possession of and, with or without advertisement, sell at public sale at which the Government may be purchaser, or at a private sale, all or any part of the property

on which the Government has a lien under this contract, and after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(g)(1) No interest shall be charged for advance payments made hereunder, except interest during a period of default as provided in paragraph (f)(2). The Contractor shall charge interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41 85 Stat. 97 for the Renegotiation Board on subadvances or downpayments to subcontractors and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with educational or research institutions provided such subcontracts are awarded without profit or fee for research, development or experimental work.

(2) The office administering advance payments is designated as _____

(End of clause)

352.232–74 Estimated cost and fixed fee—incrementally funded contract.

The following clause, or one reading substantially as it, shall be included in the Special Provisions of an incrementally funded contract:

CONSIDERATION—ESTIMATED COST AND FIXED FEE (APR 1984)

(a) It is estimated that the total cost to the Government for full performance of this contract will be $_____, of which the sum of $_____ represents the estimated reimbursable costs and $_____ represents the fixed-fee.

(b) Total funds currently available for payment and allotted to this contract are $_____, of which $_____ represents the estimated reimbursable costs and $_____ represents the fixed-fee. For further provisions on funding, see the Limitation of Funds clause.

(c) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by (date) _____.

(d) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

(End of clause)

352.232–75 Incremental funding.

The following provision shall be included in all requests for proposals whenever the use of incremental funding is contemplated:

INCREMENTAL FUNDING (APR 1984)

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled Limitation of Funds. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Funds clause to be included in the resultant contract shall supersede the Limitation of Cost clause found in the General Provisions.

(End of provision)

352.233–70 Litigation and claims.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (APR 1984)

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled ''Allowable Cost and Payment.'' Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the

Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

352.237–70 Consulting services reporting.

The contracting officer shall include the following clause in every contract for consulting services, as defined in the General Administration Manual Chapter 8–15 and as required by 337.270.

CONSULTING SERVICES REPORTING (APR 1984)

The Contractor shall set forth on the cover of every report submitted pursuant to this contract the following information: (a) Name and business address of the Contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Department's project officer and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

352.242–71 Final decisions on audit findings.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

FINAL DECISIONS ON AUDIT FINDINGS (APR 1984)

For the purpose of issuing final decisions under the Disputes clause of this contract concerning monetary audit findings, the Contracting Officer shall be that person with ultimate responsibility for making that decision in accordance with Chapter 1–105, Resolution of Audit Findings, of the Department's Grants Administration Manual.

(End of clause)

352.242–72—352.242–79 [Reserved]

352.249–14 Excusable delays.

Insert the following clause in all solicitations and resultant contracts other than purchase orders which do not have either a default or excusable delays clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless: (1) The supplies or services to be furnished by the subcontractor were obtainable from other sources, (2) The Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (3) The Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he/she shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the termination clause hereof. (As used in this clause, the terms ''subcontractor'' and ''subcontractors'' mean subcontractor(s) at any tier.)

(End of clause)

352.270–1 Accessibility of meetings, conferences, and seminars to persons with disabilities.

The following clause is to be used in accordance with 370.102:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (APR 1984)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the project officer for approval prior to initiating action. (A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.)

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site, one 12′ wide space must be set aside for the care of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means to assist a person who has a mobility impairment may be used. Alternate means must be satisfactory in the judgment of the Government project officer.

(2) *Entrances.* (i) ''Entrances'' shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1″ rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30″ in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29″ wide by 45″ long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30″ in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the project officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30″ in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29″ wide by 45″ long. A space 60″ by 60″ or 63″ by 56″ of unobstructed floor space as measured 12″ above the floor is acceptable by standard; other layouts will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29″ wide by 45″ long (by standard, the minimum is 3′–0″ by 4′–8″) with outswinging doors or privacy curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is

conveniently located nearby, whichever is satisfactory to the project officer.

(ii) Overnight facilities shall provide for the same minimum accessiblity requirements as the facility utilized for the meeting, conference, or seminar. In addition, guest room access from the main entrance area shall be level, ramped at an independently negotiable incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29″ wide by 45″ long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30″ in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) *Provisions of Services for Sensory Impaired Attendees.* (1) The Contractor, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide on site teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the nonrepresented group, or groups, is not required.

(End of clause)

352.270–2 Indian preference.

The following clause shall be used as prescribed in 370.202(a):

INDIAN PREFERENCE (APR 1984)

(a) The Contractor agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain statistical records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled ''Equal Opportunity.''

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and

controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

(1) ''Indian'' means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of that Tribe.

(2) ''Indian Tribe'' means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) ''Indian organization'' means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) ''Indian-owned economic enterprise'' means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control* of the enterprise.

(f) The Contractor agrees to include the provisions of this clause, including this paragraph (f), in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270–3 Indian preference program.

The following clause shall be used as prescribed in 370.202(b):

INDIAN PREFERENCE PROGRAM (APR 1984)

(a) In addition to the requirements of the clause of this contract entitled ''Indian Preference,'' the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive perference for employment and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) Maintain liaison with the Government and the Tribe(s) on Indian perference matters; (ii) Supervise compliance with the provisions of this clause; and (iii) Administer the Contractor's Indian perference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than twenty (20) calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including:

(i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) A statement indicating that preference will

be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93–638 (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) Definitions for the terms ''Indian organization'' and ''Indian-owned economic enterprise'' as prescribed under the ''Indian Preference'' clause of this contract; (iv) A representation to be completed by the bidder or offeror that it is an Indian organization or ''Indian-owned economic enterprise; and (v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian orgnizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract. If one or more responsive bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. If the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract. (5) Maintain written records under this contract which indicate: (i) The numbers of Indians seeking employment for each employment position available under this contract; (ii) the number and types of positions filled by Indians and non-Indians, and the total number of Indians employed under this contract; (iii) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) Reasons why preference was not given to Indian firms as subcontracators or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract; and (vi) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms ''Indian,'' ''Indian Tribe,'' ''Indian Organization,'' and ''Indian-owned economic enterprise'' are defined in the clause of this contract entitled ''Indian Preference.''

(2) ''Indian reservation'' includes Indian reservations, public domain Indian Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.)

(3) ''On or near an Indian Reservation'' means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a workday.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270–4 Pricing of adjustments.

Insert the following clause in all solicitations and resultant fixed-priced contracts other than purchase orders.

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in determination of a contract price adjustment pursuant to the ''Changes'' clause or any provision of this contract, such costs shall be determined in accordance with the applicable cost principles and procedures set forth below:

Principles	Types of organizations
(a) Subpart 31.2 of the Federal Acquisition Regulation.	Commercial.

Principles	Types of organizations
(b) Subpart 31.3 of the Federal Acquisition Regulation.	Education.
(c) Subpart 31.6 of the Federal Acquisition Regulation.	State or local governments.
(d) 45 CFR Part 74 Appendix E	Hospitals.
(e) Subpart 31.7 of the Federal Acquisition Regulation.	Other nonprofit institutions.

(End of clause)

[49 FR 14031, Apr. 9, 1984, as amended at 50 FR 38005, Sept. 19, 1985]

352.270–5 Key personnel.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

KEY PERSONNEL (APR 1984)

The personnel specified in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *Provided,* that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by the clause. The contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(End of clause)

352.270–6 Publication and publicity.

Insert the following clause in all solicitations and resultant contracts.

PUBLICATIONS AND PUBLICITY (JUL 1991)

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other publication is published, and furnish a copy of it as finally published.

(b) The Contractor shall include in any publication resulting from work performed under this contract a disclaimer reading as follows:

The content of this publication does not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

(End of clause)

[56 FR 33882, July 24, 1991, as amended at 56 FR 57602, Nov. 13, 1991]

352.270–7 Paperwork Reduction Act.

Insert the following clause in all solicitations and contracts.

PAPERWORK REDUCTION ACT (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties, the Paperwork Reduction Act of 1980 (Pub. L. 96–511) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Assistant Secretary for Management and Budget (ASMB) within the Department of Health and Human Services (HHS) and the Office of Management and Budget (OMB). Contractors and Project Officers should be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring ASMB and OMB clearance.

(b) The Contractor shall obtain the required ASMB and OMB clearance through the Project Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and proceed with the collection of information shall be in writing by the Contracting Officer. The Contractor must plan at least 120 days for ASMB and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

PART 353—FORMS

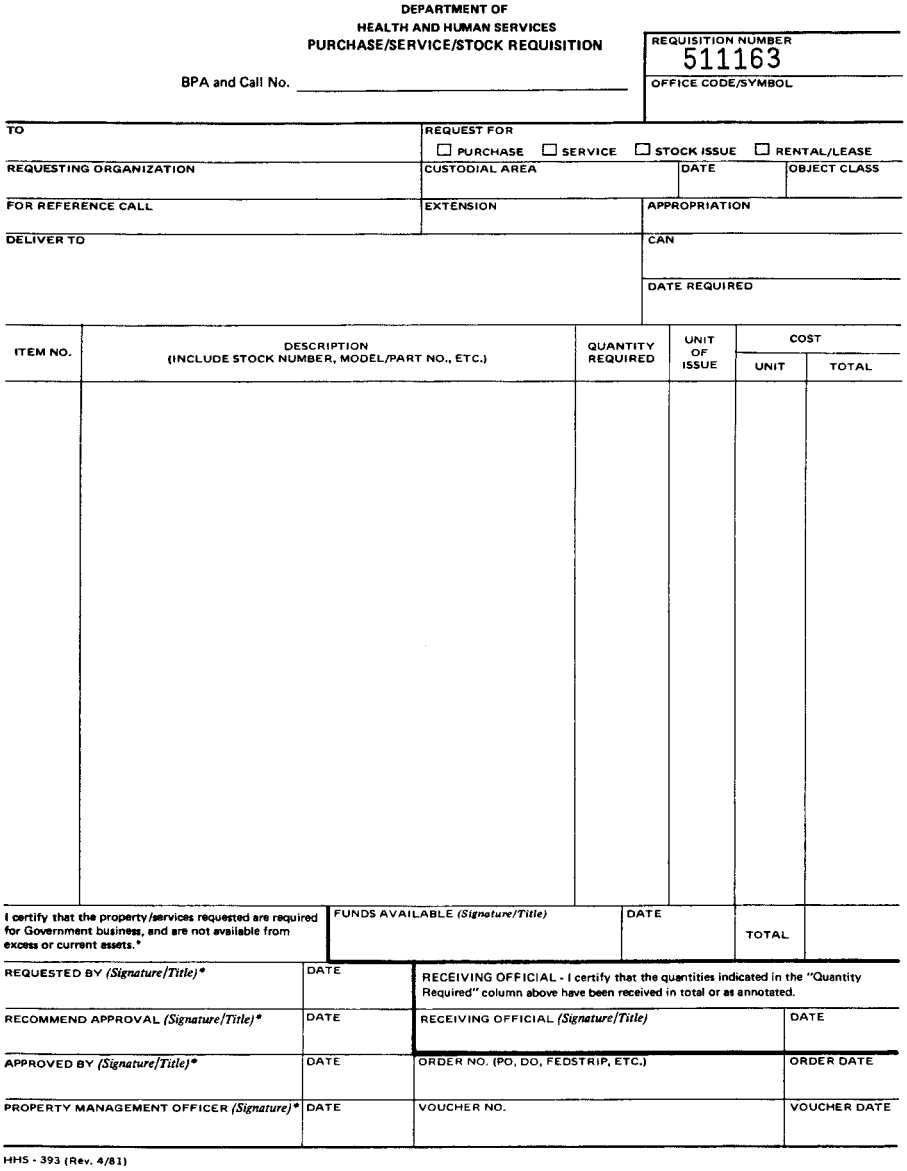
Subpart 353.3—Illustrations of Forms

Sec.
353.370–393 Form HHS 393, Purchase/Service/Stock Requisition.
353.370–674 Form HHS 674, Structured Approach Profit/Fee Objective.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 353.3—Illustrations of Forms

353.370–393 Form HHS 393, Purchase/Service/Stock Requisition.



DEPARTMENT OF
HEALTH AND HUMAN SERVICES
PURCHASE/SERVICE/STOCK REQUISITION

REQUISITION NUMBER: 511163

BPA and Call No. _____

OFFICE CODE/SYMBOL

TO	REQUEST FOR ☐ PURCHASE ☐ SERVICE ☐ STOCK ISSUE ☐ RENTAL/LEASE		
REQUESTING ORGANIZATION	CUSTODIAL AREA	DATE	OBJECT CLASS
FOR REFERENCE CALL	EXTENSION	APPROPRIATION	
DELIVER TO		CAN	
		DATE REQUIRED	

ITEM NO.	DESCRIPTION (INCLUDE STOCK NUMBER, MODEL/PART NO., ETC.)	QUANTITY REQUIRED	UNIT OF ISSUE	COST UNIT	COST TOTAL

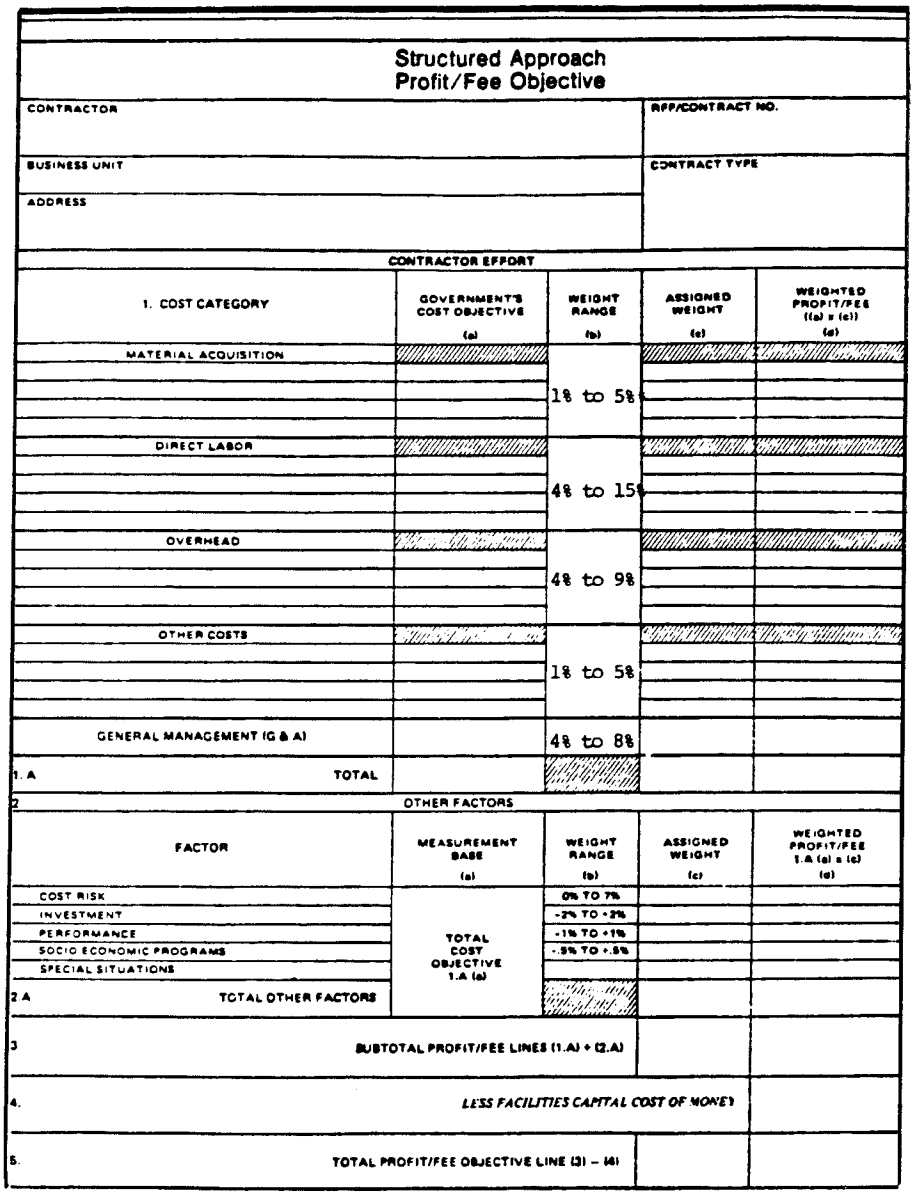
I certify that the property/services requested are required for Government business, and are not available from excess or current assets.*	FUNDS AVAILABLE *(Signature/Title)*	DATE	TOTAL	

REQUESTED BY *(Signature/Title)**	DATE	RECEIVING OFFICIAL - I certify that the quantities indicated in the "Quantity Required" column above have been received in total or as annotated.	
RECOMMEND APPROVAL *(Signature/Title)**	DATE	RECEIVING OFFICIAL *(Signature/Title)*	DATE
APPROVED BY *(Signature/Title)**	DATE	ORDER NO. (PO, DO, FEDSTRIP, ETC.)	ORDER DATE
PROPERTY MANAGEMENT OFFICER *(Signature)**	DATE	VOUCHER NO.	VOUCHER DATE

HHS - 393 (Rev. 4/81)

[51 FR 44295, Dec. 9, 1986]

353.370–674 Form HHS 674, Structured Approach Profit/Fee Objective.



Structured Approach Profit/Fee Objective

CONTRACTOR	RFP/CONTRACT NO.
BUSINESS UNIT	CONTRACT TYPE
ADDRESS	

CONTRACTOR EFFORT

1. COST CATEGORY	GOVERNMENT'S COST OBJECTIVE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE ((a) x (c)) (d)
MATERIAL ACQUISITION		1% to 5%		
DIRECT LABOR		4% to 15%		
OVERHEAD		4% to 9%		
OTHER COSTS		1% to 5%		
GENERAL MANAGEMENT (G & A)		4% to 8%		
1. A TOTAL				

2 OTHER FACTORS

FACTOR	MEASUREMENT BASE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE 1.A (a) x (c) (d)
COST RISK	TOTAL COST OBJECTIVE 1.A (a)	0% TO 7%		
INVESTMENT		-2% TO +2%		
PERFORMANCE		-1% TO +1%		
SOCIO ECONOMIC PROGRAMS		-.5% TO +.5%		
SPECIAL SITUATIONS				
2 A TOTAL OTHER FACTORS				

3	SUBTOTAL PROFIT/FEE LINES (1.A) + (2.A)	
4.	*LESS FACILITIES CAPITAL COST OF MONEY*	
5.	TOTAL PROFIT/FEE OBJECTIVE LINE (3) – (4)	

FORM HHS-674 (12/81)

[49 FR 14047, Apr. 9, 1984]

SUBCHAPTER T—HHS SUPPLEMENTATIONS

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

Sec.
370.101 Policy.
370.102 Responsibilities.

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.
370.202 Applicability.
370.203 Definitions.
370.204 Compliance enforcement.
370.205 Tribal preference requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14048, Apr. 9, 1984, unless otherwise noted.

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

370.101 Policy.

(a) It is the policy of HHS that all meetings, conferences, and seminars be accessible to individuals with disabilities. For the purposes of this policy, accessibility is defined as both physical access to meeting, conference, and seminar sites, and aids and services to enable individuals with sensory disabilities to fully participate in meetings, conferences, and seminars.

(b) In regard to acquisition, the policy is applicable to all contracts where the statement of work requires the contractor to conduct meetings, conferences, or seminars that are open to the public or involve HHS personnel, but not to ad hoc meetings that may be necessary or incidental to contract performance.

370.102 Responsibilities.

(a) The contracting officer shall include the clause in 352.270–1 in every solicitation and resulting contract when the statement of work requires the contractor to conduct meetings, conferences, or seminars in accordance with 370.101(b).

(b) The project officer shall be responsible for obtaining, reviewing, and approving the contractor's plan, which is to be submitted in response to paragraph (a) of the contract clause in 352.270–1. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars will be acceptable. The project officer, prior to approving the plan, shall consult with the Office of Engineering Services serving the region where the meeting, conference, or seminar is to be held, to assure that the contractor's plan meets the accessibility requirements of the contract clause. The Office of Engineering Services shall make a determination on the adequacy of the contractor's plan, and notify the project officer, in writing, within ten (10) working days of receiving the request from the project officer.

[49 FR 14048, Apr. 9, 1984, as amended at 50 FR 23135, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 88 Stat. 2205; 25 U.S.C. 450e(b) requires:

> Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—
>
> (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

370.202 Applicability.

The Indian Preference clause set forth in 352.270–2 and the Indian Preference Program clause set forth in 352.270–3 have been developed to implement section 7(b) of Public Law 93–638 for all activities of the Department. The clauses shall be used by any affected departmental contracting activity as follows, except solicitations issued and contracts awarded pursuant to Title I of Public Law 93–638 (25 U.S.C. 450 et seq.) are exempted:

(a) The Indian Preference clause (352.270–2) shall be included in each solicitation and resultant contract, regardless of dollar amount:

(1) When the contract is to be awarded pursuant to an act specifically authorizing contracts with Indian organizations; or

(2) Where the work to be performed under the contract is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The Indian Preference Program clause (352.270–3) shall be included in each solicitation and resultant contract when:

(1) The dollar amount of the acquisition is expected to equal or exceed $50,000 for nonconstruction work or $100,000 for construction work;

(2) The Indian Preference clause is to be included in the solicitation and resultant contract; and

(3) The determination is made, prior to solicitation that the work to be performed under the resultant contract will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the Indian Preference Program clause may be included in any solicitation and resultant contract below the $50,000 or $100,000 level for nonconstruction or construction contracts, respectively, but which meet the requirements of paragraphs (b) (2) and (3) of this section, and, in the opinion of the contracting activity, offer substantial opportunities for Indian employment, training, and subcontracting.

370.203 Definitions.

For purposes of this Subpart 370.2, the following definitions shall apply:

(a) *Indian* means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of that Tribe.

(b) *Indian Tribe* means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) *Indian organization* means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

(d) *Indian-owned economic enterprise* means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control.*

(e) *Indian reservation* includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(f) *On or near an Indian Reservation* means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

370.204 Compliance enforcement.

(a) The concerned contracting activity shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of

the clauses set forth in 352.270–2 and 352.270–3. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses set forth in 352.270–2 and 352.270–3 which are filed in writing with the contracting activity shall be promptly investigated and resolved by the contracting officer.

370.205 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting activity may supplement the clause set forth in 352.270–3 by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting activity and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Public Law 93–638 and must be approved by the affected program director and approved for legal sufficiency by the Business and Administrative Law Division, OGC, or a regional attorney before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause in 352.270–3 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in these regulations shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in paragraph (a) above, become a requirement in contracts covered under this Subpart 370.2, and must not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

ATTACHMENT I TO CHAPTER 3—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES

State	Organization and payee No.	Recipient CRS–EIN [1]	Letter of credit
Alabama	University of Alabama Medical Center, 1–636005396–A4.	1–636001138–A2, 1–636001138–A3, 1–636001138–A4, 1–636001138–A5,.	750080110
	Director, Office of Grants and Contracts Accounting, University of Alabama, University Station, Birmingham, Alabama 35296.	1–636001138–B1, 1–636005396–A3 1–636005396–A4, 1–636005396–A5, 1–636005396–A6, 1–636005396–A7, 1–636005396–A8.	.....
	University of Alabama, 1–636001138–A1	1–636001138–A1, 1–636001138–A6	75080115
	Comptroller, University of Alabama, P.O. Box M, University, Alabama.	1–636001138–A7, 1–636001138–A8, 1–636001138–A9, 1–636001138–B2, 1–636001138–B3, 1–636001138–B4.	.....
	Southern Research, Institute, 1–630288868–A2	1–630288868–A1, 1–630288868–A2	75083532
	Financial Officer, Southern Research Institute, 2000 9th Avenue, South, Birmingham, Alabama 35205.	.....	.....
Alaska	State of Alaska, 1–900001517–A1	1–000700389–A1, 1–926001185–A2, 1–926001185–A3.	75080021
	Director, Division of Finance, Department of Administration, Pouch C, Juneau, Alaska 99801.	1–926001185–A4, 1–926001185–A5, 1–926001185–A7, 1–926001185–B1, 1–926001185–B2, 1–926001185–B3, 1–926001185–B6, 1–926001185–B7, 1–926001185–B8, 1–926001185–B9, 1–926001185–C1, 1–926001185–C2.	.....
Arizona.			
	State of Arizona, 1–866004791–B7	1–866004791–A1, 1–866004791–A2, 1–866004791–A3,	75080628

ATTACHMENT I TO CHAPTER 3—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES—Continued

State	Organization and payee No.	Recipient CRS–EIN [1]	Letter of credit
	State Treasurer's Office, State Capitol, Phoenix, Arizona, 85007.	1–866004791–A4, 1–866004791–A5, 1–866004791–A6, 1–866004791–A7, 1–866004791–A8, 1–866004791–A9, 1–866004791–B2, 1–866004791–B3, 1–866004791–B7, 1–866004791–B8, 1–866004791–C2, 1–866004791–C5, 1–866004791–C7, 1–866004791–C8, 1–866004791–C9, 1–866004791–D1, 1–866004791–D2, 1–866004791–D3, 1–866004791–D5, 1–866004791–D6, 1–866004791–D7, 1–866004791–D8, 1–866004791–D9, 1–866004791–E3, 1–866004791–E5, 1–866004791–E6, 1–866004791–E7, 1–866004791–E8, 1–866004791–E9.	.....
California	County of San Diego, 1–95000934–A2	1–956000924–A1 1–956000924–A2	75080386
	Auditor and Controller, County of San Diego, County Administration Center, 1600 Pacific Highway, San Diego, California 92101.	.....	.....
	University of California, 1–900001727–A1	.....	75081471
	Letter of Credit, Universities of California, Berkeley, California 94720.	.....	.....
	Santa Barbara	1–956006145–A1 1–956006145–A2	75081471
	San Diego	1–956006144–A1, 1–956006144–A2, 1–956006144–A3.	75081471
	Davis	1–946036494–A1	75081471
	Los Angeles	1–956006143–A1, 1–956006143–A2, 1–956006143–A3, 1–956006143–A4, 1–956006143–A6.	75081471
	Irvine	1–952226406–A1, 1–952226406–A2	75081471
	Berkeley	1–946002133–A1, 1–946002133–A2	75081471
	Riverside	1–237361894–A1, 1–956006142–A1	75081471
	Santa Cruz	1–941539563–A1	75081471
	San Francisco	1–946036493–A1, 1–946036493–A6, 1–946036493–A7, 1–946036493–A8.	75081471
	Los Alamos Lab	1–856004458–A1	75081471
	Lawrence Livermore Lab	1–946031193–A1	75081471
	Scripps Clinic and Res. Fndn	1–951684089–A1	75087560
	Comptroller, Scripps Clinic and Res. Fndn. 476 Prospect Street, La Jolla, California 92037.	.....	.....
Connecticut	Yale University, 1–060646973–A1	1–060646973–A1, 1–060646973–A2, 1–060646973–A4.	75089755
	Treasurer, Yale University, Grants and Contracts, 155 Whitney Avenue, New Haven, Conn. 05611.	1–060646973–A5, 1–060646973–A6, 1–060646973–A7, 1–060646973–A8.	.....
District of Columbia.	Georgetown University, 1–530196603–A1	1–530196603–A1, 1–530196603–A2, 1–530196603–A3.	75083450
	Treasurer, Georgetown University, 37th and O Streets NW., Washington, D.C. 20007.	1–530196603–A4, 1–530196603–A5, 1–530196603–A6, 1–530196603–A7.	.....
	George Washington University, 1–530196584–A1.	1–530196584–A1, 1–530196584–A3	75083441
	Treasurer, George Washington University, Rice Hall, Washington, D.C. 20006.	.....	.....
	Gorgas Memorial Institute, 1–530196518–A1 ...	1–530196518–A1	75083522
	Treasurer, Gorgas Memorial Institute, 2007 I Street NW., Washington, D.C. 20007.	.....	.....
	National Academy of Sciences, 1–530196932–A1.	1–530196932–A1, 1–530196932–A2	75085992
	Treasurer, National Academy of Sciences, 2101 Constitution, Avenue NW., Washington, D.C. 20037.	.....	.....
Florida	University of Florida, 1–596001874–C7, Fiscal Contract Officer, University of Florida, Room 106, R. Johnson Hall, Gainesville, Florida 32611.	1–596001874–C7, 1–596001874–F2	75083326
	University of Miami, 1–590624458–A1	1–590624458–A1, 1–590624458–A2, 1–590624458–A3.	75085253
	Chief Accountant, University of Miami, P.O. Box 9057, Coral Gables, Florida 33124.	1–590624458–A6	.....

ATTACHMENT I TO CHAPTER 3—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES—Continued

State	Organization and payee No.	Recipient CRS–EIN [1]	Letter of credit
Georgia	State of Georgia, 1–581130678–Al	1–580973190–A2, 1–581130678–A1, 1–581130678–A5,.	75083462
	Director, Department of Adm. Services, Fiscal Division, Pryor-Mitchell Building, Atlanta, Georgia 30334.	1–581130678–A6, 1–586000246–A2, 1–586002042–A1, 1–586002042–A2, 1–586002042–A3, 1–586002042–A4, 1–586002042–A6, 1–900000257–A1, 1–900000648–A1.	
Guam	Territory of Guam, 1–980018947–E6	1–000040215–A1, 1–000040218–A1, 1–000040228–A1.	7508B368
	Department of Administration, P.O. Box 884, Government of Guam, Agana, Guam 96110.	1–000040238–A1,1–000307495–A1,1–000313462–A1,1–900000270–A1,1–900000273–A1,1–900000274–A1,1–980018947–A1,1–980018947–A2,1–980018947–A3,1–980018947–A4,1–980018947–A7,1–980018947–A8,1–980018947–A9,1–980018947–B1,1–980018947–B2,1–980018947–B3,1–980018947–B5,1–980018947–D1,1–980018947–E5,1–980018947–E7,1–980018947–F1.	.....
Illinois	University of Illinois Medical Center, 1–376000511–A5.	1–376000511–A1,1–376000511–A3,1–376000511–A5,1–376000511–A8.	75083885
	Business Manager, University of Illinois, Chicago, Illinois, P.O. Box 6998, Chicago, Illinois 60680.	01–376000511–A9,1–376000511–B2,1–376000511–B4,1–376000511–B5,1–376000511–C1,1–376000511–C2,1–376000511–C3.	
Kansas	Kansas State University 1–480771751–A1, Comptroller, Kansas State, University of Agriculture & Applied Sciences, Anderson Hall, Manhattan, Kansas 66502.	1–480771751–A1,1–480771751–A2	75084200
Louisiana	State of Louisiana, 1–900001516–A1, ...	1–000014399–A1,1–000014607–A1,1–237208290–A1.	75080020
	Assistant State Treasurer, State Treasurer's Office, P.O. Box 44154, Capital Station, Baton Rouge, Louisiana 70804.	1–237208290–A2,1–720591509–A1,1–720637038–A1,1–720637038–A2,1–720645546–A1,1–720650883–A1,1–720695435–A1,1–720707278–A1,1–726000720–A1,1–726000733–A1,1–726000734–A1,1–726000734–A2,1–726000734–A3,1–726000743–A1,1–726000745–A1,1–726000756–A1,1–726000766–A1,1–726000800–A1,1–726000800–A2,1–726000813–A1,1–726000821–A1,1–726000821–A2,1–726000821–A3,1–726000821–A4,1–726000821–A5,1–726000826–A1,1–726001901–A1,1–726011595–A1,1–726011595–A3,1–726011595–A5,1–726011595–A6,1–726011595–A8,1–726011595–A9,1–726012498–A1,1–726014571–A1,1–726101595–A1,1–900001256–A1,1–900001342–A1,1–900002575–A1.	
Maine	Jackson Laboratories, 1–010211513–A1	1–01211513–A1	75087315
	Financial Officer, The Jackson Laboratories, Otter Creek Road, Bar Harbor, Maine 04609.		
Massachusetts	Boston University, 1–042103547–A1	1–042103547–A1, 1–042103547–A2, 1–042103547–A4.	75081272
	Comptroller, Boston University, 755 Commonwealth Avenue, Boston, Mass. 02215.		
	Forsyth Dental Center, 1–042104230–A2	1–042104230–A1, 1–042104230–A2	75083375
	Assistant Treasurer, Forsyth Dental Center, 140 Fenway, Boston, Mass. 02115.		
	Harvard University 1–042103580–B1	1–042103580–A2, 1–042103580–A3, 1–042103580–A4.	75083630
	Office of the Comptroller	1–042103580–A5, 1–042103580–A6	
	President & Fellows of Harvard College Cambridge, Mass. 02138.	1–042103580–A7, 1–042103580–A8, 1–042103580–A9, 1–042103580–B1.	.....
	Massachusetts General Hospital, 1–041564655–A4.	1–041564300–A1, 1–041564655–A3, 1–041564655–A4.	75084810

ATTACHMENT I TO CHAPTER 3—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES—Continued

State	Organization and payee No.	Recipient CRS–EIN [1]	Letter of credit
	Treasurer, Massachusetts General Hospital, 45 Milk Street, Boston, Mass. 02114.	1–041564655–A5	
	Massachusetts Institute of Technology, 1–042103594–A1.	1–042103594–A1, 1–042103594–A2	75084836
	Fiscal Officer, Division of Sponsored Research, Massachusetts Institute of Technology, Cambridge, Mass. 02139.		
	Worcester Foundation, 1–042121658–A1	1–042121658–A1	75089680
	Finance Officer, Worcester Foundation for Experimental Biology, Inc., 222 Maple Avenue, Shrewsbury, Massachusetts 01545.		
Maryland	Johns Hopkins University, 1–520595110–A5, University Budget Officer Johns Hopkins University, Garland Hall, Rm 327, Charles and 34th Streets, Baltimore, Md. 21218.	1–000701501–A1, 1–520595110–A1, 1–520595110–A2, 1–520595110–A3, 1–520595110–A4, 1–520595110–A5.	75084130
Michigan	University of Michigan, 1–386006309–A1	1–386006309–A1, 1–386006309–A2, 1–386006309–A3.	75085301
	University Cashier, Regents of the University of Michigan, 1015 L.S. & A. Bldg., Ann Arbor, Michigan 48104.	1–386006309–A4, 1–386006309–A5, 1–386006309–A6, 1–386006309–A7, 1–386006309–A8, 1–386006309–A9, 1–386006309–B1,1–386006309–B2.	
Minnesota	Mayo Foundation, 1–416011702–A1	1–4160011702–A1, 1–4160011702–A2	75084875
	Treasurer, Mayo Foundation, 200 First Street, SW., Rochester, Minnesota 55901.		
	University of Minnesota, 1–416007513–A5	1–416007513–A1, 1–416007513–A2, 1–416007513–A3.	75085448
	Director, Research Administration, 105 Admin. Servs. Building, 2610 University Avenue, St. Paul, Minnesota 55114.	1–416007513–A5, 1–416007513–A8, 1–416007513–B2, 1–416007513–B3, 1–416007513–B4, 1–416007513–B5, 1–416007513–B7.	
Missouri	Midwest Research Institute, 1–440545878–A1	1–440545878–A1	75085361
	Treasurer, Midwest Research Institute, 425 Volker Blvd., Kansas City, Missouri 64110.		
Nebraska	State of Nebraska, 1–470491233–C5	1–000021900–A1, 1–210674761–A1, 1–470491233–A1.	75086320
	State of Nebraska Accounting Dept., Administrative Services Office, State Capitol Bldg., Lincoln, Nebraska 68509.	1–470491233–A3, 1–470491233–A4, 1–470491233–A6, 1–470491233–A7, 1–470491233–A8, 1–470491233–A9, 1–470491233–B1, 1–470491233–B2, 1–470491233–B3, 1–470491233–B4, 1–470491233–B5, 1–470491233–B6, 1–470491233–B7, 1–470491233–B8, 1–470491233–B9, 1–470491233–C1, 1–470491233–C2, 1–470491233–C3, 1–470491233–C4, 1–470491233–C5, 1–470491233–C6, 1–470491233–C7, 1–470491233–C8, 1–470491233–C9, 1–470491233–D1, 1–470491233–D2, 1–470491233–D4, 1–476000479–A1, 1–476000535–A1, 1–476000535–A8, 1–741699874–A1, 1–900001910–A1, 1–900001919–A1, 1–900002209–A1, 1–900002333–A1, 1–900003427–A1, 1–900003437–A1.	
New York	Adelphi University, 1–111630741–A1	1–111630741–A1	75080040
	Business Manager, Adelphi University, South Avenue, Garden City, New York 11530.		
	Albany Medical Center, 1–141338310–A1,	1–141338310–A1	75080150
	Assistant Treasurer, Albany Medical College of Union University, 47 New Scotland Avenue, Albany, New York 12208.		
	Children's Hospital of Buffalo, 1–160748423–A1.	1–160748423–A1	75082160
	Comptroller, Children's Hospital of Buffalo, 219 Bryant Street, Buffalo, N.Y. 14222.		
	New York Medical College, 1–131099420–A1	1–131099420–A1	75086270
	Treasurer, New York Medical College, Flower/Fifth Avenue Hospitals, 1 East 105th Street, New York, N.Y. 10029.		

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	New York University, 1–135562308–A1	1–135562308–A1, 1–135562308–A3, 1–135562308–A4.	75086330
	Assistant Controller, New York University, 500 Kimball Hall, Washington Square, New York, New York 10003.	1–135562308–A5, 1–135562308–A6	.....
	New York University Medical Center, 1–135562309–A1.	1–135562308–A2, 1–135562308–B1, 1–135562309–A1, 1–135562309–A2.	75086333
	Comptroller, New York University Medical Center, 550 First Avenue, New York, New York 10016.	1–135562309–A3, 1–229124053–A1	.....
	University of Rochester, 1–160743209–A1, Research Accountant University of Rochester, River Campus, Rochester, New York 14627.	1–160743209–A1, 1–160743209–A2, 1–160743209–A3, 1–160743209–A4, 1–160743209–A5.	7508272
	Research Foundation of the State, University of New York, 1–14136861–J3, Comptroller, Research Foundation of State University of New York, P.O. Box 7126, Albany, New York 12224.	1–131819472–A1, 1–132633612–A1, 1–141363361–A1, 1–141368361–A1, 1–141368361–A2, 1–141368361–J3, 1–146013200–E4, 1–146013200–E5, 1–146013200–E6, 1–146013200–E7, 1–146013200–E8, 1–146013200–E9, 1–146013200–F1, 1–146013200–F2, 1–146013200–F3, 1–146013200–F4, 1–146013200–F5, 1–146013200–F6, 1–146013200–F7, 1–146013200–F8, 1–146013200–F9, 1–146013200–G1, 1–146013200–G2, 1–146013200–G3, 1–146013200–G4, 1–146013200–G5, 1–146013200–G6, 1–146013200–G7, 1–146013200–G8, 1–146013200–G9, 1–146013200–H1, 1–146013200–H2, 1–146013200–H3, 1–146013200–H4, 1–146013200–J3, 1–146013200–K4, 1–146013200–L5, 1–146013200–L6, 1–146013200–L7.	75087210
	Research Foundation of the City, University of New York, 1–131988190–A1.	1–131988190–A1, 1–131988190–A8	75082337
	Treasurer, Research Foundation of the City, University of New York, 1411 Broadway, New York, New York 10018.	.....	.....
	State of New York, 1–146013200–J7	1–146013200–A1, 1–146013200–A2, 1–146013200–A3.	75086340

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	Director, State Accounts, Alfred E. Smith, Building, Albany, New York 12225.	1–146013200–A4, 1–146013200–A5, 1–146013200–A6, 1–146013200–A7, 1–146013200–A8, 1–146013200–A9, 1–146013200–B1, 1–146013200–B2, 1–146013200–B3, 1–146013200–B4, 1–146013200–B5, 1–146013200–B6, 1–146013200–B7, 1–146013200–B8, 1–146013200–B9, 1–146013200–C1, 1–146013200–C2, 1–146013200–C3, 1–146013200–C4, 1–146013200–C5, 1–146013200–C6, 1–146013200–C8, 1–146013200–C9, 1–146013200–D1, 1–146013200–D2, 1–146013200–D3, 1–146013200–D4, 1–146013200–D5, 1–146013200–D6, 1–146013200–D7, 1–146013200–D9, 1–146013200–E1, 1–146013200–E2, 1–146013200–E3, 1–146013200–H5, 1–146013200–H6, 1–146013200–H7, 1–146013200–H8, 1–146013200–H9, 1–146013200–I1, 1–146013200–I2, 1–146013200–I3, 1–146013200–I4, 1–146013200–I7, 1–146013200–I8, 1–146013200–J1, 1–146013200–J4, 1–146013200–J5, 1–146013200–J6, 1–146013200–J7, 1–146013200–J8, 1–146013200–J9, 1–146013200–K1, 1–146013200–K2, 1–146013200–K3, 1–146013200–K6, 1–146013200–K7, 1–146013200–K9, 1–146013200–L3, 1–146013200–L4, 1–146013200–L8.	
Ohio	Case Western Reserve University, 1–341018992–A1.	1–341018992–A4, 1–341018992–A1, 1–341018992–A2.	75089472
	Comptroller Case Western Reserve University, 2040 Adelbert Road, Cleveland, Ohio 44106.		
Tennessee	St. Jude's Children's Research Hospital, 1–620646012–A1.	1–62646012–A1	75083427
	Treasurer, St. Jude's Children's Hospital, 332 N. Lauderdale, Memphis, Tennessee 38101.		
Texas	Baylor University College of Medicine, 1–741613878–A2.	1–741613878–A1, 1–741613878–A2	75081070
	Business Manager, Baylor College of Medicine, 1200 Moursund Ave., Houston, Texas 77025.		
	University of Texas at Houston Health Center, 1–741761309–A4.	1–741761309–A4, 1–741761309–A6	75088056
	Associate Dean for Business Affairs, University of Texas, Medical School, P.O. Box 20036 Houston, Texas 77025.		
	University of Texas Medical School, 1–756002868–A4.	1–756002868–A3, 1–756002868–A4, 1–756002868–A5.	75088130
	Business Manager, University of Texas, Southwestern Medical Schools, 5323 Harry Hines Blvd., Dallas, Tex 75235.		
	University of Texas, M.D. Anderson Hospital, 1–746001118–A1.	1746001118–A1	75088910
	Supervisor, Grant Reporting, M.D. Anderson Hospital, University of Texas, 6723 Bertner Ave., Houston, Texas 77025.		
	University of Texas Medical Branch, Galveston, Texas, 1–74600949–A1.	1–74600949–A1	75088916
	Business Manager, University of Texas, Medical Branch, 1000 Strand, Galveston, Texas 77550.		
Utah	University of Utah and University of Utah Research 1–876000525–A6.	1–876000525–A1, 1–876000525–A2, 1–876000525–A3, 1–876000525–A6, 1–876000525–A7,.	75089067
	Controller, University of Utah, 122 Park Building, Salt Lake City, Utah 84112.	1–876000525–A8	

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Washington	University of Washington, 1–916001537–A5, Director, Office of Grant/Contract Services, University of Washington, 211 Administration Building, Seattle, Washington 98195.	1–916001537–A1, 1–916001537–A2, 1–916001537–A4, 1–916001537–A5, 1–916001537–A6, 1–916001537–A9.	75089320
Wisconsin	State of Wisconsin, 1–396006469–B1	1–000039594–A1, 1–000702000–A1, 1–390808464–A1.	7508H610
	Budget Operations, State Budget Office, One West Wilson St., Madison Wisconsin 53607.	1–391051231–A1, 1–396006436–A1, 1–396006443–A3, 1–396006447–A1, 1–396006461–A1, 1–396006461–A2, 1–396006461–A3, 1–396006461–A4, 1–396006461–A5, 1–396006461–A6, 1–396006461–A7, 1–396006461–A8, 1–396006461–A9, 1–396006461–B1, 1–396006466–A1, 1–396006469–A1, 1–396006469–A5, 1–396006469–A6, 1–396006469–A7, 1–396006469–B1, 1–396006469–B5, 1–396006487–A1, 1–396006487–A2, 1–396006488–A1, 1–396006492–A1, 1–396006492–A2, 1–396006492–A3, 1–396006492–A5, 1–396006492–A6, 1–396006492–A7, 1–396006492–A8, 1–396006492–B1, 1–396006492–B2, 1–396006492–B3, 1–396006492–B4, 1–396006492–B5, 1–396006492–B6, 1–396006492–B7, 1–396006492–B8, 1–396006492–B9, 1–396006492–C1, 1–396006492–C2, 1–396006492–C3, 1–396006492–C4, 1–396006492–C5, 1–396006492–C6, 1–396006492–C7, 1–396006492–C8, 1–396006492–C9, 1–396006492–D1, 1–396028867–A1, 1–396028867–A2, 1–396091677–A1, 1–396091677–A2, 1–396320507–A1, 1–900000022–A1, 1–900002012–A1, 1–900002564–A1, 1–900002665–A1, 1–900003134–A1.	.....

[1] Central Registry-System Entity Identification Number (CRS–EIN).

CRS–EIN is a twelve digit number used to identify a recipient organization/individual in the HHS Central Registry System (CRS). This system utilizes a standard identification number within HHS to identify recipients of Federal assistance-like programs. The first digit identifies whether the recipient is an organization (1) or individual (2). The next nine (9) digits uniquely associate the organization/individual to an Employer Identification Number assigned by the Internal Revenue Service in the case of an organization, or a Social Security Number assigned by the Social Security Administration in the case of an individual. A two character suffix code is assigned by the Central Registry System, HHS, to identify component levels within the recipient organization, such as: School of Medicine, Research Division, Department of Biology, etc. A suffix is not applied to a Social Security Number since that number is unique to each individual.

[49 FR 14049, Apr. 9, 1984. Redesignated at 49 FR 36110, Sept. 14, 1984]

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EDITORIAL NOTE: This listing is provided for information purposes only. It is compiled and kept up-to-date by the Department of Health and Human Services.

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PHS 301.104–1 Publication and code arrangement.
PHS 301.104–2 Arrangement of regulations.
PHS 301.104–3 Copies.
PHS 301.105 OMB approval under the Paperwork Reduction Act.

Subpart PHS 301.2—Administration

PHS 301.201 Maintenance of the PHSAR.
PHS 301.270 Procurement Management Advisory Committee.
PHS 301.271 Timing of PHSAR revisions.

Subpart PHS 301.4—Deviations From the FAR

PHS 301.470 Procedure.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 36237, Sept. 14, 1984, unless otherwise noted.

Subpart PHS 301.1—Purpose, Authority, Issuance

PHS 301.101 Purpose.

(a) The Public Health Service Acquisition Regulation (PHSAR) is issued to establish uniform acquisition policies and procedures throughout PHS which are necessary to implement or supplement the Department of Health and Human Services Acquisition Regulation (HHSAR).

(b) PHS issuances do not reiterate material published in the HHSAR or the Federal Acquisition Regulation (FAR).

(c) The PHSAR implements and supplements the HHSAR. Implementing material expands upon or indicates the manner of compliance with the related HHSAR. Supplementing material is new material which has no counterpart in the HHSAR. The omission of sections or subsections in PHSAR means no further explanation or qualification is necessary for implementation within PHS. Therefore, in order to obtain comprehensive coverage and assure consideration of all acquisition policies and procedures pertinent to PHS, the FAR, HHSAR, and PHSAR should be read.

PHS 301.102 Authority.

(a) The HHSAR authorizes supplementation or implementation of the FAR and HHSAR in accordance with prescribed procedures (see 301.301) in order to publish essential acquisition instructions, policies, and procedures that do not conflict with, supersede or duplicate that prescribed by the FAR and the HHSAR.

PHS 301.103 Applicability.

The FAR, HHSAR and PHSAR issuances apply to all acquisitions made by PHS procuring activities as defined in FAR 1.103.

PHS 301.104 Issuance.

PHS 301.104–1 Publication and code arrangement.

(a) The PHSAR is published in the same forms as indicated in FAR 1.104–1(a).

(b) PHS issuances will be published on yellow pages in looseleaf form for insertion into the HHSAR.

PHS 301.104–2 Arrangement of regulations.

(a) *General.* The PHSAR conforms to the FAR and HHSAR with respect to divisional arrangements; i.e., subchapters, parts, subparts, sections, subsections, and paragraphs.

(c) *References and citations.*

(2) This regulation shall be referred to as the Public Health Service Acquisition Regulation (PHSAR), Appendix A to the Department of Health and Human Services Acquisition Regulation. Any reference shall be cited as ''PHS'' followed by the appropriate number.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by ''FAR.'' References to the HHSAR shall

state only the number without the prefix ''HHSAR.''

PHS 301.104–3 Copies.

Copies of the PHSAR in FEDERAL REGISTER form may be purchased by the public from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Looseleaf copies of the PHSAR may be obtained by departmental personnel having a need for the document by placing an order with a Directives Distribution Coordinator in accordance with General Administration Manual Chapter 1–00, Exhibit G, HHS Staff Manual System.

PHS 301.105 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this regulation:

PHSAR segment	OMB control No.
All segments (excluding PHS 352.223–70 and PHS 252.232–70)	0990–0128
PHS 352.223–70	0990–0137
PHS 352.232–70	0990–0134

[49 FR 36237, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986]

Subpart PHS 301.2—Administration

PHS 301.201 Maintenance of PHSAR.

The PHSAR is maintained by the Division of Grants and Contracts, Office of Resource Management, Office of Management, PHS. The Director, Division of Grants and Contracts is responsible for developing and preparing material to be included in the PHSAR.

PHS 301.270 Procurement Management Advisory Committee.

(a) The Director, Division of Grants and Contracts has established the Procurement Management Advisory Committee (PMAC) to assist and facilitate the planning and development of acquisition policies and procedures, and the resolving of operational problems affecting all acquisition activities in the PHS.

(b) The PMAC consists of members and alternates from the Office of the Assistant Secretary for Health, Alcohol, Drug Abuse, and Mental Health Administration, Centers for Disease Control, Food and Drug Administration, Health Resources and Services Administration, and National Institutes of Health.

[49 FR 36237, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986]

PHS 301.271 Timing of PHSAR revisions.

PHSAR revisions will be issued throughout the year as the need arises. PHS issuances shall be effective on the date cited in the FEDERAL REGISTER issuance or on the date of the transmittal notice which distributes it to PHSAR Staff Manual holders, unless otherwise directed.

Subpart PHS 301.4—Deviations From the FAR

PHS 301.470 Procedure.

(a) Requests for deviations from the FAR, HHSAR or any PHSAR issuance for implementation or supplementation shall be submitted in writing by the PHS agency principal official responsible for acquisition to the Director, Division of Grants and Contracts, ORM/OM/PHS for approval and/or further processing as may be required. When it is recognized that a deviation will be required prior to the issuance of a solicitation, the request for deviation must be processed and approved prior to release of the solicitation. When completion of a contract action is contingent on approval of a deviation, the request for deviation must be processed and approval granted by the appropriate level, prior to contract execution. In an exigency situation, initial verbal contact should be made with the Chief, Contracts Management Branch, DGC/ORM/OM/PHS or his/her designee. Only deviations to the PHSAR may be granted by the Director, Division of Grants and Contracts.

(b) Each request for deviation shall provide sufficient information to permit PHS compliance with the HHSAR. Generally, such requests shall contain the following in addition to the information required by 301.470(b):

(1) The name of the contractor and contract number, or the name of the

proposed contractor and the solicitation number.

(2) A statement indicating whether or not the deviation had been previously requested. If so, outline the circumstances involved and the disposition of that request.

[49 FR 36237, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986]

PART PHS 302—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 302.1—Definitions

PHS 302.170 Definitions of terms.

The following terms, when utilized in PHS supplementing or implementing issuances to the HHSAR, have the meanings set forth below.

PHS agencies identifies collectively that group of organizational entities within the PHS which have assigned major health functions as currently shown in the PHS Organization Handbook. The PHS agencies are as follows:

Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA)
Centers for Disease Control (CDC)
Food and Drug Administration (FDA)
Health Resources and Services Administration (HRSA)
National Institutes of Health (NIH)

PHS agency heads identifies collectively those individuals who are given the responsibility and authority to manage and direct the efforts of the PHS agencies. These are the Administrators of ADAMHA and HRSA, Commissioner of FDA, and Directors of NIH and CDC.

PHS contracting activities identifies collectively those organizational elements of the PHS staff offices and the PHS agencies which have functional responsibility to contract for the acquisition of personal property and nonpersonal services.

[49 FR 36238, Sept. 14, 1984]

PART PHS 304—ADMINISTRATIVE MATTERS

Subpart PHS 304.1—Contract Execution

Sec.
PHS 304.170 Ratification of unauthorized contract awards.

Subpart PHS 304.6—Contract Reporting

PHS 304.670 PHS Contract Information System (PHSCIS).
PHS 304.670–1 Policy.
PHS 304.670–2 PHS agency implementation.

Subpart PHS 304.71—Review and Approval of Proposed Contract Awards

PHS 304.7101 Contracts requiring review and approval.
PHS 304.7102 Conduct of the review.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 49 FR 36238, Sept. 14, 1984, unless otherwise noted.

Subpart PHS 304.1—Contract Execution

PHS 304.170 Ratification of unauthorized contract awards.

(c)(2) Where ratification of an unauthorized contract action within a PHS agency is requested, the contracting officer shall forward the file through acquisition channels to an official at an organizational level above the contracting officer. He/she in turn shall analyze and evaluate the contracting officer's submission and make appropriate recommendations regarding ratification to the head of the contracting activity.

The Administrative Services Center (ASC), Office of Management (OM), will submit its requests for ratification to the Director, OM through the Division of Grants and Contracts (DGC), Office of Resource Management, OM/PHS.

(c)(4)(i) PHS agencies, and ASC, OM/PHS, shall submit a report of ratification data as specified in 304.170. PHS agencies with several contracting offices will be required to collect the required information from these activities and submit a consolidated agency report.

(ii) These reports shall be submitted to DGC/ORM/OM/PHS within 20 days following the expiration of the reporting period. A consolidated PHS report will be prepared for submission to the Deputy Assistant Secretary for Procurement, Assistance, and Logistics as specified in 304.170.

Subpart PHS 304.6—Contract Reporting

PHS 304.670 PHS Contract Information System (PHSCIS).

The PHS Contract Information System consolidates all PHS contract data for the Department-wide Contract Information System (DCIS) from the PHS contracting activities.

PHS 304.670–1 Policy

The PHS principal officials responsible for acquisition (PORA) are responsible for ensuring that all required information is collected, submitted, and received into the PHSCIS in accordance with the central PHSCIS User Manual.

[49 FR 36238, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986]

PHS 304.670–2 PHS agency implementation.

It is the responsibility of the PORAs to develop and implement appropriate procedures within their activities to ensure that data submissions to the PHSCIS are timely, error free, and contain all the required information.

Subpart PHS 304.71—Review and Approval of Proposed Contract Awards

PHS 304.7101 Contracts requiring review and approval.

(b)(2)(i) In addition to the reviews required by 304.7101(a) and PHS 304.7101(c), internal reviews are to be conducted of acquisitions made by the following contracting offices in the National Institutes of Health for contract awards that fall below the dollar threshold for review and approval set forth in PHS 304.7101(c) but exceed the dollar threshold set forth herein:

National Cancer Institute—$750,000
National Heart, Lung, and Blood Institute—$500,000
National Institute of Environmental Health Sciences—$250,000
National Institute of Allergy and Infectious Diseases—$250,000
National Institute of Child Health and Human Development—$250,000
Centralized procuring activity for all other National Institutes of Health Research Organizations (Research Contracts Branch)—$250,000

These internal reviews shall be conducted by senior personnel with each contracting office. Typically, the chief of contracting office or his/her deputy should be involved in the review. Personnel involved in the contract action shall not perform the review. Each review shall be documented in writing, and any substantive issues identified shall be resolved prior to award.

(ii) Furthermore, to assure that an adequate review of smaller dollar acquisitions is made prior to award, a statistically significant sample of contract actions of dollar values, less than those amounts referenced in this section is required to be approved prior to award. This review and approval will be by the designated Reviewing Official listed in paragraph (c) (but see PHS 304.7102(a)). Records of such review actions will be maintained and will include documentation of the resolution of any significant issue raised by the review.

(iii) Contract awards and modifications of proposed architect-engineer contracts expected to exceed $50,000 shall be reviewed and approved prior to award by the reviewing official designated in PHS 304.7101(c).

(c) *Reviewing officials.* For PHS agency contract awards expected to exceed the dollar amounts stated in this paragraph, the reviewing official indicated will personally approve the award. Other than these specified requirements for the designated reviewing official, PHS agencies may assign other review and approval responsibilities at their discretion. The following officials shall be responsible for preaward contract review and approval of all proposed contracts and modifications which are expected to exceed the dollar limits expressed below:

Review and approval required for contracts expected to exceed	PHS acquisition activity	Reviewing official
	Office of the Assistant Secretary for Health	
$300,000	Administrative Services Center, Office of Management	Director, Administrative Services Center.
	Alcohol, Drug Abuse and Mental Health Administration	
300,000	National Institute on Drug Abuse	Director, Division of Grants and Contracts Management.
300,000	National Institute on Alcohol Abuse and Alcoholism	Do.
300,000	National Institute of Mental Health	Do.
300,000	St Elizabeths, Hospital, NIMH	Do.
50,000	Addiction Research Center	Do.
	Centers for Disease Control	
300,000	Centers for Disease Control	Director, Procurement and Grants Office.
	Food and Drug Administration	
300,000	Division of Contracts and Grants Management	Director, Division of Contracts and Grants Management.
300,000	National Center for Toxicological Research	Do.
	National Institutes of Health	
1,500,000	National Cancer Institute	Director, Division of Contracts and Grants.
1,000,000	National Heart, Lung, and Blood Institute	Do.
	National Institutes of Environmental Health Sciences	
1,000,000	Research and development awards	Do.
100,000	Other than research and development	Director, Division of Procurement.
750,000	National Institute of Child Health and Human Development	Director, Division of Contracts and Grants.
750,000	National Institute of Allergy and Infectious Diseases	Do.
500,000	National Institute of Neurological and Communicative Disorders and Stroke.	Do.
	National Library of Medicine	
500,000	Research and development awards	Director, Division of Contracts and Grants.
250,000	Other than research and development	Director, Division of Procurement.
250,000	National Institute of Dental Research	Director, Division of Contracts and Grants.
250,000	National Institute of Arthritis, Metabolism and Digestive Diseases	Do.
750,000	Centralized procuring activity for all other National Institutes of Health Research Organizations.	Do.
250,000	Procurement Branch, Division of Procurement, ORS	Director, Division of Procurement.
	Health Resources and Services Administration	
500,000	Awards made by Headquarters and the Indian Health Service	Director, Division of Grants and Procurement Management.
300,000	Awards made by other than Headquarters and the Indian Health Service	Do.

[49 FR 36238, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986]

PHS 304.7102 Conduct of the review.

(a) *General.* The reviewing official is not required to personally perform the review, but he or she is responsible for assuring that the reviewer is knowledgeable in the acquisition field and has sufficient expertise to perform a comprehensive review and to make cogent recommendations to the reviewing official for actions exceeding the dollar amounts stated in this subpart. The reviewing official shall approve each proposed contract award that is reviewed.

SUBCHAPTER B—ACQUISITION PLANNING

PART PHS 305—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 305.2—Synopses of Proposed Contract Actions

PHS 305.202 Exceptions.

(b) A determination and finding has been executed by the Acting Assistant Secretary for Health after concurrence by the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, which exempts for the period September 30, 1985 through September 29, 1988, certain acquisitions with the National Academy of Sciences (NAS) from the synopsis requirements set forth in FAR 5.201. This exemption is applicable only to acquisitions where NAS is the only source which can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the program requirements. To ensure that this exemption will be used only when appropriate, the agency competition advocate shall certify, prior to award, each acquisition with NAS which is not synopsized regardless of the dollar value. The certification must state that only NAS can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the program needs.

[51 FR 20487, June 5, 1986]

PART PHS 306—COMPETITION REQUIREMENTS

Subpart PHS 306.3—Other Than Full and Open Competition

Sec.

PHS 306.304 Approval of the justification.

Subpart PHS 306.5—Competition Advocates

PHS 306.502 Duties and responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20487, June 5, 1986, unless otherwise noted.

Subpart PHS 306.3—Other Than Full and Open Competition

PHS 306.304 Approval of the justification.

(a)(3) The Deputy Assistant Secretary for Health, Operations, PHS, is designated as the approving official referenced in FAR 6.304(a)(3) and 306.304(a)(3).

Subpart PHS 306.5—Competition Advocates

PHS 306.502 Duties and responsibilities

(b) The competition advocates for the PHS activities shall coordinate their efforts with the PHS competition advocate, the Deputy Assistant Secretary for Health Operations.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART PHS 314—FORMAL ADVERTISING

Subpart PHS 314.4—Opening of Bids and Award of Contract

Sec.

PHS 314.406–3 Other mistakes disclosed before award.
PHS 314.406–4 Mistakes after award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 314.4—Opening of Bids and Award of Contract

PHS 314.406–3 Other mistakes disclosed before award.

(g)(3) In addition to the requirement in 314.406–3(g)(3), a copy of the data required by FAR 14.406–3(g)(3) shall be sent to the Office of General Counsel, Business and Administrative Law Division, Parklawn Building, Room 17A–32, 5600 Fishers Lane, Rockville, MD 20857. An information copy of the contracting officer's written statement of facts and circumstances shall be provided to the Contracts Management Branch, DGC/ORM/OM/PHS.

[51 FR 20488, June 5, 1986]

PHS 314.406–4 Mistakes after award.

(e)(2) The data shall be submitted as prescribed in PHS 314.406–3(g)(3).

[51 FR 20488, June 5, 1986]

PART PHS 315—CONTRACTING BY NEGOTIATION

Subpart PHS 315.4—Solicitation and Receipt of Proposals and Quotations

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

PHS 315.412 Late proposals and modifications.

(c)(1) When the principal official responsible for acquisition determines that certain classes of biomedical or behavioral research and development acquisitions should be subject to conditions other than those specified in FAR 52.215–10, Late Submissions, Modifications and Withdrawals of Proposals, he/she may authorize the use of the provision in PHS 352.215–10 in addition to the provision at FAR 52.215–10.

(2) When the provision in PHS 352.215–10 is included in the solicitation and a proposal is received after the exact time specified for receipt, the contracting officer, with the assistance of cost and technical personnel, shall make a written determination as to whether the proposal meets the requirements of the provision at PHS 352.215–10 and, therefore, can be considered.

[51 FR 43357, Dec. 2, 1986; 51 FR 45229, Dec. 17, 1987, as amended at 52 FR 44397, Nov. 19, 1987]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART PHS 323—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart PHS 323.70—Safety and Health

Sec.

PHS 323.7000 Scope of subpart.
PHS 323.7001 General.
PHS 323.7002 Policy.
PHS 323.7003 Actions required.
PHS 323.7004 Contract clause.
PHS 323.7005 Solicitation notice—construction.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20488, June 5, 1986, unless otherwise noted.

Subpart PHS 323.70—Safety and Health

PHS 323.7000 Scope of subpart.

This subpart prescribes the use of a safety and health clause in contracts involving hazardous material or operations, and procedures for developing and administering safety and health provisions.

PHS 323.7001 General.

Various statutes and regulations (e.g., Walsh-Healey Act; Service Contract Act) require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. Positive action to reduce accidents and conditions hazardous to health under all contracts is in the Government's interest since the cost of such accident and health hazards is borne by the Government through higher prices and sometimes by direct indemnification of contractors against liability claims.

PHS 323.7002 Policy.

(a) The guidance contained in FAR Subpart 23.3 shall be used for hazardous material as the primary reference. When that guidance is judged insufficient or does not meet the safety and health situation in the instant acquisition, this subpart shall be followed.

(b) Whenever the performance of a contract will require use of hazardous materials or operations, the contracting activity shall require the prime contractor and subcontractors to:

(1) Provide protection for the life and health of PHS employees, contractor employees, other persons involved with work on PHS programs and projects, and the public;

(2) Avoid accidental work interruptions which could delay progress of PHS programs and project;

(3) Maintain controls for the prevention of damage and loss to property; and

(4) Accumulate and provide data necessary for analysis of risk and loss factors relating to PHS programs and projects.

PHS 323.7003 Actions required.

(a) *Contracting activities.* Contracting activities shall use the clause set forth in PHS 352.223–70 as a guide in developing appropriate safety and health clauses for use in prospective contracts involving the following:

(1) Services or products;

(2) Research, development, or test projects;

(3) Transportation of hazardous materials; and

(4) Construction, including construction of facilities on the contractor's premises.

(b) *Safety officers.* OPDIV safety officers shall advise and assist initiators of acquisition requests and contracting officers in:

(1) Determining whether safety and health provisions should be included in a prospective contract;

(2) Selecting or developing safety and health clause provisions for incorporation in a prospective contract;

(3) Evaluating a prospective contractor's safety and health programs; and

(4) Conducting post-award review and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall:

(1) During the preparation of a request for contract, and in the RFP or IFB:

(i) Ensure that hazardous materials and operations to be utilized in the performance of the contract are clearly identified; and

(ii) Coordinate with the appropriate safety officer to ensure that all hazardous materials and operations are evaluated and that adequate safety requirements are established in the RFP or IFB.

(2) During the period of performance:

(i) Apprise the contracting officer of any noncompliance with safety and health provisions identified in the contract; and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

PHS 323.7004 Contract clause.

All contracts which require the use of hazardous materials or operations shall include a clause to provide adherence to minimum safety and health standards. The clause set forth in PHS 352.223–70 may be used or appropriately modified to meet the needs of the individual contract.

PHS 323.7005 Solicitation notice—construction.

The contracting officer shall include the clause in PHS 352.223–71 in all solicitations and resultant contracts for construction and construction services.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART PHS 333—PROTESTS, DISPUTES, AND APPEALS

Subpart PHS 333.1—Protests

Sec.
PHS 333.102 General.
PHS 333.104 Protests to GAO.
PHS 333.105 Protests to GSBCA.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20488, June 5, 1986, unless otherwise noted.

Subpart PHS 333.1—Protests

PHS 333.102 General.

The Division of Grants and Contracts (DGC), ORM/OM/PHS, will participate directly in the resolution of protests against PHS agencies when the Office of the Secretary, HHS, requests DGC involvement, or when DGC considers a protest action to be sensitive or controversial, or otherwise has an interest in the protest. In cases where DGC will participate, the cognizant PHS contracting office shall be notified. In those instances, all file materials and written statements normally forwarded directly to the Departmental Protest Control Officer shall be forwarded to DGC, ORM/OM/PHS.

PHS 333.104 Protests to GAO.

(a) *General.* (2) A copy of the protest files shall be sent to the Office of General Counsel, Business and Administrative Law Division (OGC–BAL), Parklawn Building, Room 17A–32, 5600 Fishers Lane, Rockville, MD 20857. In addition, an information copy of the contracting officer's statement of facts required by 333.104(a)(2)(i) shall be sent to the Contracts Management Branch, DGC/ORM/OM/PHS.

(b) *Protests before award.* (1) The head of the contracting activity authority to approve the written finding required by FAR 33.104(b)(1) to authorize a contract award while a protest is pending, may be delegated to an organizational level no lower than the Executive Officer of each PHS Agency.

(4) The data shall be submitted as prescribed in PHS 333.104(a)(2).

(c) *Protests after award.* (1) The data shall be submitted as prescribed in PHS 333.104(a)(2).

(2) The head of the contracting activity authority to authorize contract performance notwithstanding a protest as set forth in FAR 33.104(c)(2), may be delegated to an organizational level no lower than the Executive Officer of each PHS Agency.

PHS 333.105 Protests to GSBCA.

(b) The copy of the protest file to be sent to OGC–BAL shall be sent to OGC–BAL, Parklawn Building, Room 17A–32, 5600 Fishers Lane, Rockville, MD 20857. In addition, an information copy of the contracting officer's statement of facts required by 333.105(b)(1) shall be sent to the Contracts Management Branch, DGC/ORM/OM/PHS.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART PHS 335—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

PHS 335.080 Special determinations and findings affecting research and development contracting.

The Assistant Secretary for Health shall sign individual and class determinations and findings for:

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in a research contract pursuant to 42 U.S.C. 241(a)(7).

[51 FR 20489, June 5, 1986]

PART PHS 336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart PHS 336.6—Architect-Engineer Services

Sec.

PHS 336.680 Program of Requirements approval.
PHS 336.681 Funding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20489, June 5, 1986, unless otherwise noted.

Subpart PHS 336.6—Architect-Engineer Services

PHS 336.680 Program of Requirements approval.

The programmatic and technical requirements for PHS design projects are established in a special document known as a Program of Requirements (POR). In the case of design projects involving the construction of new space, including new facilities, replacement facilities, and building additions, the contracting officer shall ensure that the Office of the Assistant Secretary for Health has approved, or waived approval of, a POR prior to the issuance of the synopsis or solicitation for architectural/engineering services.

PHS 336.681 Funding.

(a) The contracting officer shall ensure that the agency financial management officer has identified and certified that design funds have been appropriated and apportioned prior to the release of a synopsis or solicitation for architect-engineer services for the types of acquisitions specified in PHS 336.680. New facilities, replacement facilities, and building additions must only be acquired with funds appropriated for that specific project as evidenced by either (1) specific language in an appropriations act, or (2) Congressional appropriations intent as reflected in appropriations committee reports or Congressional budget justification.

(b) In the case of ADAMHA, FDA, HRSA, and NIH, the referenced agency financial management officer is the Director of the agency's Division of Financial Management. In the case of CDC, this official is the Director of the Financial Management Office. Subject to HRSA concurrence, funding for projects of the Indian Health Service/HRSA may be certified by the designated financial management officer within the IHS Office of Administration.

(c) The funding source certification shall include identification of the title, appropriation symbol, and fiscal year of the appropriation plus any relevant project or activity description in the appropriation act or reports.

(d) In an unusual circumstance where time is critical, a synopsis or solicitation for architect-engineer services may be issued after the POR has been approved if the agency financial management officer certifies that appropriation and apportionment of proper funds as set forth in paragraph (a) above are expected within 60 days. In such cases, the synopsis or solicitation must specify that award is subject to the availability of funds. In these circumstances the contracting officer shall ensure that contract award is not made until the agency financial management officer has certified in writing

that proper funds have been appropriated and apportioned. Other exceptions to the funding requirements set forth in paragraph (a) above, must be specifically approved in writing by the Office of the Assistant Secretary for Health prior to the release of a synopsis or solicitation for architect-engineer services for new facilities, replacement facilities, and building additions.

SUBCHAPTER H—CLAUSES AND FORMS

PART PHS 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart PHS 352.2—Texts of Provisions and Clauses

Sec.

PHS 352.215–10 Late proposals, modifications of proposals, and withdrawals of proposals.
PHS 352.223–70 Safety and health.
PHS 352.223–71 Safety and health—construction.
PHS 352.232–70 Additional payment provision.
PHS 352.280–1 Protection of human subjects.
PHS 352.280–2 Care of laboratory animals.
PHS 352.280–3 Maximum allowable cost for drugs.
PHS 352.280–4 Contracts awarded under the Indian Self-Determination Act.
PHS 352.280–6 Demurrage charge provisions for reusable cylinders and containers.

Subpart PHS 352.3—Provision and Clause Matrices

PHS 352.380–4 Contract clauses for contracts awarded under the Indian Self-Determination Act.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 36242, Sept. 14, 1984, unless otherwise noted.

Subpart 352.2—Texts of Provisions and Clauses

PHS 352.215–10 Late proposals, modifications of proposals, and withdrawals of proposals.

As prescribed in PHS 315.412, the following provision may be included in the solicitation when authorized by the principal official responsible for acquisition.

LATE PROPOSALS, MODIFICATIONS OF PROPOSALS, AND WITHDRAWALS OF PROPOSALS (NOV 1986)

Notwithstanding the procedures contained in the provision of this solicitation entitled Late Submissions, Modifications, and Withdrawals of Proposals, a proposal received after the date specified for receipt may be considered if it offers significant cost or technical advantages to the Government, and it was received before proposals were distributed for evaluation, or within five calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

[51 FR 43357, Dec. 2, 1986; 51 FR 45229, Dec. 17, 1987, and 52 FR 44357, Nov. 19, 1987]

PHS 352.223–70 Safety and health.

The following clause is covered by the policy set forth in Subpart PHS 323.70 and is to be used in accordance with the instructions set forth in PHS 323.7002 and PHS 323.7003.

SAFETY AND HEALTH (APR 1984)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to all property; and for avoidance of work interruptions in the performance of the contract; the Contractor will comply with the following standards: (Insert codes, standards, and criteria (including any applicable State and local requirements) prescribed by the Safety Officer.)

Further, the Contractor shall take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary; *Provided,* that, if compliance with such additonal safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause of this contract entitled ''Changes.''

(b) Prior to commencement of work, the Contractor will submit in writing its plan for complying with the safety and health provisions of this contract, and will meet with the Contracting Officer or his/her designated representative to discuss and develop a mutual understanding relative to administration of the overall safety program.

(c) During the performance of work under this contract, the Contractor share comply with all procedures prescribed by the Contracting Officer for the control and safety of persons visiting the job site and will comply with such requirements to prevent accidents as may be prescribed by the Contracting Officer.

(d) The Contractor will maintain an accurate record of, and report to the Contracting Officer in such manner as the Contracting Officer may prescribe, all accidents and incidents resulting in death, traumatic injury, occupational disease, and/or damage to all property incident to work performed under the contract.

(e) The Contracting Officer shall notify (if otherwise, confirm in writing) the Contractor of any noncompliance with the provisions of this clause and corrective action to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action. (Such notice, when delivered to the Contractor or its representative at the site of the work, shall be deemed sufficient for the purpose.) If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be the subject of claim for extension of time or for costs or damages by the Contractor.

(f) The Contractor shall insert the substance of this clause in each subcontract involving the use of hazardous materials or operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

(End of clause)

[51 FR 20489, June 5, 1986]

PHS 352.223–71 Safety and health—construction.

The following clause shall be included in all solicitations and resultant contracts for construction and construction services, as required by PHS 323.7005.

SAFETY AND HEALTH—CONSTRUCTION (APR 1984)

Your attention is invited to the regulations issued by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitled ''Safety and Health Regulations for Construction'' (29 CFR part 1926). The Contractor is required to comply with the referenced regulations to the extent that the resultant contract involves construction.

(End of clause)

[51 FR 20490, June 5, 1986]

PHS 352.232–70 Additional payment provision.

The following clause shall be included in all solicitations and resultant contracts for construction which contain the ''Payments Under Fixed-Price Construction Contracts'' clause set forth in FAR 52.232–4:

ADDITIONAL PAYMENT PROVISION (APR 1984)

Unless otherwise stated in this contract, there will be taken into consideration in computing progress payments material that will be incorporated into the structure if such material is delivered at the site, or is delivered to the Contractor and properly stored by it in a suitable warehouse, storage yard, or similar place either within 25 miles of the site or as otherwise approved by the Contracting Officer. Before each payment is made, the Contractor shall furnish to the Contracting Officer such evidence as he/she may require of the quantity and value of such material and that it will be incorporated into the structure. If such material is stored off the site, the Contractor shall also furnish to the Contracting Officer, before payment, properly executed bills of sale to the Government for the delivered material upon which such payment is to be made.

(End of clause)

[51 FR 20490, June 5, 1986]

PHS 352.280–1 Protection of human subjects.

The policy and procedures to be followed whenever individuals may be involved as subjects in research activities supported or conducted by the Department under a contract are provided in Subpart PHS 380.1 and 45 CFR Part 46, Protection of Human Subjects.

(a) The following provisions shall be included in solicitations expected to involve human subjects:

NOTICE TO OFFERORS OF REQUIREMENTS OF 45 CFR PART 46, PROTECTION OF HUMAN SUBJECTS (SEP 1985)

(a) Copies of the Department of Health and Human Services (Department) regulations for the protection of human subjects, 45 CFR part 46, are available from the Office for Protection from Research Risks (OPRR), National Institutes of Health, Bethesda, Maryland 20892. The regulations provide a systematic means, based on established ethical principles, to safeguard the rights and welfare of individuals who participate as subjects in research activities supported or conducted by the Department.

(b) The regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention of interaction with the individual, or (2) identifiable private information. The regulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The use of autopsy materials is governed by applicable State and

local law and is not directly regulated by 45 CFR part 46.

(c) Activities in which the only involvement of human subjects will be in one or more of the categories set forth in 45 CFR 46.101(b)(1–6) are exempt from coverage.

(d) Inappropriate designations of the noninvolvement of human subjects or of exempt categories of research in a project may result in delays in the review of a proposal. The Public Health Service will make a final determination of whether the proposed activities are covered by the regulations or are in an exempt category, based on the information provided in the proposal. In doubtful cases, *prior consultation with OPRR, (telephone: 301–496–7014), is recommended.*

(e) In accordance with 45 CFR part 46, prospective Contractors being considered for award shall be required to file with OPRR an acceptable Assurance of Compliance with the regulations, specifying review procedures and assigning responsibilities for the protection of human subjects. The initial and continuing review of a research project by an institutional review board shall assure that the rights and welfare of the human subjects involved are adequately protected, that the risks to the subjects are reasonable in relation to the potential benefits, if any, to the subjects and the importance of the knowledge to be gained, and that informed consent will be obtained by methods that are adequate and appropriate. Prospective Contractors proposing research that involves human subjects shall be contacted by OPRR and given detailed instructions for establishing an institutional review board and filing an Assurance of Compliance.

(f) It is recommended that OPRR be consulted for advice or guidance concerning either regulatory requirements or ethical issues pertaining to research involving human subjects.

(End of provision)

(b) The following clause shall be included in contracts involving human subjects:

PROTECTION OF HUMAN SUBJECTS (OCT 1986)

(a) The Contractor agrees that the rights and welfare of human subjects involved in research under this contract shall be protected in accordance with 45 CFR part 46 and with the Contractor's current Assurance of Compliance on file with the Office for Protection for Research Risks, National Institutes of Health, Public Health Service. The Contractor further agrees to provide certification at least annually that the institutional review board has reviewed and approved the procedures which involve human subjects in accordance with 45 CFR part 46 and the Assurance of Compliance.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. Nothing in this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agency or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgement or otherwise, as an independent Contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(c) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (b), above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete the corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those Contractors with approved Department of Health and Human Services Human Subject Assurances.

(End of clause)

[51 FR 20490, June 5, 1986, as amended at 52 FR 9300, Mar. 24, 1987]

PHS 352.280–2 Care of laboratory animals.

The policies and procedures to be used when contracts involve live vertebrate animals are provided in Subpart PHS 380.2, and in the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* and accompanying implementation instructions published in a special edition of the *NIH Guide for Grants and Contracts,* Vol. 14, No. 8, June 25, 1985.

(a) The following provision shall be included in solicitations expected to involve vertebrate animals:

NOTICE TO OFFERORS OF REQUIREMENT FOR ADEQUATE ASSURANCE OF PROTECTION OF VERTEBRATE ANIMAL SUBJECTS (SEP 1985)

The *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* establishes a number of requirements for research activities involving animals. Before a PHS award may be made to an applicant organization, the organization shall file, with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), PHS, a written Animal Welfare Assurance which commits the organization to comply with the provisions of the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions,* the Animal Welfare Act, and the *Guide for the Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources. In accordance with the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions,* applicant organizations must establish a committee, qualified through the experience and expretise of its members, to oversee the institution's animal program, facilities and procedures. No PHS award involving the use of animals shall be made unless the Animal Welfare Assurance has been approved by OPRR. Prior to award, the contracting officer will notify Contractor(s) selected for projects that involve live vertebrate animals that an Animal Welfare Assurance is required. The contracting officer will request that OPRR negotiate an acceptable Animal Welfare Assurance with those Contractor(s). *For further information, OPRR may be contacted at NIH, Bethesda, Maryland 20892 (301–496–7041).*

(End of provision)

(b) The following clause shall be included in all contracts involving research on vertebrate animals:

CARE OF LIVE VERTEBRATE ANIMALS (OCT 1986)

(a) Before undertaking performance of any contract involving research on live vertebrate animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2316 and 9 CFR 2.25–2.28. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR 2.1–2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of any live vertebrate animals used or intended for use in the performance of this contract will conform with the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions,* the current Animal Welfare Assurance, the *Guide for the Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources and the pertinent laws and regulations of the United States Department of Agriculture (see 7 U.S.C. 2131 *et seq.* and 9 CFR subchapter A, parts 1–4). In case of conflict between standards, the more stringent standard shall be used.

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (c), above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracing Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those Contractors with approved Public Health Service Animal Welfare Assurances.

NOTE: The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(End of clause)

[51 FR 20491, June 5, 1986, as amended at 52 FR 9300, Mar. 24, 1987]

PHS 352.280–3 Maximum allowable cost for drugs.

The following clause, or one reading substantially as follows, shall be included in all contracts subject to the provisions of the Maximum Allowable Cost (MAC) regulation and PHS 380.305.

MAXIMUM ALLOWABLE COST FOR DRUGS (APR 1984)

(a) Reimbursement for drugs provided or used under this contract shall be in accordance with the Maximum Allowable Cost (MAC) regulation set forth in 45 CFR subtitle A, part 19. In accordance with 19.3 of the MAC regulation, the amount which is recognized for reimbursement or payment purposes for any drug purchased under the terms of the contract shall not exceed the lowest of:

(1) The maximum allowable cost of the drug, if any, established in accordance with 19.5 of the MAC regulation plus a reasonable dispensing fee;

(2) The acquisition cost of the drug plus a reasonable dispensing fee; or

(3) The provider's usual and customary charge to the public for the drug; *Provided,* That:

(i) The maximum allowable cost established for any drug shall not apply to a brand of that drug prescribed for a patient which the prescriber has certified in his/her own handwriting is medically necessary for that patient; and *Provided, further,* That:

(ii) When compensation for drug dispensing is included in some other amount payable to the provider by the reimbursing or payment program agency, a separate dispensing fee will not be recognized.

(b) The Contractor agrees:

(1) To include the following solicitation notification in all applicable solicitations issued under this contract and to ensure that subcontractors include it in any subsequent applicable solicitation:

This acquisition is subject to the Maximum Allowable Cost (MAC) regulation set forth in part 19 to subtitle A of title 45 of the Code of Federal Regulations.

(2) To include this clause, including this paragraph (b), in all applicable subcontracts, regardless of tier, awarded pursuant to this contract.

(3) To include the furnished MAC determination or acquisition cost data in all applicable solicitations issued under this contract and in all resultant subcontracts awarded pursuant to this contract.

(End of clause)

PHS 352.280–4 Contracts awarded under the Indian Self-Determination Act.

(a) Insert the following clauses in cost-reimbursement contracts awarded under the Indian Self-Determination Act as described in subpart PHS 380.4.

CLAUSE NO. 1—DEFINITIONS (JUN 1977)

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term ''Secretary'' means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services (HHS); and the term ''his/her duly authorized representative'' means any person, persons, or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term ''Contracting Officer'' means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his/her authority.

(c) The term ''Project Officer'' means the person representing the Government for the purpose of monitoring contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(d) The term ''Department'' means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term ''subcontract'' includes purchase orders under this contract.

(End of clause)

CLAUSE NO. 2—DISPUTES (JUN 1977)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final

decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This ''Disputes'' clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided,* That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

CLAUSE NO. 3—LIMITATION OF COST (JUN 1977)

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in this contract and the Contractor agrees to use its best efforts to perform all work and all obligations under this contract within such estimated costs. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the contract, or, if at any time the Contractor has reason to believe that the total cost to the Government, for the performance of this contract, will be substantially greater or less than the estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the contract and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of such estimated cost unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in this contract has been increased by the Contracting Officer in writing, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

(End of clause)

CLAUSE NO. 4—ALLOWABLE COST (JUN 1977)

(a) *Compensation for Contractor's performance.* Payment for the allowable cost, as herein defined and as actually incurred by the Contractor shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Allowable cost.* The allowable cost of performing the work under this contract shall be the cost actually incurred by the Contractor, either directly incident or properly allocable to the contract, in the performance of this contract in accordance with its terms. The allowable cost, direct and indirect, including acceptability of cost allocation methods, shall be determined by the Contracting Officer in accordance with:

(1)(i) ''A Guide for Nonprofit Institutions Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health and Human Services, HHS Publication OASC–5'' or (ii) ''A Guide for Hospitals, Grants and Contracts with the Department of Health and Human Services, HHS Publication OASC–3,'' or (iii) Subpart 1–15.7 of the Federal Procurement Regulations (41 CFR subpart 1–15.7) if the contract is with a state or local government agency, or (iv) Subpart 1–15.4 of the Federal Procurement Regulations (41 CFR subpart 1–15.4) if the contract is for the procurement of construction or architect-engineer services.

(2) The terms of the contract.

(End of clause)

CLAUSE NO. 5—NEGOTIATED OVERHEAD RATES (JUN 1977)

(a) Notwithstanding the provisions of the clause of this contract entitled, ''Allowable Cost,'' the allowable indirect costs shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the expiration of each of the Contractor's financial years or such period as may mutually be agreed upon by the Government and the Contractor, shall submit to the Contracting Officer, with a copy to the cognizant audit agency, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles set forth in paragraph (b)(1) of Clause 4, as in effect on the date of this contract, and the same hereby incorporated herein by reference.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed final rate,

(2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in this contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this contract shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled ''Disputes.''

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his/her duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his/her duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d) and (e) above.

(End of clause)

CLAUSE NO. 6—PAYMENT (JUN 1977)

(a) *Payment on account of allowable cost.* Once each month (or at more frequent intervals if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of (b) below, make payment thereon as approved by the Contracting Officer.

(b) *Audit Adjustments.* At any time or times prior to settlement under this contract the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayment, or increased for underpayments on preceding invoices or vouchers.

(c) *Completion voucher.* On receipt and approval of the invoice or voucher designated by the Contractor as the ''completion invoice'' or ''Completion Voucher'' and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and provisions of (d) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 6 months (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion.

(d) *Applicable credits.* The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable cost hereunder when approved by the Contracting Officer.

(e) *Financial settlement.* Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract, and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are susceptible to exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; Provided, That such claims are not known to the Contractor on the date of the execution of the release; And provided further, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by

reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(End of clause)

CLAUSE NO. 7—ADVANCE PAYMENTS (JUN 1977)

(a) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the ''Administering Office'' and designated in paragraph (k)(4) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he/she may designate in writing (hereinafter called the ''Countersigning Agent''). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. An interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefor shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an ''insured'' bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder.

(h) *Lien on Property Under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other

things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release to the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (1) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assembles, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(j) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations.* (1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $_____.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

(End of clause)

CLAUSE NO. 8—EXAMINATION OF RECORDS (JUN 1977)

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States and the Secretary, or any of their duly authorized representatives, shall until expiration of 3 years after final payment under this contract or of the time period for the particular records in Part 1–20 of the Federal Procurement Regulations (41 CFR part 1–20) whichever expires earlier, have access to and the

right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States, or his/her duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR part 1–20) whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term ''subcontract'' as used in this clause excludes (1) purchases orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above, for records which relate to (1) appeals under the ''Disputes'' clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his/her duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

(End of clause)

CLAUSE NO. 9—INSPECTION AND REPORTS (JUN 1977)

(a) *Inspection of work.* The Government shall have the right to inspect the work and activities under this contract, including without limitation, premises where any Government property may be located at such reasonable times and in such manner as it may deem appropriate and the Contractor shall afford the Government proper facilities and assistance for such inspection.

(b) *Reports.* The Contractor shall furnish such progress reports, schedules, financial and cost reports, and other reports, concerning the work under this contract as specified elsewhere in this contract. Cost and other financial data and projections furnished pursuant to this paragraph (b) shall not relieve the Contractor of the requirements for furnishing notice specified in the clause of this contract entitled ''Limitation of Cost.''

(c) In addition, where Federal financial assistance is involved in the contract effort, the following clause will apply:

Reports to the Indian People

The contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people served or represented by the contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(d) *Annual Reporting.*

(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services involved. The reports shall include any other information requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the contract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the tribal contractor shall furnish other reports when and as required by the Secretary.

(End of clause)

CLAUSE NO. 10—SUBCONTRACTING (JUN 1977)

(a) *Prior approval required.* Except as provided in (c) below, the Contractor shall not enter into any subcontract or purchase order not otherwise expressly authorized elsewhere in this contract without the prior written approval of the Contracting Officer and subject to such conditions as the Contracting Officer may require.

(b) *Request for approval.* The Contractor's request for approval to enter into a subcontract pursuant to this clause shall include: (1) A description of the supplies or services to be called for by the subcontract; (2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained; (3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof; (4) identification of the type of subcontract to be used; (5) a copy or draft of the proposed subcontract, if available; and (6) any other information which the Contracting Officer may require.

(c) *Certain purchases of property and services.* Prior written approval shall not be required for firm fixed-price subcontracts for the purchase or rental of items of personal property having a unit acquisition cost of less than $200 or for subcontracts in a total amount less than $1,000 unless otherwise specified elsewhere in this contract: Provided, however, That advance notification shall be given by the Contractor of any subcontract which exceeds in dollar amount 5 percentum of the total estimated cost of this contract.

(d) *Contractor's procurement system.* The contractor shall use methods, practices or procedures in subcontracting or purchasing (hereinafter referred to as the Contractor's ''procurement system'') acceptable to the Contracting Officer. The Contracting Officer may, at any time during the performance of this contract, require the Contractor to provide information concerning its procurement system.

(e) *Effect of subcontracting.* Subcontracts shall be made in the name of the Contractor and shall not bind nor purport to bind the Government. The making of subcontracts hereunder shall not relieve the Contractor of any requirement under this contract (including, but not limited to, the duty to properly supervise and coordinate the work of subcontracts, and the duty to maintain and account for property pursuant to the clause of this contract entitled ''Government Property''). Approval of the provisions of any subcontract by the Contracting Officer shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost. In no event shall approval of any subcontract by the Contracting Officer be construed as effecting any increase in the estimated cost set forth in this contract. No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Procurements from contractor-controlled sources.* Procurement or transfer of equipment, materials, supplies, or services from contractor-controlled source (any division or other organizational component of the prime contractor, exclusive of the contracting component, and any subsidiary or affiliate of the Contractor under a common control) shall be considered a subcontract for the purpose of this clause.

(End of clause)

CLAUSE NO. 11—ACCOUNTS, AUDIT AND RECORDS (JUN 1977)

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitutes ''records'' for the purposes of this clause.

(b) The Contractor's facility(ies), or such part thereof as may be engaged in the performance of this contract, and its records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his/her authorized representative.

(c) The contractor shall preserve and make available its records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in (41 CFR part 1–20), whichever expires earlier and (2) for such longer period, if any, as is required by applicable statute, or by other clause of this contract, or by (i) or (ii) below.

(i) If this contract is completely or partially retroceded or reassumed by the Government, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the ''Disputes'' clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Contracting Officer or any of his/her duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at this level involved in place of the Contractor: to add ''of the Government prime contract'' in place of ''this contract'' in (B) of subparagraph (c)(ii) above.

(End of clause)

CLAUSE NO. 12—GOVERNMENT PROPERTY (JUN 1977)

(a) *Government furnished property.* (1) The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (such property to be referred to as ''Government furnished property'').

In the event that Government furnished property is not delivered to the contractor by the time or times as stated, or if not stated, in sufficient time to enable the Contractor to meet such delivery or performance dates under this contract, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and make appropriate equitable adjustments to any contractual provisions affected by any such delay in accordance with the provisions of the clause of this contract entitled ''Changes.''

In the event that Government furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, immediately upon receipt thereof, notify the Contracting Officer of such fact, and, as directed by the Contracting Officer either (i) return or otherwise dispose of such property, or (ii) effect repairs or modifications thereto. Upon completion of (i) or (ii) above, the Contracting Officer, upon timely written request of the Contractor, shall make appropriate equitable adjustments to any contractual provisions affected thereby in accordance with the provisions of the clause of this contract entitled ''Changes.'' The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Title.* (1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as ''Government property.''

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property now owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

(c) *Use of Government property.* Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(d) *Property management and control.* The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance repair, protection, and preservation, control of and accountability for Government property, so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall comply with Federal, State, and local laws, codes, ordinances, regulations, and orders pertaining to standards of construction, safety, environment quality, energy conservation, historic site preservation, facilities for the handicapped, emergency preparedness, and other requirements that are applicable to the physical characteristics, operation, and maintenance of Government property. The Contractor agrees to promptly receipt for all Government property in a form and manner as prescribed by the Contracting Officer. The Contractor further agrees to take all reasonable steps to comply with all directions or instructions which the Contracting Officer may prescribe regarding the management and control of Government property.

(e) *Risk or loss.* (1) The Contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto);

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of

(A) all or substantially all of the Contractor's operations at any one plant, laboratory or separate location in which this contract is being performed or

(B) a separate and complete major organization, industrial or otherwise in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (d) hereof, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (4) hereof;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; Provided That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) If the Contractor transfers Government property to the possession and control of a subcontractor the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to Government property as set forth in (1) above. The Contractor shall require the subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to Government property while in the latter's possession or control, and the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received (except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract). Provided, however, That the subcontractor may be relieved from such liability only to the extent that the subcontract, with the prior approval of the Contracting Officer, so provides.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovation of the damaged Government property, or take such other actions as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The loss, destruction or damage and, upon the request of the Constracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(f) *Disposition of Government property*.

(1) During the period of performance of this contract, the Contractor shall promptly and regularly report to the Contracting Officer, in such form and manner as the Contracting Officer may direct, concerning the status of Government property under the contract, including all Government property in the Contractor's possession which is not in use or which is excess to the needs of the contract. The Contractor shall make such disposition of Government property as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(2) Upon completion or expiration of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all

Government property which had come into the possession or custody of the Contractor under this contract. Such accounting shall include inventory schedules covering all items of Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, or for which the Contractor has not otherwise been relieved of responsibility. The Contractor shall deliver or make such other disposition of Government property covered in such inventory schedules as the Contracting Officer may direct.

(3) The net proceeds of any disposition of Government property, in accordance with (1) and (2) above, shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(g) *Restoration of premises.* Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any Government property.

(End of clause)

CLAUSE NO. 13—CHANGES (JUN 1977)

The Contracting Officer may at any time, with the consent of the Contractor, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) Drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; and (d) the amount of Government furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not by any such order, an equitable adjustment shall be made (a) in the estimated cost or delivery schedule, or both, and (b) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: Provided, however, That the Contracting Officer, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled ''Disputes.'' However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

CLAUSE NO. 14—NOTICE TO THE GOVERNMENT OF DELAYS (JUN 1977)

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(End of clause)

CLAUSE NO. 15—RETROCESSION (JUN 1977)

(a) The Indian Tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the Tribe.

(b) Should the Tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies, mutually agree to:

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

(End of clause)

CLAUSE NO. 16—ASSUMPTION AND REASSUMPTION OF CONTRACT PROGRAMS (JUN 1977)

(a) When the Director or his/her delegate determines that the performance of a Contractor under these regulations involves (1)

the violation of the rights or endangerment of the health, safety, or welfare of any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, he/she will, in writing, notify the contractor of such determinations and will request that the Contractor take such corrective action within such period of time as the Director or his/her delegate may prescribe.

(b) When the Director or his/her delegate determines that a Contractor has not taken corrective action (as prescribed by him/her under paragraph (a) of this section) to his/her satisfaction, he/she may, after the Contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his/her delegate has made a determination described in paragraph (b) of this section, he/she shall in writing notify the Contractor of such determination and of the Contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his/her delegate shall set forth the reasons for the determination in sufficient detail to enable the Contractor to respond and shall inform the Contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the Contractor for a hearing, the Board, established pursuant to paragraph (d) of this section shall in writing within 10 days of the establishment notify the Contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his/her delegate determines that a Contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he/she may immediately rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he/she will immediately notify the Contractor of such action and the basis therefor; and offer the Contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determination at issue. The Board shall afford the Contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on Contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogatories; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall become final within 20 days unless the Director, Indian Health Service or his/her representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his/her representative shall be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where the Board is considering issues arising under paragraph (2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(c) In any case where the officer has rescinded a contract under paragraph (b) or (c) of this section, he/she may decline to enter into a new contract agreement with the Contractor until such time as he/she is satisfied that the basis for the recision has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(End of clause)

CLAUSE NO. 17—KEY PERSONNEL (JUN 1977)

Where ''key personnel'' have been identified in this contract, it has been determined that such named personnel are necessary for the successful performance of the work under this contract; and the Contractor agrees to assign such personnel to the performance of the work under this contract, and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned personnel is unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such personnel with personnel of substantially equal ability and qualifications.

(End of clause)

CLAUSE NO. 18—LITIGATION AND CLAIMS (JUN 1977)

The Contractor shall give the Contracting Officer immediate notice in writing of (a)

any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled ''Allowable Cost,'' except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any cost resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

CLAUSE NO. 19—INDEMNITY AND INSURANCE (JUN 1977)

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program included as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's, landlord's, and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental and other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his/her opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waivers shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either expressed or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy insurance.

(End of clause)

CLAUSE NO. 20—OVERTIME (JUN 1977)

Except as provided in this contract, the Contractor shall not perform overtime work under or in connection with this contract for which premium compensation is required to be paid, without specific written approval from the Contracting Officer.

(End of clause)

CLAUSE NO. 21—FOREIGN TRAVEL (JUN 1977)

Foreign travel shall not be performed without the prior written approval of the Contracting Officer. As used in this clause ''Foreign Travel'' means travel outside the United States, its Territories and Possessions, and Canada.

(End of clause)

CLAUSE NO. 22—QUESTIONNAIRE AND SURVEYS (JUN 1977)

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

(End of clause)

CLAUSE NO. 23—PRINTING (JUN 1977)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; Provided, however, That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and ½ inches, one side only, one color.

(End of clause)

CLAUSE NO. 24—SERVICES OF CONSULTANTS (JUN 1977)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled ''Subcontracting,'' the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a ''consultant'' under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $100, exclusive of travel costs or where the services of any consultant under this contract will exceed 10 days in any calendar year. Whenever Contracting Officer approval is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

(End of clause)

CLAUSE NO. 25—ASSIGNMENT OF CLAIMS (JUN 1977)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payment to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked ''Top Secret,'' ''Secret,''

or ''Confidential,'' be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

CLAUSE NO. 26—CONTRACT WORK HOURS AND SAFETY STANDARD ACT—OVERTIME COMPENSATION (JUN 1977)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts for any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

(End of clause)

CLAUSE NO. 27—WALSH-HEALEY PUBLIC CONTRACTS ACT (JUN 1977)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

(End of clause)

CLAUSE NO. 28—EQUAL OPPORTUNITY (JUN 1977)

Subject to the Indian preference in training and employment of Clause 29 during the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be

provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

CLAUSE NO. 29—INDIAN PREFERENCE IN TRAINING AND EMPLOYMENT (JUN 1977)

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians0 regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the Tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

(End of clause)

CLAUSE NO. 30—CERTIFICATE OF NONSEGREGATED FACILITIES (JUN 1977)

By signing the contract the Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term ''segregated facilities'' means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated

by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities. A certificate of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(End of clause)

CLAUSE NO. 31—CONVICT LABOR (JUN 1977)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor, except as provided by Public Law 89–176, September 10, 1965 (18 U.S.C. 4082(c)(2)), and Executive Order No. 11755, December 29, 1973.

(End of clause)

CLAUSE NO. 32—OFFICIALS NOT TO BENEFIT (JUN 1977)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

CLAUSE NO. 33—BUY AMERICAN ACT FOR SUPPLY AND SERVICE CONTRACTS (JUN 1977)

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) ''Components'' means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) ''End products'' means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A ''domestic source end product'' means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purpose of this (a)(iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954).

(End of clause)

CLAUSE NO. 34—ANTI-KICKBACK ACT (JUN 1977)

(a) Public Law 86–695, September 2, 1960 (41 U.S.C. 51–54) among other things prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift or gratuity to the prime contractor or any higher tier subcontractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgment for the award of a subcontact or order.

(b) The provisions of Public Law 86–695 are applicable to this contract and any subcontracts entered into under the contract.

(End of clause)

CLAUSE NO. 35—USE OF INDIAN BUSINESS CONCERNS (JUN 1977)

(a) As used in this clause, the term ''Indian business concern'' means Indian organizations or an Indian-owned economic enterprise as defined in 42 FR 36.204(i).

(b) The contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered

into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian business concerns established by the Tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1–1.7, 1–1.8, and 1–1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in sections 1–1.710–3(b), 1–1.805–3(b), and 1–1.1310–2(b), respectively, of the Federal Procurement Regulations (41 CFR chapter 1).

(End of clause)

CLAUSE NO. 36—PAYMENT OF INTEREST ON CONTRACTOR'S CLAIMS (JUN 1977)

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to P.L. 92–41, 85 Stat. 97, from the date the Contractor furnished to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeals, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing its remedies before a board of contract appeals or a court of competent jurisdiction.

The Contractor further agrees to comply with any rules, regulations and reporting requirements which may be imposed by the HHS Office for Civil Rights for purposes of insuring the proper exercise of this authority. The Contractor agrees to insert this clause in all subcontract(s) under this contract.

(End of clause)

CLAUSE NO. 37—FAIR AND EQUAL TREATMENT OF INDIAN PEOPLE (JUN 1977)

(a) The Contractor agrees consistent with medical needs to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) denying a patient any service or benefit or availability of a facility;

(ii) providing any service or benefit to a patient which is different, or is provided in a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his/her receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership, or other requirements of condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to reassume this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

(End of clause)

CLAUSE NO. 38—PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

The following clause applies to all contracts where cost and pricing data is required in accordance with P.L. 87–653.

Price Reduction for Defective Cost or Pricing Data (JUN 1977)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the Clause of this contract entitled ''Subcontractor Cost or Pricing Data'' or ''Subcontractor Cost or Pricing Data-Price Adjustments,'' or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in its Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the ''Disputes'' clause of this contract.

NOTE: Since this contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier subcontractors.)

(End of clause)

CLAUSE NO. 39—SUBCONTRACTOR COST AND PRICING DATA

The following clauses should be included in all contracts, when the subcontracts of the type and size described therein are contemplated.

Subcontractor Cost and Pricing Data (JUN 1977)

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification of which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market price or commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of its cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such expected subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clauses:

Subcontractor Cost and Pricing Data—Price Adjustments

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(End of clause)

CLAUSE NO. 40—PENALTIES (JUN 1977)

(a) Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not

more than $10,000 or imprisoned for more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The Contractor agrees to insert the clause in all subcontracts.

(End of clause)

CLAUSE NO. 41—EFFECT ON EXISTING RIGHTS (JUN 1977)

(a) Nothing in this contract shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or,

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(End of clause)

CLAUSE NO. 42—GENERAL SERVICES ADMINISTRATION (GSA) SUPPLY SOURCES

Indian tribal organizations which are awarded cost-reimbursement type contracts under the Indian Self-Determination Act, may be authorized to utilize GSA supply sources. The following clause will be inserted in all cost-reimbursement type contracts under which the Contractor may be authorized to acquire items for the account of the Government from GSA supply sources:

General Services Administration Supply Sources (June 1977)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government, (1) unless otherwise specifically provided in the contract, (2) unless otherwise provided in the Government Property clause of this contract, or (3) in the absence of both the conditions in (1) and (2) of the clause. However, such property shall not be considered to be ''Government-furnished property.''

(End of clause)

(b) Insert the following clauses in fixed price contracts awarded under the Indian Self-Determination Act as described in Subpart PHS 380.4:

CLAUSE NO. 1—DEFINITIONS (JUN 1977)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term ''Secretary'' means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services and the term ''his/her duly authorized representative'' means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term ''Contracting Officer'' means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his/her authority.

(c) The term ''Department'' means the Department of Health and Human Services (HHS).

(d) The term ''constituent agency'' means the agency of the Department responsible for the administration of this contract.

(e) Except as otherwise provided in this contract, the term ''subcontract'' includes purchase orders under this contract.

(f) The term ''Project Officer'' means the person representing the Government for the purpose of technical direction of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(End of clause)

CLAUSE NO. 2—DISPUTES (JUN 1977)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This ''Disputes'' clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

CLAUSE NO. 3—CONTRACT WORK HOURS AND SAFETY STANDARD ACT—OVERTIME COMPENSATION (JUN 1977)

This contract, to the extent it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330), is subject to the following provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standard Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater numbers of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) at the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the Tribe and the work is being performed by the tribal organization or Tribe with its own regular employees.

(End of clause)

CLAUSE NO. 4—WALSH-HEALEY PUBLIC CONTRACTS ACT (JUN 1977)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 34–45), there are hereby incorporated by reference all representations and stipulations required by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the Tribe and the work is being performed by the tribal organization or Tribe with its own regular employees.

(End of clause)

CLAUSE NO. 5—CONVICT LABOR (JUN 1977)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor except as provided by Public Law 89–176, September 10, 1965 (18 U.S.C. 4082(c)(2) and Executive Order No. 11755, December 29, 1973.

(End of clause)

CLAUSE NO. 6—NOTICE TO THE GOVERNMENT OF DELAYS (JUN 1977)

Whenever the Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the Contractor shall within ten days give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(End of clause)

CLAUSE NO. 7—ASSIGNMENT OF CLAIMS (JUN 1977)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payment aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract payments to assignee of any moneys due or due to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41).

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked ''Top Secret,'' ''Secret,'' or ''Confidential,'' be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

CLAUSE NO. 8—OFFICIALS NOT TO BENEFIT (JUN 1977)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

CLAUSE NO. 9—ANTI-KICKBACK ACT (JUN 1977)

(a) Public Law 86–695, September 2, 1960 (41 U.S.C. 51–54) among other things, prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift, or gratuity to the prime contractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgement for the award of a subcontract or order.

(b) The provisions of Public Law 86–695 are applicable this contract and any subcontracts entered into under the contract.

(End of clause)

CLAUSE NO. 10—PENALTIES (JUN 1977)

Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for not more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The Contractor agrees to insert this clause in all subcontracts.

(End of clause)

CLAUSE NO. 11—BUY AMERICAN ACT (JUN 1977)

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) ''Components'' means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) ''End products'' means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) ''A domestic source end product'' means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable. (The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954).

(End of clause)

CLAUSE NO. 12—EQUAL OPPORTUNITY (JUN 1977)

Subject to the Indian preference requirements of Clause 17, during the performance of this contract the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of Sepember 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contrator will furnish all information and reports required by executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

CLAUSE NO. 13—CERTIFICATE OF NONSEGREGATED FACILITIES (JUN 1977)

By signing the contract the Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a

breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term ''Segregated facilities'' means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. It futher agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities. A certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(End of clause)

CLAUSE NO. 14—SUBCONTRACTING (JUN 1977)

The Contractor shall not enter into subcontracts for any of the work contemplated under this contract without obtaining the prior written approval of the Contracting Officer and subject to such conditions and provisions as he/she may deem necessary, in his/her discretion, to protect the interests of the Government: Provided, however, That notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for the purchase by the Contractor of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the requirements under this contract; Provided, further, however, That the aforesaid right of Contractor to engage such services shall in no event be construed to permit the Contractor to subcontract with a third-party for the performance of any major function contemplated under this contract to be performed by the Contractor, and Provided, further, however, That no provision of this clause and no such approval by the Contracting Officer of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Government in addition to the total contract price.

(End of clause)

CLAUSE NO. 15—COMPETITION IN SUBCONTRACTING (JUN 1977)

The Contractor agrees to select subcontractors on a competitive basis to the maximum practical consistent with the objectives and requirements of this contract.

(End of clause)

CLAUSE NO. 16—USE OF INDIAN BUSINESS CONCERNS (JUN 1977)

(a) As used in this clause, the term, ''Indian business concern'' means Indian organizations or an Indian-owned economic enterprise as defined in 42 CFR 36.204(i).

(b) The Contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with efficient performance of the contract. The Contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1–1.7, 1–1.8, and 1–1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in sections 1–1.710–3(b), 1–1.805–3(b), and 1–1.1310–2(b), respectively of the Federal Procurement Regulations (41 CFR chapter 1).

(End of clause)

CLAUSE NO. 17—INDIAN PREFERENCE IN TRAINING AND EMPLOYMENT (JUN 1977)

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of

age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under this contract.

(End of clause)

CLAUSE NO. 18—INSPECTION (JUN 1977)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

CLAUSE NO. 19—CHANGES (JUN 1977)

The Contracting Officer may at any time, with the consent of the Contractor, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following (i) drawings, designs, or specifications, (ii) place of inspection, delivery, or acceptance, and (iii) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; Provided, however, That the Contracting Officer, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled ''Disputes.'' However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

CLAUSE NO. 20—RETROCESSION (JUN 1977)

(a) The Indian tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the Tribe.

(b) Should the Tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies mutually agree to:

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

(End of clause)

CLAUSE NO. 21—ASSUMPTION AND REASSUMPTION OF CONTRACT PROGRAMS (JUN 1977)

(a) When the Contracting Officer determines that the performance of a Contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any person, or (2) gross negligence or the mismanagement

in the handling or use of funds under the contract, the Contracting Officer will, in writing, notify the Contractor of such determination and will request that the Contractor take such corrective action within such period of time as the Secretary may prescribe.

(b) When the Director or his/her delegate determines that a Contractor has not taken corrective action (as prescribed by him/her under paragraph (a) of this section) to his/her satisfaction, he/she may, after the Contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his/her delegate has made a determination described in paragraph (b) of this section, he/she shall in writing notify the Contractor of such determination and of the Contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his/her delegate shall set forth the reasons for the determination in sufficient detail to enable the Contractor to respond and shall inform the Contractor of its rights to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the Contractor for a hearing, the Board, established pursuant to paragraph (d) of this section, shall in writing within 10 days of the establishment notify the Contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his/her delegate determines that a Contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he/she may immediately rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he/she will immediately notify the Contractor of such action and the basis therefor; and offer the Contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the Contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogation; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall become final within 20 days unless the Director, Indian Health Service or his/her representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his/her representative shall be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where Board is considering issues arising under paragraph (2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(e) In any case where the officer has rescinded a contract under paragraphs (b) or (c) of this section, he/she may decline to enter into a new contract agreement with the Contractor until such time as he/she is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(End of clause)

CLAUSE NO. 22—PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS (JUN 1977)

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97, from the date the Contractor furnished to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing its remedies before a board of contract appeals or a court of competent jurisdiction.

(End of clause)

CLAUSE NO. 23—GOVERNMENT-FURNISHED PROPERTY (JUN 1977)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as ''Government-Furnished Property''). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-Furnished Property suitable for use will be delivered to the Contractor at the times stated elsewhere in this contract or, if not so stated, in sufficient time to enable the Contractor by such time or times, to meet such delivery or performance dates. In the event that Government-Furnished Property is not delivered to the Contractor to meet such delivery or performance dates, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the delivery or performance dates, or the contract price, or both, and any other contractual provision affected by the delay. In the event that Government-Furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of such property, or (2) effect repairs or modifications. Upon completion of (1) or (2) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates of the contract price, or both, and any other contractual provision effected by the return, disposition, repair, or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-Furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance date or the contract price, or both, and any other contractual provisions affected by the decrease.

(c) Title to the Government-Furnished Property shall remain in the Government. Title to Government-Furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-Furnished Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(d) The Government-Furnished Property, unless otherwise specifically provided herein, and except as otherwise approved or directed by the Contracting Officer in writing, shall be used exclusively for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-Furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property, as the Government directs; Provided, however, That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible; and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-Furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) The Contractor also agrees to maintain and administer, in accordance with sound business practice, a property control system which will provide the following: Contract number; nomenclature of item; quantity received; issued; and balance on hand; posting reference to include date received, issued unit price and location; marking or identification of item; adequate maintenance, storage, and security of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. The Contractor further agrees to receipt promptly for all Government property in a form and manner as prescribed by the Contracting Officer.

(g) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government-Furnished Property is located.

(h) (i) The Contractor shall not be liable for any loss or damage to the Government-

Furnished Property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto):

(A) Which results from willful misconduct r lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(B) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government-Furnished Property as required by subparagraph (e) above; or

(C) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in this contract; or

(D) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(E) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed but only to the extent of such insurance or reimbursement; Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(ii) The Contractor represents that it is not including the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-Furnished Property, except the extent that the risk of loss is imposed on the Contractor under (i)(C) above, or insurance has been required under (i)(D) above.

(iii) Upon the happening of loss or destruction of or damage to any Government-Furnished Property, the Contractor shall notify the Contracting Officer thereof and shall take all reasonable steps to protect the Government-Furnished Property from further damage, separate the damaged and undamaged Government-Furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(A) The lost, destroyed and damaged Government-Furnished Property;

(B) The time and origin of the loss, destruction or damage;

(C) All known interest in commingled property of which the Government-Furnished Property is a part; and

(D) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under the subparagraph (iii), to the extent approved by the Contracting Officer and set forth in a supplemental agreement or amendment to this contract.

(iv) With the prior written approval of the Contracting Officer after loss or destruction of or damage to Government-Furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-Furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of other, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-Furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-Furnished Property in accordance with the provisions of this contract, the Government-Furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-Furnished Property, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(i) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract or which has not been previously disposed of in accordance with the

provisions of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(j) If the Contracting Officer determines that the interests of the Government require removal of any Government-Furnished Property, or if the Contractor determines any Government-Furnished Property to be in excess of its need under this contract such Government-Furnished Property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government-Furnished Property under this paragraph (j) or paragraph (i) above, upon timely written request of the Contractor, an equitable adjustment shall be made in the contract price to cover the direct cost to the Contractor of such removal and of any property damage occasioned thereby.

(End of clause)

CLAUSE NO. 24—EXAMINATION OF RECORDS BY THE COMPTROLLER GENERAL (JUN 1977)

(a) The Contractor agrees that the Comptroller General of the United States or any of his/her duly authorized representatives shall, until expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR part 1–20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his/her duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR part 1–20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term ''subcontract'' as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

CLAUSE NO. 25—INDEMNITY AND INSURANCE (JUN 1977)

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program including as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's, landlord's, and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental, or other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his/her opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense

the tribe's sovereign immunity from suit, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either expressed or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy or insurance.

(End of clause)

CLAUSE NO. 26—FAIR AND EQUAL TREATMENT OF INDIAN PEOPLE (JUN 1977)

(a) The Contractor agrees to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) Denying a patient any service or benefit or availability of a facility;

(ii) Providing any service or benefit to a patient which is different, or is provided in a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his/her receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership, or other requirements or conditions which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to terminate this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

(End of clause)

CLAUSE NO. 27—REPORTS TO THE INDIAN PEOPLE AND ANNUAL REPORTS (JUN 1977)

(a) The Contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people serviced or represented by the Contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(b) *Annual reports.*

(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to the contract under this part, the tribe which requested the contract must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services involved. The report shall include any other information requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the reports to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the contract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the tribal contractor shall furnish other reports when and as required by the Secretary.

(End of clause)

CLAUSE NO. 28—QUESTIONNAIRES AND SURVEYS (JUN 1977)

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

(End of clause)

CLAUSE NO. 29—PRINTING (JUN 1977)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this

contract: Provided, however, That performance of a requirement under this contract involvingthe reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and ½ inches, one side only, one color.

(End of clause)

CLAUSE NO. 30—PRICE REDUCTION FOR DEFECTIVE COST OR PRICING

The following clause applies to all contracts where cost and pricing data is required in accordance with P.L. 87–653.

Price Reduction for Defective Cost or Pricing Data (June 1977)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the clause of this contract entitled ''Subcontractor Cost, or Pricing Data'' or ''Subcontractor Cost or Pricing Data—Price Adjustments,'' or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in its Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the ''Disputes'' clause of this contract.

(NOTE: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier subcontractors).

(End of clause)

CLAUSE NO. 31—SUBCONTRACTOR COST AND PRICING DATA

The following clause should be included in all contracts when the subcontracts of the type and size described therein are contemplated.

Subcontractor Cost and Pricing Data (JUN 1977)

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The contractor shall insert the substance of this clause including this paragraph (c) in each of its cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clause:

Subcontractor Cost and Pricing Data—Price Adjustment

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour,

incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(End of clause)

CLAUSE NO. 32—ADVANCE PAYMENT (JUN 1977)

(a) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the ''Administering Office'' and designated in paragraph (k)(4) hereof) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he/she may designate in writing (hereinafter called the ''Countersigning Agent''). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purpose of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and or such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefor shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office,

in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an ''insured'' bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other items, which lien shall secure the repayment or any advance payments made hereunder.

(h) *Lien on Property under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (1) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by other operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(j) *Prohibition against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations.* (1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $_____.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish

such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

(End of clause)

CLAUSE NO. 33—EFFECT ON EXISTING RIGHTS (JUN 1977)

(a) Nothing in this contract shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(End of clause)

CLAUSE NO. 34—FEDERAL, STATE, AND LOCAL TAXES (JUN 1977)

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase; Provided, That the Contractor if requested by the Contracting Officer, warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or the amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain, a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(d) As used in paragraph (b) above, the term ''contract date'' means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification to this contract, the term ''contract date'' means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the direction of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

(End of clause)

[49 FR 36242, Sept. 14, 1984, as amended at 51 FR 20491, June 5, 1986]

PHS 352.280–6 Demurrage charge provisions for reusable cylinders and containers.

The clause set forth below shall be inserted in solicitations and resultant contracts when delivery of the items may be in contractor-furnished reusable gas cylinders or other containers.

DEMURRAGE CHARGE PROVISIONS FOR REUSABLE CYLINDERS AND CONTAINERS (APR 1984)

(a) Reusable gas cylinders or other containers identified below by offereors shall remain the property of the Contractor (except as provided in (c) below), and will be loaned without charge to the Government for the period stipulated below. In computing the period involved, such free loan period shall commence on the first day after date of delivery of each container to the herein specified f.o.b. point(s). Offerors who specify less than _____ days (to be determined by the Contracting Officer in accordance with trade custom), shall have their offers increased for

evaluation purposes only by an amount arrived at by multiplying the number of days less than the established free loan period by the daily rental charge. In the event the offeror does not specify a free loan period, such period shall be _____ days (insert the same number of days as the established free loan period). Beginning with the first day after expiration of the free loan period to and including the date the containers are delivered to the Contractor's designated carrier, the Government shall pay the Contractor demurrage (rental) in the amount specified below. No demurrage shall accrue to the Contractor in excess of the herein specified container's replacement value. For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the herein specified replacement value less allocable demurrage paid therefor. Such lost or damaged containers paid for by the Government shall become the property of the Government.

(b) Empty containers will be delivered to the Contractor's designated carrier (offeror to identify applicable carrier below) f.o.b. points of original delivery specified in this solicitation/contract.

OFFERORS SHALL FURNISH THE FOLLOWING INFORMATION, AS APPLICABLE, FOR CONTAINERS

Applicable item No.	Type and size of container	Quantity	Free loan period	Demurrage charges per day per cylinder

Replacement value for each container	Identification and location of offeror's carrier for return of empty container

(c) When the offeror indicates that containers have a replacement value of less than $10, the Government shall have the option to purchase containers and add the cost to the offered price. When purchase option is exercised, offers shall be evaluated accordingly. In this event, the container shall become the property of the Government.

(End of clause)

Subpart PHS 352.3—Provision and Clause Matrices

PHS 352.380–4 Contract clauses for contracts awarded under the Indian Self-Determination Act.

(a) PHS Acquisition Regulations (PHSAR) Clauses for Cost-Reimbursement Contracts Awarded under the Indian Self-Determination Act.

Number, PHSAR Clause No., and Title and Date of Clause

1. 352.280–4(a)(1) Definitions. (June 1977)
2. 352.280–4(a)(2) Disputes. (June 1977)
3. 352.280–4(a)(3) Limitation of Cost. (June 1977)
4. 352.280–4(a)(4) Allowable Cost. (June 1977)
5. 352.280–4(a)(5) Negotiated Overhead Rates. (June 1977)
6. 352.280–4(a)(6) Payment (June 1977)
7. 352.280–4(a)(7) Advance Payment. (June 1977)
8. 352.280–4(a)(8) Examination of Records. (June 1977)
9. 352.280–4(a)(9) Inspection and Reports. (June 1977)
10. 352.280–4(a)(10) Subcontracting. (June 1977)
11. 352.280–4(a)(11) Accounts, Audit, and Records. (June 1977)
12. 352.280–4(a)(12) Government Property. (June 1977)
13. 352.280–4(a)(13) Changes. (June 1977)
14. 352.280–4(a)(14) Notice to the Government of Delays. (June 1977)
15. 352.280–4(a)(15) Retrocession. (June 1977)
16. 352.280–4(a)(16) Reassumption of Programs. (June 1977)
17. 352.280–4(a)(17) Key Personnel. (June 1977)
18. 352.280–4(a)(18) Litigation and Claims. (June 1977)
19. 352.280–4(a)(19) Indemnity and Insurance. (June 1977)
20. 352.280–4(a)(20) Overtime. (June 1977)
21. 352.280–4(a)(21) Foreign Travel. (June 1977)
22. 352.280–4(a)(22) Questionnaires and Surveys. (June 1977)
23. 352.280–4(a)(23) Printing. (June 1977)
24. 352.280–4(a)(24) Services of Consultants. (June 1977)
25. 352.280–4(a)(25) Assignment of Claims. (June 1977)
26. 352.280–4(a)(26) Contract Work Hours and Safety Standards Act-Overtime Compensation. (June 1977)
27. 352.280–4(a)(27) Walsh-Healey Public Contracts Act. (June 1977)
28. 352.280–4(a)(28) Equal Opportunity. (June 1977)
29. 352.280–4(a)(29) Indian Preference in Training and Employment. (June 1977)
30. 352.280–4(a)(30) Certificate of Nonsegregated Facilities. (June 1977)
31. 352.280–4(a)(31) Convict Labor. (June 1977)
32. 352.280–4(a)(32) Officials not to Benefit. (June 1977)
33. 352.280–4(a)(33) Buy American Act Supply and Service contracts. (June 1977)
34. 352.280–4(a)(34) Anti-Kickback Act. (June 1977)

35. 352.280–4(a)(35) Use of Indian Business Concerns. (June 1977)
36. 352.280–4(a)(36) Payment of Interest on Contractors' Claims. (June 1977)
37. 352.280–4(a)(37) Fair and Equal Treatment of Indian People. (June 1977)
38. 352.280–4(a)(38) Price Reduction for Defective Cost or Pricing Data. (June 1977)
39. 352.280–4(a)(39) Subcontractor Cost and Pricing Data. (June 1977)
40. 352.280–4(a)(40) Penalties. (June 1977)
41. 352.280–4(a)(41) Effect on Existing Rights. (June 1977)
42. 352.280–4(a)(42) General Services Administration Supply Sources. (June 1977)

(b) PHSAR Clauses for Fixed-Price Contracts Awarded under the Indian Self-Determination Act.

Number, PHSAR Clause No. and Title and Date of Clause

1. 352.280–4(b)(1) Definitions. (June 1977)
2. 352.280–4(b)(2) Disputes. (June 1977)
3. 352.280–4(b)(3) Contract Work Hours and Safety Standards Act-Overtime Compensation. (June 1977)
4. 352.280–4(b)(4) Walsh-Healey Public Contracts Act. (June 1977)
5. 352.280–4(b)(5) Convict Labor. (June 1977)
6. 352.280–4(b)(6) Notice to the Government of Delays. (June 1977)
7. 352.280–4(b)(7) Assignment of Claims. (June 1977)
8. 352.280–4(b)(8) Officials not to Benefit. (June 1977)
9. 352.280–4(b)(9) Anti-Kickback Act. (June 1977)
10. 352.280–4(b)(10) Penalties. (June 1977)
11. 352.280–4(b)(11) Buy American Act. (June 1977)
12. 352.280–4(b)(12) Equal Opportunity. (June 1977)
13. 352.280–4(b)(13) Certificate of Nonsegregated Facilities. (June 1977)
14. 352.280–4(b)(14) Subcontracting. (June 1977)
15. 352.280–4(b)(15) Competition in Subcontracting. (June 1977)
16. 352.280–4(b)(16) Use of Indian Business Concerns. (June 1977)
17. 352.280–4(b)(17) Indian Preference in Training and Employment. (June 1977)
18. 352.280–4(b)(18) Inspection. (June 1977)
19. 352.280–4(b)(19) Changes. (June 1977)
20. 352.280–4(b)(20) Retrocession. (June 1977)
21. 352.280–4(b)(21) Assumption and Reassumption of Contract Programs. (June 1977)
22. 352.280–4(b)(22) Payment of Interest on Contractor's Claims. (June 1977)
23. 352.280–4(b)(23) Government-Furnished Property. (June 1977)
24. 352.280–4(b)(24) Examination of Records by the Comptroller General. (June 1977)
25. 352.280–4(b)(25) Indemnity and Insurance. (June 1977)
26. 352.280–4(b)(26) Fair and Equal Treatment of Indian People. (June 1977)
27. 352.280–4(b)(27) Reports to the Indian People and Annual Reports. (June 1977)
28. 352.280–4(b)(28) Questionnaires and Surveys. (June 1977)
29. 352.280–4(b)(29) Printing. (June 1977)
30. 352.280–4(b)(30) Price Reduction for Defective Cost or Pricing. (June 1977)
31. 352.280–4(b)(31) Subcontractor Cost and Pricing Data. (June 1977)
32. 352.280–4(b)(32) Advance Payment. (June 1977)
33. 352.280–4(b)(33) Effect on Existing Rights. (June 1977)
34. 352.280–4(b)(34) Federal, State, and Local Taxes. (June 1977)

SUBCHAPTER T—PHS SUPPLEMENTATIONS

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 36263, Sept. 14, 1984, unless otherwise noted.

Subpart PHS 380.1—Acquisitions Involving Human Subjects

SOURCE: 51 FR 20491, June 5 1986, unless otherwise noted.

PHS 380.101 Applicability.

This subpart applies to all research and development contracts involving human subjects except those that are exempt by Secretarial waiver under 45 CFR 46.101(e) or exempt under 45 CFR 46.101(b).

PHS 380.102 Policy.

(a) Safeguarding the rights and welfare of human subjects in activities under Public Health Service (PHS) research and development contracts is the responsibility of each institution that receives or is accountable to PHS for funds awarded for the conduct of that activity. To assure that this institutional responsibility is met, PHS shall not permit a nonexempt research activity involving human subjects to be undertaken unless the institution has an assurance on file with the Office for Protection from Research Risks (OPRR), NIH/PHS, and has filed a certification that an institutional review board (IRB) has reviewed and approved

the activity in accordance with 45 CFR Part 46.

(b) Contracts involving human subjects will not be awarded to an individual unless he/she is affiliated with or sponsored by an institution which can and will assume responsibility for safeguarding the human subjects involved.

PHS 380.103 Assurances.

In accordance with 45 CFR 46.103, OPRR is responsible for negotiation of assurances covering all PHS-supported research activities involving human subjects. Consultation with OPRR (telephone: 301–496–7041) is recommended on issues regarding assurances, certification of IRB review and approval, and interpretation of the regulations for the protection of human subjects in 45 CFR Part 46.

PHS 380.104 Notice to offerors.

Solicitations shall contain the notice to offerors set forth in PHS 352–280–1(a) whenever contract performance is expected to involve human subjects.

PHS 380.105 Contract clause.

The clause set forth in PHS 352.280–1(b) shall be inserted in all contracts involving human subjects.

Subpart PHS 380.2—Acquisitions Involving the Use of Laboratory Animals

SOURCE: 51 FR 20492, June 5 1986, unless otherwise noted.

PHS 380.201 Scope of subpart.

This subpart describes Public Health Service (PHS) contracts for projects or activities involving animals, and the responsibilities of the PHS agencies and subordinate elements for implementing policies and procedures described herein.

PHS 380.202 Definitions.

(a) *Animal.* Any live, vertebrate animal used or intended for use in research, research training, experimentation or biological testing or for related purposes.

(b) *Animal facility.* Any building, room, area, enclosure, or vehicle, including satellite facility, used for animal confinement, transport, maintenance, breeding or experiments of surgical manipulation. A satellite facility is any containment outside of a core facility or centrally designated or managed area in which animals are housed for more than 24 hours.

(c) *Animal Welfare Act.* Pub. L. 89–544, 1966, as amended (Pub. L. 91–579 and Pub. L. 94–279) 7 U.S.C. 2131 et seq. Implementing regulations are published in the Code of Federal Regulations (CFR), Title 9, Subchapter A, Parts 1, 2, 3, and 4, and are administered by the U.S. Department of Agriculture.

(d) *Animal Welfare Assurance or Assurance.* The documentation from an awardee or a prospective awardee institution assuring institutional compliance with this policy.

(e) *Guide. Guide for the Care and Use of Laboratory Animals,* NIH Pub. No. 85–23, 1985 edition or succeeding revised editions.

(f) *Institution.* Any public or private organization, business, or agency (including components of Federal, State and local governments).

(g) *Institutional official.* An individual who has the authority to sign the institution's Assurance, making a commitment on behalf of the institution that the requirement of this subpart will be met.

(h) *Public Health Service.* The Public Health Service includes the Office of the Assistant Secretary for Health; the Alcohol, Drug Abuse, and Mental Health Administration; the Centers for Disease Control; the Food and Drug Administration; the Health Resources and Services Administration; and the National Institutes of Health.

(i) *Quorum.* A majority of the members of the Institutional Animal Care and Use Committee.

PHS 380.203 Policy.

It is the policy of PHS to require institutions to establish and maintain proper measures to ensure the appropriate care and use of all animals involved in research, research training and biological testing (hereinafter referred to as activities) supported by PHS. PHS endorses the ''U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in

Testing, Research and Training'' developed by the Interagency Research Animal Committee (IRAC). This policy is intended to implement and supplement those Principles.

PHS 380.204 Applicability.

(a) This policy is applicable to all PHS-supported activities involving animals, whether the activities are performed at an awardee institution, or any other institution, in the United States, the Commonwealth of Puerto Rico, or any territory or possession of the United States. Institutions in foreign countries receiving PHS support for activities involving animals shall comply with this policy, or provide evidence to PHS that acceptable standards for the humane care and use of the animals in PHS-supported activities will be met.

(b) No PHS support for an activity involving animals will be provided to an individual unless that individual is affiliated with or sponsored by an institution which can and does assume responsibility for compliance with this policy for PHS-supported activities, or unless the individual makes other arrangements with PHS.

(c) This policy does not supercede or preempt applicable State or local laws or regulations which impose more stringent standards for the care and use of laboratory animals. All institutions are required to comply, as applicable, with the Animal Welfare Act, and other Federal statutes and regulations relating to animals.

PHS 380.205 Contractor implementation.

(a) *Animal Welfare Assurance.* No activity involving animals will be supported by PHS until the institution conducting the activity has provided a written Assurance acceptable to PHS, setting forth compliance with the policy in this subpart for PHS-supported activities. Assurances shall be submitted to OPRR, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 4B09, Bethesda, Maryland 20892. The Assurance shall be typed on the institution's letterhead and signed by an institutional official. OPRR will provide the applicant institution with necessary instructions and an example of an acceptable Assurance. All Assurances submitted to PHS in accordance with the policy will be evaluated by OPRR to determine the adequacy of the institution's proposed program for the care and use of animals in PHS-supported activities. On the basis of this evaluation, OPRR may approve or disapprove the Assurance, or negotiate an acceptable Assurance with the institution. Approval of an Assurance will be for a specified period of time (no longer than five years) after which time the institution must submit a new Assurance to OPRR. OPRR may limit the period during which any particular approved Assurance shall remain effective or otherwise condition, restrict, or withdraw approval. Without an applicable PHS approved Assurance, no PHS-supported activity involving animals at the institution will be permitted to continue.

(1) *Institutional program for animal care and use.* The Assurance shall fully describe the institution's program for the care and use of animals in PHS-supported activities. PHS requires institutions to use the *Guide for the Care and Use of Laboratory Animals* (*Guide*) as a basis for developing and implementing an institutional program for activities involving animals. The program description must include the following:

(i) A list of every branch and major component of the institution, as well as a list of every branch and major component of any institution which is to be included under the Assurance;

(ii) The lines of authority and responsibility for administering the program and ensuring compliance with this policy;

(iii) The qualifications, authority and responsibility of the veterinarian(s) who will participate in the program;

(iv) The membership list of the Institutional Animal Care and Use Committee(s) (IACUC)[1] established in accordance with the requirements set forth in this subpart;

[1] The name Institutional Animal Care and Use Committee (IACUC) as used in this policy is intended as a generic term for a committee whose function is to ensure that the

Continued

(v) The procedures which the IACUC will follow to fulfill the requirements set forth in this subpart;

(vi) The health program for personnel who work in laboratory animal facilities or have frequent contact with animals;

(vii) The gross square footage of each animal facility (including satellite facilities), the species housed therein and the average daily inventory, by species, of animals in each facility; and

(viii) Any other pertinent information requested by OPRR.

(2) *Institutional status.* Each institution must assure that its program and facilities are in one of the following categories:

(i) *Category 1*— Accredited by the American Association for the Accreditation of Laboratory Animal Care (AAALAC). All of the institution's programs and facilities (including satellite facilities) for activities involving animals have been evaluated and accredited by AAALAC, or another accrediting body recognized by PHS.[2]

(ii) *Category 2*— Evaluated by the Institution. All of the institution's programs and facilities (including satellite facilities) for activities involving animals have been evaluated by the IACUC and will be reevaluated by the IACUC at least once each year. The IACUC shall use the *Guide* as a basis for evaluating the institution's program and facilities.

A report of the IACUC evaluation shall be submitted to the institutional official and updated on an annual basis.[3] The initial report shall be submitted to OPRR with the Assurance. Annual reports of the IACUC evaluation shall be maintained by the institution and made available to OPRR upon request. The report must contain a description of the nature and extent of the institution's adherence to the *Guide* and this policy.[4] The report must identify specifically any departures from provisions of the *Guide* and this policy, and state the reasons for each departure. If program or facility deficiencies are noted, the report must contain a reasonable and specific plan and schedule for correcting each deficiency. The report must distinguish significant deficiencies from minor deficiencies. A significant deficiency is one which, in the judgment of the IACUC and the institutional official, is or may be a threat to the health or safety of the animals. Failure of the IACUC to conduct an annual evaluation and submit the required report to the institutional official may result in PHS withdrawal of its approval of the Assurance.

(3) *Institutional Animal Care and Use Committee (IACUC).* (i) Each institution shall appoint an Institutional Animal Care and Use Committee (IACUC), qualified through experience and expertise of its members, to oversee the institution's animal program, facilities and procedures.

(ii) The Assurance must include the names, position titles and credentials of the IACUC chairperson and the members. The committee shall consist of not less than five members, and shall include at least:

(A) One Doctor of Veterinary Medicine, with training or experience in laboratory animal science and medicine, who has direct or delegated program responsibility for activities involving animals at the institution;

(B) One practicing scientist experienced in research involving animals;

(C) One member whose primary concerns are in a nonscientific area (for example, ethicist, lawyer, member of the clergy); and

(D) One individual who is not affiliated with the institution in any way

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care and use of animals in PHS-supported activities is appropriate and humane in accordance with this policy. However, each institution may identify the committee by whatever name it chooses. Membership and responsibilities of the IACUC are set forth in PHS 380.205(d).

[2] As of the issuance date of this policy the only accrediting body recognized by PHS is the American Association for Accredidation of Laboratory Animal Care (AAALAC).

[3] The IACUC may, at its discretion, determine the best means of conducting an evaluation of the institution's programs and facilities. The IACUC may invite ad hoc consultants to conduct or assist in conducting the evaluation. However, the IACUC remains responsible for the evaluation and report.

[4] If some of the institution's facilities are accredited by AAALAC or other accrediting body recognized by PHS, the report should identify those facilities and need not contain any further information about evaulation of those facilities.

other than as a member of the IACUC, and is not a member of the immediate family of a person who is affiliated with the institution.

(iii) An individual who meets the requirements of more than one of the categories detailed in PHS 380.205(d)(2)(i)-(iv) above, may fulfill more than one requirement. However, no committee may consist of less than five members.

(b) *Functions of the Institutional Animal Care and Use Committee.* As an agent of the institution, the IACUC shall, will respect to PHS-supported activities:

(1) Review at least annually the institution's program for humane care and use of animals;

(2) Inspect at least annually all of the institution's animal facilities, including satellite facilities;

(3) Review concerns involving the care and use of animals at the institution;

(4) Make recommendations to the institutional official regarding any aspect of the institution's animal program, facilities or personnel training;

(5) Review and approve, require modifications in (to secure approval), or withhold approval of those sections of PHS applications or proposals related to the care and use of animals, as specified in PHS 380.205(f) of this subpart;

(6) Review and approve, require modifications in (to secure approval), or withhold approval of proposed significant changes regarding the use of animals in ongoing activities; and

(7) Be authorized to suspend an activity involving animals in accord with specifications set forth in this subpart.

(c) *Review of applications and proposals.* In order to approve applications and proposals or proposed changes in ongoing activities, the IACUC shall conduct a review of those sections related to the care and use of animals and determine that the proposed activities are in accordance with this policy. In making this determination, the IACUC shall confirm that the activity will be conducted in accordance with the Animal Welfare Act insofar as it applies to the activity, and that the activity is consistent with the *Guide,* unless the IACUC determines that acceptable justification for a departure is presented. Furthermore, the IACUC shall determine that the activity conforms with the institution's Assurance and meets the following requirements:

(1) Procedures with animals will avoid or minimize discomfort, distress and pain to the animals, consistent with sound research design.

(2) Procedures that may cause more than momentary or slight pain or distress to the animals will be performed with appropriate sedation, analgesia, or anesthesia, unless the procedure is justified for scientific reasons in writing by the investigator.

(3) Animals that would otherwise experience severe or chronic pain or distress that cannot be relieved will be painlessly sacrificed at the end of the procedure or, if appropriate, during the procedure.

(4) The living conditions of animals will be appropriate for their species and contribute to their health and comfort. The housing, feeding and nonmedical care of the animals will be directed by a veterinarian or a scientist trained and experienced in the proper care, handling and use of the species being maintained or studied.

(5) Medical care for animals will be available and provided as necessary by a qualified veterinarian.

(6) Personnel conducting procedures on the species being maintained or studies will be appropriately qualified and trained in those procedures.

(7) Methods of euthanasia used will be consistent with the recommendations of the American Veterinary Medical Association (AVMA) Panel of Euthanasia[5], unless a deviation is justified for scientific reasons in writing by the investigator.

PHS 380.206 Public Health Service implementation.

(a) *Responsibility of the Office for Protection from Research Risks (OPRR).* OPRR is responsible for the general administration and coordination of this policy and will:

(1) Request and negotiate, approve or disapprove, and, as necessary, withdraw approval of Assurances;

[5] Journal of the American Veterinary Association (JAVMA), 1978, Vol. 143, No. 1, pp. 59–72, or succeeding revised editions.

(2) Distribute to executive secretaries of initial review and technical evaluation groups, and to PHS contracting offices, lists of institutions that have an approved Assurance;

(3) Advise contracting offices and awardee institutions concerning the implementation of this policy;

(4) Evaluate allegations of noncompliance with this subpart;

(5) Have the authority to review and approve or disapprove waivers of this subpart (see paragraph (d) of this section); and

(6) With other PHS officials, conduct site visits to selected institutions.

(b) *Responsibilities of PHS contracting offices.* PHS contracting offices shall not make an award for an activity involving animals unless the institution submitting the application or proposal is on the list of institutions that have an approved Assurance of file with OPRR, and the institutional official has provided verification of approval by the IACUC of those sections of the application or proposal related to the care and use of animals. If an institution is not listed, the contracting office shall ask OPRR to negotiate an Assurance with the institution before an award is made. No award shall be made until the Assurance has been submitted by the institution, approved by OPRR, and the institution has provided verification of approval by the IACUC of those sections of the application or proposal related to the care and use of animals in PHS-supported activities.

(c) *Conduct of special reviews/site visits.* Each awardee institution is subject to review at any time by PHS staff and advisors, which may include a site visit, to assess the adequacy of the institution's compliance with this policy.

(d) *Waiver.* Institutions may request a waiver of a provision of this policy by submitting a request to OPRR. No waiver will be granted unless sufficient justification is provided, and the waiver is approved in writing by OPRR.

Subpart PHS 380.3—Acquisition of Drugs and Medical Supplies

PHS 380.301 Scope of subpart.

This subpart provides policies and procedures pertaining to the acquisition of drug products and medical supplies by PHS or PHS's contractors.

PHS 380.302 Acquisition of drugs.

PHS 380.302–1 Policy.

(a) Drugs shall be acquired at the lowest possible price consistent with acceptable standards of identity, strength, quality, purity, safety and effectiveness, and with due regard for the welfare of the patient and the professional judgment of the prescriber.

(b) Contracting activities shall ensure that drugs are acquired by generic name on a competitive basis whenever it is possible to obtain therapeutically effective drugs of established quality. However, the professional judgment of the prescriber to request drugs by brand name or house designation must be recognized when the best interest of the patient requires it. Similarly, scientific investigators have the prerogative to request drugs having end-product characteristics considered necessary for the conduct of research or investigations.

(c) Prior to taking any acquisition action, the contracting officer shall ensure that the requested drug products are not available from mandatory sources such as Federal Supply Schedules. Part 103–26 of the HHS Material Management Manual describes sources of supply for drugs.

PHS 380.302–2 Solicitation and contract requirements.

The contracting officer should consider including statements similar to the following in solicitations and resultant contracts pertaining to drug products:

(a) The offeror (contractor) guarantees that all requirements established by the Food and Drug Administration, HHS, have been met. These requirements include: plant sanitation, manufacturing, packaging, labeling, identification, strength, quality, purity, safety, and effectiveness.

NOTE: The contracting officer may want to cite the applicable reference(s) pertaining to the FDA requirements.

(b) The offeror (contractor), by signing this document, guarantees/warrants that any applicable shelf-life requirements have been met and the furnished drugs are free from defects.

(c) The Government reserves the right to inspect the manufacturer's plant and premises during normal operating hours.

NOTE: FDA will normally conduct the inspection when requested, but may request to be reimbursed for the services.

(d) The offeror (contractor) agrees to submit either a comprehensive, certified analysis on each lot of drugs at the time of delivery of the drugs, or a comprehensive list of specifications met by the drugs along with a certificate of analysis, or other suitable documentation, verifying that the drugs meet the appropriate standards.

(e) The offeror (contractor) claims it is not currently listed as a disqualified bidder or offeror for drugs by any Federal agency or department.

(f) The offeror must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(g) If the offeror (prime contractor) plans to use (or uses) a subcontractor or secondary manufacturer for the furnishing of any or all the drug products under the resultant contract, the name and address of the subcontractor or secondary manufacturer is to be furnished the contracting officer, along with the drug lots affected. The prime contractor shall ensure that the subcontractor or secondary manufacturer complies with the above stated requirements.

PHS 380.303 Acquisition of controlled drugs.

(a) Controlled drugs include narcotics and dangerous drugs identified by the Drug Enforcement Administration (DEA), Department of Justice, in the regulations implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Title 21 CFR Chapter II).

(b) The DEA issues a Controlled Substances Inventory List which provides general information pertaining to the ordering of controlled drug products and the use of specific order forms. The local DEA regional office should be contacted to receive the list and instructions regarding registering and ordering forms, as well as other matters concerning the handling and processing of controlled drugs. Sections 103–27.6204(a)(2) and 103–27.6302(b) of the HHS Material Management Manual provide information on issuing, shipping, and safeguarding controlled drugs.

(c) Contracting officers shall ensure that requests for contracts or purchase requests are supported by the required DEA form prior to initiation of any action.

PHS 380.304 Effectiveness of drug products.

PHS 380.304–1 General.

(a) The National Academy of Sciences National Research Council (NAS-NRC) has established effectiveness classifications for the indication of drug products, based upon the following criteria:

(1) Factual information that is freely available in scientific literature;

(2) Factual information that is available from the Food and Drug Administration, the manufacturer, or other sources; and

(3) Experience and informed judgment of the members of NAS-NRC panels.

(b) The indications mentioned in the following categories refer to ''the effect the drug purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling.'' That is, the indications are the claims noted in the labeling of a given drug product.

(1) *Category A—Effective.* For the presented indication, the drug is effective on the basis of the criteria cited in PHS 380.304–1(a) above.

(2) *Category B—Probably Effective.* For the indication presented, effectiveness of the drug is probable on the basis of the criteria cited in PHS 380.304–1(a) but additional evidence is required before it can be assigned to Category A.

(3) *Category C—Possibly Effective.* In relation to the indication in question, there is little evidence of effectiveness under any of the criteria cited in PHS

380.304–1(a). The possibility that additional supporting evidence might be developed should not be ruled out, however.

(4) *Category D—Ineffective.* In relation to the indication in question, there is no acceptable evidence under any of the criteria cited in PHS 380.304–1(a) to support a claim of effectiveness.

PHS 380.304–2 Policy.

(a) It is PHS policy to not acquire drug products classified ''ineffective'' or ''possibly effective'' for use in its direct care programs. However, there are two exceptions to this policy:

(1) Drug products categorized as ''ineffective'' and ''possibly effective'' may be acquired for use in the pursuit of approved clinical research products.

(2) Drug products categorized as ''possibly effective'' may be acquired when no alternate means of therapy with drug products in the ''probably effective'' or ''effective'' categories are available.

(b) This policy applies to similar drug products marketed by the same or other firms.

PHS 380.304–3 Procedures.

(a) The contracting officer, prior to initiating action on a purchase request or request for contract for drug products, shall ensure that the items are screened against current lists of products identified by the Pharmacy Liaison Officer, Public Health Service, to determine whether acquisition of the items is prohibited, and that the individual actually performing the screening has annotated and initialed the request.

(b) When the request is received for a drug product which is allowable under the exceptions stated in PHS 380.304–2, the contracting officer shall ensure that the appropriate justification is provided, that it is signed by the responsible program official, and that it is included in the contract or purchase request file.

(c) When the request for a restricted drug product cannot be resolved by the substitution of another item, the contracting officer shall consider the request as a deviation and process it in accordance with Subpart 301.4.

PHS 380.304–4 Distribution of information.

(a) The Pharmacy Liaison Officer, Public Health Service, has responsibility for distributing information on the effectiveness of drug products to the principal official responsible for acquisition. The principal official responsible for acquisition will be advised by telephone of drug products classified as ''ineffective'' or ''possibly effective'' prior to publication in the FEDERAL REGISTER, and will be provided a monthly list of these drug products following publication in the FEDERAL REGISTER.

(b) The principal official responsible for acquisition shall establish procedures for the distribution of information on the effectiveness of drug products and implement other controls necessary to assure compliance with the policy set forth in PHS 380.304–2.

PHS 380.305 Maximum allowable cost for drugs.

PHS 380.305–1 General.

(a) The regulation entitled ''Limitation on Payment or Reimbursement for Drugs,'' also known as the Maximum Allowable Cost or MAC regulation, is set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(b) The MAC regulation established departmental policies and procedures for determining allowable drug costs and, where applicable, dispensing fees to be used to establish:

(1) Reimbursement to providers and health maintenance organizations under the Medicare program;

(2) Reimbursement to States under State administered health, welfare, and social service programs; and

(3) Allowable costs under projects for health services.

PHS 380.305–2 Applicability.

(a) This regulation implements the MAC regulation by establishing acquisition procedures consistent with the purpose and intent of the MAC regulation.

(b) This regulation applies to the direct acquistion of drugs by PHS and the acquisition or supply of drugs by PHS contractors.

(c) This regulation does not apply to the acquisition of drugs for research programs made by PHS and its contractors.

PHS 380.305–3 Responsibilities.

(a) The program office which initiates the requirement is responsible for advising the contracting office as to the applicability of the MAC regulation to the proposed acquisition.

(b) The Pharmacy Liaison Officer, PHS, is responsible for distributing to the principal official responsible for acquisition of the MAC determination or data concerning the acquisition cost of drugs. The MAC determination should be furnished within thirty days after publication as a final rule in the FEDERAL REGISTER. Acquisition cost data should be furnished within thirty days after the effective date.

(c) The principal official responsible for acquisition shall establish procedures for disseminating MAC determinations and acquisition cost data and may initiate other actions necessary to ensure compliance with the requirements of this regulation.

PHS 380.305–4 Solicitation notification.

(a) The contracting officer shall ensure that all requests for proposals and invitations for bids which are subject to the provisions of the MAC regulation contain a notice worded substantially as follows:

> This acquisition is subject to the Maximum Allowable Cost (MAC) regulation set forth in part 19 to subtitle A of title 45 of the Code of Federal Regulations.

(b) The contracting officer shall include the applicable MAC determination or acquisition cost data in the RFP or IFB.

(c) The referenced solicitation notice, or a notice worded similarly to it, is required to be included in all applicable solicitations issued by the contractor or its subcontractors.

PHS 380.305–5 Contract requirements.

(a) The contracting officer shall include a clause entitled ''Maximum Allowable Cost for Drugs,'' reading substantially as the clause cited in PHS 352.280–3, in all contracts subject to the provisions of the MAC regulation.

(b) The contracting officer shall incorporate in all contracts subject to the provisions of the MAC regulation the applicable MAC determination or acquisition cost data furnished in the solicitation.

(c) The clause cited in PHS 352.280–3, or a clause worded substantially as that cluase, is required to be included in all applicable contracts awarded by the contractor or its subcontractors.

PHS 380.306 Acquisition of tax free and specially denatured alcohol.

(a) All orders for tax free and specially denatured alcohol shall be placed with the HRSA Supply Service Center, Perry Point, MD. Orders shall be placed in accordance with the ordering instructions contained in the HRSA Medical Supply Catalog.

Subpart PHS 380.4—Contracts Under the Indian Self-Determination Act

PHS 380.400 Scope of subpart.

This subpart prescribes procedures for contracting by the Public Health Service (PHS) under the Indian Self-Determination Act (25 U.S.C. 450f).

PHS 380.401 Applicability of regulations.

Contracts with tribal organizations resulting from the submission of Indian Self-Determination Contract Proposals as authorized in Public Law 93–638 shall be in accordance with 41 CFR Chapters 1 and 3, except as otherwise provided herein. If this subpart conflicts with any of the other provisions of 41 CFR Chapters 1 or 3, the provisions of this subpart govern.

PHS 380.402 Waivers.

(a) The Secretary of Health and Human Services (HHS) waives Federal contract clauses that are normally contained in the General provisions of a contract to the extent that they are omitted from the General provisions prescribed for such contracts in this subpart.

(b) The Secretary may waive for the purpose of a specific contract other provisions of Federal contracting laws

or regulations as determined not appropriate in view of, or are inconsistent with, the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). Requests for such waivers shall be in accordance with 42 CFR 36.216.

(c) Although it is PHS's policy to obtain competition whenever possible, any contract award to a tribal organization resulting from the submission of an Indian Self-Determination Contract Proposal will be effected without competition.

(d) Proposed contracts under section 103 of the Indian Self-Determination Act are exempted from the synopsis requirements of 41 CFR 1–1.1003. Although subcontracts are subject under section 7(b) of that act to a preference to Indian organizations and to Indian-owned economic enterprises, opportunities to so subcontract may be publicized by contracting officers as provided for in 41 CFR 1–1.1003–4.

PHS 380.403 Negotiating authority.

Contracts entered into pursuant to section 103 of the Indian Self-Determination Act (25 U.S.C. 450g) will cite as the negotiating authority 41 U.S.C. 252(c)(15) and 25 U.S.C. 450g.

PHS 380.404 Definitions.

The definitions prescribed in 42 CFR 36.204 are applicable to this supbart.

PHS 380.405 Types of contracts.

(a) Cost-reimbursement contracts will be used for all contracts made pursuant to this subpart between PHS and an Indian tribe or tribal organization. In addition to other provisions as the Secretary may from time to time require, the cost-reimbursement contracts shall contain the terms set out in PHS 352.280–4(a).

(b) Fixed-price contracts may be used in only these instances where costs can be precisely established. In addition to other provisions as the Secretary may from time to time require, the fixed-price contracts shall contain the terms set out in PHS 352.280–4(b).

(c) Cost sharing contracts may be used where the tribe contributes to the cost of a program and may specify a percentage of cost or fixed amount to be funded by the Government.

PHS 380.406 Term of contract.

(a) The term of contracts awarded under the Act shall not exceed one year except that contracts may be made for a longer term up to three years subject to the availability of appropriations under the following circumstances:

(1) The services provided under the contract can reasonably be expected to be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe or tribes to be served by the contract request that the term be more than one year. The tribal organizational will indicate the desired term of the contract in the Self-Determination Contract Proposal.

(b) Contract made for a term of more than one year may be renegotiated annually to reflect factors which include, but need not be limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract.

PHS 380.407 Exemption from bonds.

A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this subpart for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors other than tribal organizations, to furnish both performance and payment bonds as follows:

(a) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he/she deems adequate, for the protection of the United States.

(b) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in the prosecution of the work provided for in the contract. Whenever the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total

amount payable by the terms of the contract is more than $1,000,000 but not more than $5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $5,000,000, the payment bond shall be $2,500,000.

PHS 380.408 Acquisition of construction and architect-engineering service contracts.

(a) This section sets forth procedures and requirements peculiar to construction and architect-engineering service contracts. The terms and conditions of these contracts when negotiated with an Indian tribe or tribal organization pursuant to the Act shall, to the extent applicable, be in accordance with the requirements set forth in 41 CFR Part 1–18 and Subpart 1–4.10. However, if there is a conflict between 41 CFR Part 1–18 and Subpart 1–4.10, and any provision of the Act or 42 CFR Part 36, the Act or 42 CFR Part 36 shall govern. In addition these contracts shall include the special provisions identified in PHS 380.410.

(b) *Exceptions.* (1) Subpart 1–18.10 of this title is not applicable.

(2) The contract clauses required by 1–18.703–1 of this title shall be inserted in construction contracts with an Indian tribe or tribal organization which serves as a governmental instrumentality of an Indian tribe, but shall be prefaced by the provision contained in 1–18.702–3 of this title.

(3) In all cases, the contracting officer shall obtain and insert the Wage Determination Decision issued by the Secretary of Labor in the contract prior to award of any contract for construction that falls within the purview of the Davis-Bacon Act. The Wage Determination Decision should be furnished sufficiently in advance of the contract award date to permit full consideration by the tribal organization and any prospective subcontractors.

PHS 380.409 Performance of personal services.

Any contract made under this subpart may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in connection with the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Providing such assistance, benefits, or services.

PHS 380.410 Special provisions of Indian Self-Determination contracts.

Contracts entered into pursuant to Section 103 of the Indian Self-Determination Act must incorporate special clauses which are consistent with those prescribed in Subpart I of Part 36 of 42 CFR on the following subjects:

(a) Fair and equal treatment of Indian people.

(b) Use of Indian business concerns.

(c) Indian preference in training and employment.

(d) Indemnity and insurance.

(e) Reports to the Indian people.

(f) Penalties.

(g) Retrocession.

(h) Assumption and reassumption of contract programs.

PHS 380.411 General provisions.

General provisions are published in these regulations (see PHS 352.280–4 for text of clauses) in order to respond to the expressed desire of the Indian people, to have published in one place, all of the terms and conditions applicable to contracts awarded under the Act. These general provisions incorporate the special clauses whose titles are listed in PHS 380.410, above, as well as applicable standard contract clauses.

Subpart PHS 380.5—Acquisitions Under the Buy Indian Act

PHS 380.500 Scope of subpart.

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Bay Indian Act. Applicability of this subpart is limited to acquisitions made by or on behalf of the Indian Health Service of the Public Health Service.

PHS 380.501 Policy.

(a) The Indian Health Service will utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act was enacted as a proviso to Section 23 of the Act of June 25, 1910, Chapter 431, Pub. L. 313, 61st Congress, 36 Stat. 861,and prescribes the application of the advertising requirements of section 3709 of the Revised Statutes to the acquisition of Indian supplies. As set out in 25 U.S.C. 47, the Buy Indian Act provides as follows:

> So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

(b) The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians were transferred to the Secretary of Health, Education, and Welfare, on July 1, 1955 by Pub. L. 568, 83rd Congress, 42 U.S.C. 2001 et seq. Accordingly, the Secretary of Health and Human Services is authorized to use the Buy Indian Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of the Indian Health Service).

(c) Use of the Buy Indian Act negotiation authority has been emphasized in subsequent legislation, particularly Pub. L. 94–437 and Pub. L. 96–537.

PHS 380.502 Definitions.

PHS 380.502–1 Indian.

Indian means a member of any tribe, pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services. The Secretary of Health and Human Services in making such determinations may take into account the determination of the tribe with which affiliation is claimed.

PHS 380.502–2 Indian firm.

Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Pub. L. 94–437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (see PHS 380.503(a)).

PHS 380.502–3 Product of Indian industry.

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

PHS 380.502–4 Buy Indian contract.

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c)(15) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service.

PHS 380.502–5 Buy Indian restricted advertising.

Buy Indian restricted advertising is a special method of negotiated acquisition conducted in the same manner as a formally advertised acquisition, except that competition and award are restricted to Indian firms (see FAR 19.101). Thus, a Buy Indian acquisition may be considered an acquisition set-aside for Indian firms in the manner that some acquisitions are set-aside for small business concerns (see FAR 19.101). Set-aside acquisitions are, technically, negotiated acquisitions but should be conducted as if they were formally advertised acquisitions in instances where the formal advertising method would be used if the set-aside was not in effect.

PHS 380.503 Requirements.

(a) *Indian ownership.* The degree of ownership that is called for by PHS 380.502–2 shall be 100 percent during the period covered by a Buy Indian contract unless a deviation from that 100 percent requirement is approved on an individual basis by the cognizant Area or Program Office Director of the Indian Health Service. Such a deviation, which may be to not less than 51 percent, must be accompanied by an appropriate justification for the deviation.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or pubic works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a) and Part 28 of the Federal Acquisition Regulation (48 CFR Ch. 1). In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), which requires that preference be given to Indians in employment, training, and subcontracting. Subpart 370.2 and the contract clauses in 352.270–2 and 352.270–3 represent the Department's implementation of section 7(b). The Indian Preference clause set forth in 352.270–2 shall be included in all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in 352.270–3 shall be used as specified in 370.202(b). All requirements set forth in Subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a–5) shall be included in all contracts awarded under the Buy Indian Act for over $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or members of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

PHS 380.504 Competition.

(a) Contracts to be awarded under the Buy Indian Act shall be subject to competition among Indians or Indian concerns to the maximum extent that competition is determined by the contracting officer to be practicable, pursuant to FAR 14.101 and FAR 15.105. When competition is determined not to be practicable, a Justification for Noncompetitive Acquisition shall be prepared in accordance with 315.7105 and subsequently retained in the contract file.

(b) Notwithstanding the provisions of Subpart 315.71, a request for approval of noncompetitive acquisitions to be negotiated under the Buy Indian Act may, if $25,000 or less, be approved by

the chief of the contracting office,or, if over $25,000, by the cognizant Area or Program Office Director. Approval shall be in the form of a Justification for Noncompetitive Acquisition.

(c) Solicitations must be synopsized and publicized in the Commerce Business Daily (see FAR 5.2 and Subpart 305.2) and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis should state that the acquisition is restricted to Indian firms under the Buy Indian Act.

PHS 380.505 Responsibility determinations.

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under such a contract and that the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a), to be made prior to the award of a contract, will be made in writing by the contracting officer reflecting an analysis of the standards set forth in FAR 9.104–1, 309.104–1 of this chapter and PHS 380.502–2.

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AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

401.000 Scope of part.

This part presents basic policies and general information about the Department of Agriculture's (USDA) Acquisition Regulation, subsequently referred to as the AGAR. The AGAR is an integral part of the Federal Acquisition Regulations System.

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.

(a) The AGAR provides for the codification and publication of uniform policies and procedures for acquisitions by contracting activities within USDA.

(b) The purpose of the AGAR is to implement the Federal Acquisition Regulation (FAR), where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete document, as it must be used in conjunction with the FAR.

401.103 Authority.

The AGAR and amendments thereto are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c). The Senior Procurement Executive (SPE) has the delegated authority to promulgate Departmental acquisition regulations.

401.104 Applicability.

The FAR and AGAR apply to all USDA acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified in this chapter or excepted by law.

401.105 Issuance.

401.105–1 Publication and code arrangement.

(a) The AGAR is codified in the Code of Federal Regulations (CFR) as Chapter 4 of Title 48, Federal Acquisition Regulations System, to implement and supplement Chapter 1 which constitutes the FAR. Parts 400 through 499 have been assigned to USDA by the Office of the FEDERAL REGISTER.

(b) The AGAR and its subsequent changes are published in:

(1) Daily issues of the FEDERAL REGISTER,

(2) Cumulative form in the CFR, and

(3) Loose-leaf form for distribution within USDA.

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. OFPP Policy Letter 83–2 requires rulemaking for substantive acquisition rules but allows discretion in the matter for other than significant issues meeting the stated criteria. The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act and OFPP Policy Letter 83–2.

401.105–2 Arrangement of regulations.

AGAR coverage parallels the FAR in format, arrangement, and numbering system. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

401.105–3 Copies.

Copies of the AGAR published in CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference Chapter 4 of Title 48 CFR.

401.106 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to USDA solicitations and specified information collections within the AGAR:

AGAR segment	OMB Control No.
411.170	0505–0014
415.2	0505–0013
436.575	0505–0011
437.110	0505–0015
437.270	0505–0016
452.211–1	0505–0014
452.215–71	0505–0013
452.236–75	0505–0011
452.237–74	0505–0015
452.237–76	0505–0016

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52674, Sept. 30, 1999]

401.170 Electronic access to regulatory information.

The USDA Departmental Administration Procurement Homepage provides access to the AGAR, AGAR amendments (circulars), AGAR Advisories, and other USDA procurement policy and guidance in electronic form. The Internet address for the Procurement Homepage is URL http://www.usda.gov/da/procure.html.

[63 FR 26994, May 15, 1998]

Subpart 401.2—Administration

401.201 Maintenance of the FAR.

401.201–1 The two councils.

(a) USDA's representative on the Civilian Agency Acquisition Council is designated by the SPE.

(b) The Procurement Policy Division will coordinate proposed FAR revisions with interested contracting activities.

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.

(a) The SPE, subject to the authorities in 401.103 and FAR 1.301, may issue and publish Departmental regulations, that together with the FAR, constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between USDA (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated head of a contracting activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the FEDERAL REGISTER. HCA's shall ensure that the guidance, procedures, or instructions issued—

(1) Are consistent with the policies and procedures contained in this chapter;

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this chapter; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A [Reserved]
4B Agricultural Research Service.
4C Farm Service Agency.
4D Rural Development (mission area).
4E Food Safety and Inspection Service.
4F [Reserved]
4G Forest Service.
4H [Reserved]
4I Natural Resources Conservation Service.
4J [Reserved]
4K Food and Consumer Service.
4L Animal and Plant Health Inspection Service.
4M [Reserved]
4N Office of Operations.
4O–4P [Reserved]
4R Office of Inspector General.
4S [Reserved]

401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisition regulations published in the FEDERAL REGISTER to assure compliance with FAR part 1.

(b) The SPE is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) HCA's are responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the SPE for further action.

401.370 Exclusions.

Subject to the policies of FAR subpart 1.3, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which is effective for a period less than 12 months.

(b) Subject matter which is instituted on an experimental basis for a reasonable period.

(c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, OMB Circular, or OFPP Policy Letter.

401.371 AGAR Advisories.

The SPE may issue AGAR Advisories, consistent with the policies of the FAR and the AGAR, for the following purposes:

(a) To communicate Department-wide policy and/or procedural guidance to contracting activities;

(b) To delegate to procurement officials authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,

(c) To establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.

401.372 Departmental directives.

Subject to the policies of FAR 1.3, USDA from time to time may issue internal directives to establish procedures, standards, guidance, or methods of performing duties, functions, or operations. Such directives include Departmental Regulations (DR's), Departmental Notices, and Secretary's Memoranda.

Subpart 401.4—Deviations From the FAR and AGAR

401.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as

far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(a) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR and AGAR;

(b) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(c) If applicable, the name of the contractor and identification of the contract affected;

(d) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(e) A description of the intended effect of the deviation;

(f) A statement of the period of time for which the deviation is needed; and

(g) Any pertinent background information which will contribute to a full understanding of the desired deviation.

401.403 Individual deviations.

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, HCA's may approve individual deviations from the AGAR, after coordinating with the General Counsel and the SPE. No deviations from the FAR or AGAR may be authorized at the contracting office level. A copy of each deviation and its supporting documentation shall be provided to the SPE. Deviations from the FAR shall not be made unless such action is authorized by the SPE after consultation with the Office of the General Counsel and any other appropriate office, on the basis of a written justification stating clearly the special circumstances involved.

401.404 Class deviations.

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE for approval. The SPE may authorize class deviations from the FAR without consulting the Chairperson of the Civilian Agency Acquisition Council where urgency precludes consultation. The SPE shall subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

Subpart 401.6—Contracting Authority and Responsibilities

401.601 General.

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of USDA's acquisition system.

(6) Managing and enhancing career development of the contracting work force.

(7) Participating in the development of Government-wide acquisition policies, regulations, and standards; and determining specific areas where government-wide performance standards should be established and applied.

(8) Determining areas of Department-unique standards and developing unique Department-wide standards.

(9) Certifying to the Secretary that the acquisition system meets approved standards.

(b) The SPE may delegate contracting authority to the Heads of Contracting Activities (HCA's) and the responsibility to manage their acquisition function.

(c) Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate to HCA's the authority to make determinations as the agency head in

order to implement the policies and procedures of the FAR. Such delegations shall be in writing, but need not be published.

(d) Unless prohibited by the FAR, the AGAR, or by other applicable statutes or regulations, each HCA may designate one individual from the contracting activity to carry out the functions of the HCA (HCAD). The HCAD may exercise all authority delegated to the HCA.

401.602 Contracting officers.

401.602–3 Ratification of unauthorized commitments.

(a) *Definitions. Ratification,* as used in this section, means the signed, documented action taken by an authorized official to approve and sanction a previously unauthorized commitment.

Unauthorized commitment, as used in this section, means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

(b) *Policy.* The HCA may delegate ratification authority to the chief of the contracting office.

(c) *Procedure.* Whenever an official of the cognizant contracting activity who is authorized to ratify unauthorized commitments learns that a person or firm has assumed work as a result of an unauthorized commitment, that official shall take the following actions:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the individual who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure that the individual who made the unauthorized commitment furnishes all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to: a statement as to why a contracting officer was not used; why the vendor was selected and a list of sources considered; a description of work to be performed or products to be furnished; the estimated or agreed price; whether an appropriation is available for the work; and whether performance has begun. Under exceptional circumstances, such as when the individual who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the ratifying official may waive these requirements; and

(4) Decide whether ratification is proper and proceed as follows:

(i) If ratification is not justifiable, provide the cognizant program office, contracting office, and the unauthorized contractor with an explanation of the decision not to ratify.

(ii) If ratification appears adequately justified, ratify the action and retain or assign the contract to a successor contracting officer if necessary.

(iii) Maintain related approval, decisional, and background documents in the contract file for audit purposes.

(iv) Notify the cognizant program supervisor or line officer about the final disposition of the case; the notification may include a recommendation that the unauthorized commitment should be further considered a violation of USDA's employee conduct regulations.

401.603 Selection, appointment, and termination of appointment.

401.603–1 General.

An HCA may delegate contracting authority to the extent authorized by the SPE in a general delegation of acquisition authority, by appointing qualified individuals as contracting officers, in accordance with the USDA Contracting Officer Warrant System, Departmental Regulation 5001–1.

PART 402—DEFINITIONS OF WORDS AND TERMS

Sec.

402.000 Scope of part.

Subpart 402.1—Definitions

402.101 Definitions.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

402.000 Scope of part.

As used throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

Subpart 402.1—Definitions

402.101 Definitions.

Acquisition official means an individual who has been delegated authority to manage or to exercise acquisition functions and responsibilities.

Agency head or *Head of the Agency* means the Secretary of Agriculture, Deputy Secretary, or the Assistant Secretary for Administration.

Head of the contracting activity (HCA) means the official who has overall responsibility for managing the contracting activity (i.e., Chief, Forest Service; Administrator, Agricultural Research Service; etc.), or the individual designated by such an official to carry out the functions of the HCA.

Senior Procurement Executive (SPE) means the agency official appointed as such by the head of the agency pursuant to Executive Order 12931. The Director, Office of Procurement and Property Management, has been designated as the USDA SPE.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26994, May 15, 1998]

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 403.1—Safeguards

Sec.

403.101 Standards of conduct.
403.101–3 Agency regulations.
403.104 Procurement integrity.
403.104–5 [Reserved]
403.104–10 Violations or possible violations.

Subpart 403.2—Contractor Gratuities to Government Personnel

403.203 Reporting suspected violations of the gratuities clause.
403.204 Treatment of violations.

Subpart 403.3—Reports of Suspected Antitrust Violations

403.303 Reporting suspected antitrust violations.

Subpart 403.4—Contingent Fees

403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

403.602 Exceptions.
403.603 Responsibilities of the contracting officer.

Subpart 403.8—Limitation on the Payment of Funds to Influence Federal Transactions

403.806 Processing suspected violations

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 403.1—Safeguards

403.101 Standards of conduct.

403.101–3 Agency regulations.

(a) The standards of conduct for USDA procurement officials are the uniform standards established by the Office of Government Ethics in 5 CFR Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch,* and FAR 3.104, *Procurement integrity.*

(b) Procurement officials and other employees who require advice concerning the application of standards of conduct to any acquisition issue shall obtain ethics advisory opinions from

ethics advisory officials in their agency personnel offices.

403.104 Procurement integrity.

403.104–5 [Reserved]

403.104–10 Violations or possible violations.

(a) The contracting officer shall forward information concerning any violation or possible violation of the Procurement Integrity Act (41 U.S.C. 423) to the chief of the contracting office.

(b) Heads of contracting activities (HCA's) or their designees who receive information concerning any violation or possible violation of the Act shall take action in accordance with FAR 3.104–10(b).

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

Subpart 403.2—Contractor Gratuities to Government Personnel

403.203 Reporting suspected violations of the gratuities clause.

A suspected violation of the contract clause, FAR 52.203–3, Gratuities, shall be reported immediately to the cognizant contracting officer in writing, stating the circumstances surrounding the incident(s), the date(s), and names of all parties involved. The contracting officer shall review the report for completeness, add any additional information deemed necessary and a recommendation for action, and submit the report to the HCA.

403.204 Treatment of violations.

The HCA shall review the report and consult with the Offices of General Counsel and Inspector General to determine whether further action should be pursued. If it is found that the facts and circumstances warrant further action, the HCA shall give the contractor a formal written notice which summarizes the reported violation and affords the contractor the opportunity to make a written or oral response within a reasonable, specified period after receipt of the notice. The notice shall be sent by certified mail with return receipt requested. Oral presentations shall follow the procedures outlined in FAR 3.204(b). The HCA shall furnish copies of any adverse determination to the contracting officer and the Department Debarring Officer for their subsequent considerations under FAR 3.204(c)(1) and (2), respectively.

Subpart 403.3—Reports of Suspected Antitrust Violations

403.303 Reporting suspected antitrust violations.

Contracting officers shall report the circumstances of suspected violations of antitrust laws to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

Subpart 403.4—Contingent Fees

403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A suspected misrepresentation or violation of the Covenant Against Contingent Fees shall be documented in writing by the contracting officer and reported immediately to the chief of the contracting office. The chief of the contracting office shall determine if a violation has occurred and report any violation to the Office of Inspector General. The chief of the contracting office shall take action in accordance with FAR 3.409(b).

(b) If the chief of the contracting office decides to refer the case to the Department of Justice, it should be referred through the Office of Inspector General with a copy of the report and referral submitted through the HCA to the Senior Procurement Executive.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Contracting officers shall report the circumstances of suspected violations of the Anti-Kickback Act (41 U.S.C. 51–54) to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

403.602 Exceptions.

The HCA is authorized to accept a contract from the policy in FAR 3.601.

403.603 Responsibilities of the contracting officer.

The contracting officer, when requesting authorization under 403.602, shall prepare a written determination and findings for the signature of the HCA. The determination shall document compliance with FAR 3.603, specifying the compelling reason(s) for award, and shall be placed in the contract file.

Subpart 403.8—Limitation on the Payment of Funds to Influence Federal Transactions

403.806 Processing suspected violations.

Suspected violations of the requirements of 31 U.S.C. 1352 shall be referred to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

PART 404—ADMINISTRATIVE MATTERS

Subpart 404.4—Safeguarding Classified Information Within Industry

Sec.
404.403 Responsibilities of contracting officers.

Subpart 404.6—Contract Reporting

404.601 Record requirements.
404.602 Federal Procurement Data System.

Subpart 404.8—Contract Files

404.870 Document numbering system.
404.870–1 Purchase order/delivery order numbering system.
404.870–2 Contract numbering system.

Subpart 404.70—Precontract Notices

404.7001 Solicitation provision.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 404.4—Safeguarding Classified Information Within Industry

404.403 Responsibilities of contracting officers.

When a proposed solicitation is likely to require access to information classified by USDA, the contracting officer shall consult with the Director of Human Resources Management within the Policy Analysis and Coordination Center of the Office of Assistant Secretary for Administration, regarding the procedures that must be followed.

Subpart 404.6—Contract Reporting

404.601 Record requirements.

The Senior Procurement Executive (SPE) manages an automated procurement reporting system for USDA. This system provides the Federal Procurement Data System with all required contracting information.

404.602 Federal Procurement Data System.

Contracting activities shall report contract actions into the USDA Procurement Reporting System in accordance with the instructions issued or distributed by the SPE.

Subpart 404.8—Contract Files

404.870 Document numbering system.

404.870–1 Purchase order/delivery order numbering system.

USDA purchasing activities shall number their purchase/delivery orders in accordance with *NFC Procedures Manual,* ''Purchase Orders,'' Title II, Section 5.1.

404.870–2 Contract numbering system.

Contracting offices shall assign an 8 to 12-digit number to all contracts. Contract numbers will be divided into four data elements and formatted as follows:

(1)	(2)	(3)	(4)

Transaction Code	Ordering Office	Fiscal Year	Control Number
XX	XXXX	X	X to XXXXX

(a) *Transaction code.* This two-position code identifies the contract as being one of the following types:

(1) Code 50—construction contract;
(2) Code 51—[Reserved]
(3) Code 52—tree planting/thinning contract;
(4) Code 53—service contract;
(5) Code 54—supply contract;
(6) Code 55—aircraft rental (for firefighting purposes only) contract;
(7) Code 56—personal equipment rental (rental of vehicular equipment for firefighting purposes only) contract;
(8) Code 57—leasehold interest in real property contract.

(b) *Ordering office.* This four-position code corresponds to the last four characters of the contracting office's GSA assigned FEDSTRIP requisitioner number.

(c) *Fiscal year.* This one-position code corresponds to the last digit of the fiscal year in which the contract becomes effective.

(d) *Control number.* This up-to-five position code (from one to five characters may be used) will be assigned by the contracting office. While contracts will generally be numbered consecutively (1 through 99999), contracting offices may assign codes in any manner of their choosing. Codes may not be repeated, however, unless one of the preceding data elements (transaction code, ordering office, or fiscal year) changes. Alpha characters as well as numerals may be used in any one or more of the five positions.

Subpart 404.70—Precontract Notices

404.7001 Solicitation provision.

The contracting officer shall insert the provision at 452.204–70, Inquiries, in all solicitations.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 405—PUBLICIZING CONTRACT ACTIONS

Subpart 405.3—Synopses of Contract Awards

Sec.
405.303 Announcement of contract awards.

Subpart 405.4—Release of Information

405.403 Requests from Members of Congress.
405.404 Release of long-range acquisition estimates.
405.404–1 Release procedures.

Subpart 405.5—Paid Advertisements

405.502 Authority.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 405.3—Synopses of Contract Awards

405.303 Announcement of contract awards.

Contracting officers shall make information available on any contract award with an estimated total value over $1 million (including options) to their agency congressional liaison office in sufficient time for the agency to announce it by 5:00 p.m. Washington, DC time on the day of award. The agency congressional liaison office shall, concurrent with the public announcement, provide the award announcement information to the USDA Congressional Relations Office.

Subpart 405.4—Release of Information

405.403 Requests from Members of Congress.

The head of the contracting activity (HCA) is the agency head designee pursuant to FAR 5.403(a).

405.404 Release of long-range acquisition estimates.

405.404–1 Release procedures.

(a) HCA's shall establish written procedures to control the release of long-range acquisition estimates, as authorized under FAR 5.404–1.

(b) Classified information shall not be released without the approval of the USDA Security Officer, Policy Analysis and Coordination Center—Human Resources Management. Departmental Manual and Regulation (3400 series) contain guidance on classified information.

Subpart 405.5—Paid Advertisements

405.502 Authority.

(a) The authority vested in the agency head to authorize publication of paid advertisements in newspapers (44 U.S.C. 3702) is delegated, with power of redelegation, to HCA's. HCA redelegation of this authority shall be in writing.

(b) Policies and procedures regarding prior authorization required for media other than newspapers are contained in USDA Departmental Regulations 1400 series.

PART 406—COMPETITION REQUIREMENTS

Subpart 406.2—Full and Open Competition After Exclusion of Sources

Sec.
406.202 Establishing or maintaining alternative sources.

Subpart 406.3—Other Than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.
406.302–70 Otherwise authorized by law.

Subpart 406.5—Competition Advocates

406.501 Requirements.

AUTHORITY: 5 U.S.C. and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 406.2—Full and Open Competition After Exclusion of Sources

406.202 Establishing or maintaining alternative sources.

The Senior Procurement Executive is authorized to make determinations pursuant to FAR 6.202(a) and sign the determination and findings required by FAR 6.202(b).

Subpart 406.3—Other Than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.

406.302–70 Otherwise authorized by law.

(a) *Authority.* Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) (the Act) authorizes the Secretary of Agriculture to award contracts, without competition, to further research, extension, or teaching programs in the food and agricultural sciences.

(b) *Limitations.* The use of this authority is limited to those instances where it can be determined that contracting without full and open competition is in the best interest of the Government and necessary to the accomplishment of the research, extension, or teaching program. Therefore:

(1) Contracts under the authority of the Act shall be awarded on a competitive basis to the maximum practicable extent.

(2) When full and open competition is not deemed appropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with procedures in FAR 6.303 and 6.304.

Subpart 406.5—Competition Advocates

406.501 Requirements.

(a) The Chief, Procurement Policy Division, Procurement and Property Management, Policy Analysis and Coordination Center, has been designated as the Competition Advocate for USDA.

(b) Each HCA shall designate a competition advocate for the contracting activity.

PART 407—ACQUISITION PLANNING

Subpart 407.1—Acquisition Plans

Sec.
407.103 Agency-head responsibilities.
407.170 Advance acquisition plans.

Subpart 407.3—Contractor Versus Government Performance

407.302 General.

Subpart 407.5—Inherently Governmental Functions

407.503 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C.

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 407.1—Acquisition Plans

407.103 Agency-head responsibilities.

Heads of Contracting Activities (HCA's) shall develop procedures to comply with FAR 7.103.

407.170 Advance acquisition plans.

Each HCA shall implement an advance acquisition planning system in accordance with procedures in Departmental Directives (5000 series).

Subpart 407.3—Contractor Versus Government Performance

407.302 General.

The requirements of FAR subpart 7.3 and OMB Circular A–76 are implemented by Departmental Directives (2100 series).

Subpart 407.5—Inherently Governmental Functions

407.503 Policy.

(a) HCA's shall establish procedures to ensure that requesting activities

provide the written determination required by FAR 7.503(e), when submitting requests for procurement of services.

(b) In the event of a disagreement as to whether the functions to be performed are inherently governmental, the HCA may refer the matter to the Senior Procurement Executive (SPE) for resolution. When submitting disagreements to the SPE for resolution the HCA shall provide a summary of the areas of disagreement, supported by the following:

(1) The HCA's assessment of whether the services are ''inherently governmental'';

(2) The basis for that assessment (include references to the definition and policy in FAR subpart 7.5 and/or Office of Federal Procurement Policy letter 92–1);

(3) A copy of the statement of work; and,

(4) The requesting activity's written determination in accordance with FAR 7.503(e).

(c) Such disagreements shall be resolved prior to issuance of the solicitation.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 408.4—Federal Supply Schedules

Sec.
408.404 Using schedules.
408.404–3 Requests for waivers.

Subpart 408.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

408.701 Definitions.
408.705 Procedures.
408.705–2 Direct order process.
408.705–3 Allocation process.
408.705–4 Compliance with orders.
408.706 Purchase exemptions.
408.707 Prices.
408.711 Quality complaints.
408.712 Specification changes.
408.714 Communications with the central nonprofit agencies and the Committee.

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

Subpart 408.11—Leasing of Motor Vehicles

408.1103 Contract requirements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 408.4—Federal Supply Schedules

408.404 Using schedules.

408.404–3 Requests for waivers.

A copy of the request for a waiver and the approval shall be placed in the contract file to support the acquisition of items off schedule.

Subpart 408.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

408.701 Definitions.

Committee Member is the Presidential appointee representing USDA as a member of the Committee for Purchase from People Who Are Blind or Severely Disabled.

Organization head is the head of the contracting activity (HCA), the head of a USDA corporation (as described in 31 U.S.C. 9101), or the head of a USDA staff office.

408.705 Procedures.

(a) The organization head shall appoint one person as Javits-Wagner-O'Day Act (JWOD) Advocate to represent the organization and to coordinate the organization's actions with the Committee Member.

(b) JWOD advocates may represent more than one organization. Advocates need not be acquisition officials.

(c) The organization head shall issue and maintain an action plan to promote and enhance the organization's acquisitions from JWOD participating nonprofit agencies.

(d) The action plan shall:

(1) Announce the organization's support for the JWOD Act;

(2) Establish a promotion program for the products and services provided by the JWOD participating nonprofit agencies;

(3) Provide for the JWOD Advocate's role in acquisition planning;

(4) Establish measurable program goals for growth or other accomplishment in the organization's JWOD program actions; and

(5) Establish an awards program for successful participation in the JWOD program.

408.705–2 Direct order process.

(a) The chief of a contracting office may apply to a central nonprofit agency for authorization to order specific supplies or services directly from a JWOD participating nonprofit agency.

(b) A copy of the application should be provided to the JWOD Advocate who will inform the USDA Committee Member.

408.705–3 Allocation process.

(a) The chief of a contracting office may apply to a central nonprofit agency for a production allocation of specific supplies or services to a JWOD participating nonprofit agency.

(b) A copy of the application should be provided to the JWOD Advocate who will inform the USDA Committee Member.

408.705–4 Compliance with orders.

Prior to attempting to resolve a failure to perform by a participating nonprofit agency with the Committee, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.706 Purchase exemptions.

Prior to applying to the Committee for a purchase exemption, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.707 Prices.

Prior to applying for a price revision, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.711 Quality complaints.

Prior to attempting to resolve a complaint regarding the quality of goods or services provided by participating nonprofit agency with the Committee, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.712 Specification changes.

Prior to providing 90-days advance notification to the Committee on actions that affect supplies and services on the Procurement List, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.714 Communications with the central nonprofit agencies and the Committee.

Any matter requiring referral to the Committee shall be provided to the JWOD Advocate who will coordinate the matter with the Committee Member.

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

(a) The Director, Office of Communications (OC) has been designated as the central printing authority in USDA, with the authority to represent the USDA before the Joint Committee on Printing (JCP), the Government Printing Office, and other Federal and State agencies on all matters related to printing.

(b) Prior to contracting for any of the items defined in FAR 8.801, the contracting officer shall verify that the requisite approval has been received by the publication liaison officer or requisitioner.

(c) The approval from OC or the approval authority designated by OC shall be maintained in the contract file.

Subpart 408.11—Leasing of Motor Vehicles

408.1103 Contract requirements.

If the requirement includes the need for the vendor to provide operational maintenance such as oil and other fluid

changes or replenishment, the contracting officer shall include in the contract (1) a requirement for fluids containing the maximum available amounts of recovered materials; and (2) a preference for either retreaded tires meeting the Federal retread specifications or retreading services for the tires on the vehicle.

PART 409—CONTRACTOR QUALIFICATIONS

Subpart 409.4—Debarment, Suspension and Ineligibility

Sec.
409.403 Definitions.
409.404 List of parties excluded from Federal procurement and nonprocurement programs.
409.405 Effect of listing.
409.405–1 Continuation of current contracts.
409.405–2 Restrictions on subcontracting.
409.406 Debarment.
409.406–3 Procedures.
409.407 Suspension.
409.407–3 Procedures.
409.470 Appeals.

Subpart 409.5—Organizational and Consultant Conflicts of Interest

409.503 Waiver.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 409.4—Debarment, Suspension and Ineligibility

409.403 Definitions.

Debarring official. Pursuant to the Secretary's delegations of authority in 7 CFR 2.24, the Senior Procurement Executive (SPE) is designated as the debarring official (Department Debarring Officer) with the following exceptions:

(a) For commodity contracts awarded on behalf of the Commodity Credit Corporation (CCC), the Executive Vice President, CCC, or his designee is designated as the debarring official pursuant to 7 CFR part 1407.

(b) For contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c), the Department Debarring Officer has delegated debarring authority to the Agricultural Marketing Service (AMS).

[63 FR 26995, May 15, 1998]

409.404 List of parties excluded from Federal procurement and nonprocurement programs.

The Department Debarring Officer is USDA's single point of contact with GSA for debarment and suspension actions taken under this subpart. The debarring official for AMS shall notify the Department Debarring Officer of each debarment and suspension action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide list.

409.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The SPE is authorized to make the determinations under FAR 9.405. Requests for such determinations shall be submitted through the head of the contracting activity (HCA) to the SPE.

409.405–1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405–1.

409.405–2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

409.406 Debarment.

409.406–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of

any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceeding.* For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in FAR 9.406–3(b)(2)(ii).

409.407 Suspension.

409.407–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring it to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the debarring official shall initiate the proposed suspension in accordance with FAR 9.407–3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406–3(c).

409.470 Appeals.

A debarred or suspended contractor may appeal the debarring official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the U.S. Department of Agriculture Board of Contract Appeals, Washington, DC 20250. A copy of the notice of appeal shall be furnished to the debarring officer from whose decision the appeal is taken. Appeals under subpart 409.4 shall be governed by the rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR part 24.

Subpart 409.5—Organizational and Consultant Conflicts of Interest

409.503 Waiver.

(a) The HCA, on a non-delegable basis, is authorized to waive any general rule or procedure in FAR 9.5 when in the Government's interest.

(b) Each request for waiver shall include:

(1) The general rule or procedure proposed to be waived;

(2) An analysis of the potential conflict, including the benefits and detriments to the Government and prospective contractors;

(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under FAR 9.504(b).

PART 410 [RESERVED]

PART 411—DESCRIBING AGENCY NEEDS

Subpart 411.1—Selecting and Developing Requirements Documents

Sec.
411.103 Market acceptance.
411.105 Purchase descriptions for service contracts.
411.170 Brand name or equal.
411.171 Solicitation provisions and contract clauses.

Subpart 411.2—Using and Maintaining Requirements Documents

411.202 Maintenance of standardization documents.

Subpart 411.4—Delivery or Performance Schedules

411.404 Contract clauses.

Subpart 411.6—Priorities and Allocations

411.600 Scope of subpart.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 411.1—Selecting and Developing Requirements Documents

411.103 Market acceptance.

(a) The head of the contracting activity (HCA) may determine that offerors must demonstrate, in accordance with FAR 11.103(a), the market acceptability of their items to be offered.

(b) The contracting officer shall place a copy of this determination, signed by the HCA, in the solicitation file.

411.105 Purchase descriptions for service contracts.

When contract personnel are to be used, the requiring official shall record on the requisition his or her determination whether harm to the Government might occur should contractor personnel fail to identify themselves as non-Government officials.

411.170 Brand name or equal.

(a) A ''brand name or equal'' purchase description shall include the following type of information:

(1) Identification of the item by generic description.

(2) Make, model number, catalog designation, or other description, and identification of a commercial catalog where it is listed.

(3) Name of manufacturer, producer, or distributor of the item and complete address.

(4) All salient characteristics of the ''brand name or equal'' product or products which have been determined by the requisitioner to be essential to the Government's minimum requirements.

(b) [Reserved]

411.171 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the provision at 452.211–70, Brand Name or Equal, in solicitations, other than those for construction, where ''brand name or equal'' purchase descriptions are used.

(b) Contracting officers shall insert the clause at 452.211–71, Equal Products Offered, in solicitations, other than those for construction, where the provision at 452.211–70 is included.

(c) Contracting officers shall insert the clause at 452.211–72, Statement of Work/Specifications, when the description (statement of work) or specification(s) is included in Section J of the solicitation.

(d) Contracting officers shall insert the clause at 452.211–73, Attachment to Statement of Work/Specifications, when there are attachments to the description (statement of work) or specifications.

[63 FR 26995, May 15, 1998]

Subpart 411.2—Using and Maintaining Requirements Documents

411.202 Maintenance of standardization documents.

Recommendations for changes to standardization documents are to be submitted through the Senior Procurement Executive, who will coordinate the submission of these recommendations to the cognizant preparing activity.

Subpart 411.4—Delivery or Performance Schedules

411.404 Contract clauses.

(a) The contracting officer shall insert the clause at 452.211–74, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

(b) The contracting officer shall insert the clause at 452.211–75, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

[63 FR 26995, May 15, 1998]

Subpart 411.6—Priorities and Allocations

411.600 Scope of subpart.

The Defense Priorities and Allocation System (DPAS) excludes USDA activities (see 15 CFR 700.18(b)). USDA Contracting Officers are not authorized to place rated orders under DPAS.

PART 412—ACQUISITION OF COMMERCIAL ITEMS

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

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

The head of the contracting activity is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation shall be incorporated into the contract file.

[61 FR 53646, Oct. 15, 1996]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 413.3—Simplified Acquisition Methods

Sec.
413.301 Governmentwide commercial purchase card.
413.306 SF 44, Purchase Order-Invoice-Voucher.
413.307 Forms.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 64 FR 45895, Aug. 23, 1999, unless otherwise noted.

Subpart 413.3—Simplified Acquisition Methods

413.301 Governmentwide commercial purchase card.

USDA policy and procedures on use of the Governmentwide commercial purchase card are established in Departmental Regulation Series 5000.

413.306 SF 44, Purchase Order-Invoice-Voucher.

The Standard Form 44 (and the previously prescribed USDA Form AD–744) is not authorized for use within USDA.

413.307 Forms.

Form AD–838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

PART 414—SEALED BIDDING

Subpart 414.2—Solicitation of Bids

Sec.
414.201 Preparation of invitations for bids.
414.201–6 Solicitation provision.

Subpart 414.4—Opening of Bids and Award of Contract

414.404 Rejection of bids.
414.404–1 Cancellation of invitations after opening.
414.407 Mistakes in bids.
414.407–3 Other mistakes disclosed before award.
414.407–4 Mistakes after award.
414.409 Information to bidders.
414.409–2 Award of classified contracts.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 414.2—Solicitation of Bids

414.201 Preparation of invitations for bids.

414.201–6 Solicitation provision.

The contracting officer shall insert the provision 452.214–70, Award by Lot, when multiple items are segregated into clearly identifiable lots and the contracting officer wants to reserve the right to award by item within a lot, if award in that manner would be advantageous to the Government.

Subpart 414.4—Opening of Bids and Award of Contract

414.404 Rejection of bids.

414.404–1 Cancellation of invitations after opening.

An acquisition official at a level above the contracting officer is authorized to make the determinations under FAR 14.404–1(c) and (e)(1).

414.407 Mistakes in bids.

414.407–3 Other mistakes disclosed before award.

The authority to make the determinations under FAR 14.407–3(a), (b), and (d) is delegated, without power of redelegation, to the head of the contracting activity. The authority to make the determination under FAR 14.407–3(c) is delegated to the contracting officer. Each determination pursuant to FAR 14.407–3 shall have the concurrence of the Office of the General Counsel (OGC).

414.407–4 Mistakes after award.

If a mistake in bid is disclosed after award, the contracting officer shall

make a final determination in accordance with the provisions of FAR 14.407–4 (b) and (c) and shall coordinate each proposed determination with OGC. Such coordination shall, at a minimum, consist of the contracting officer providing the proposed determination and the case file to OGC for comment.

414.409 Information to bidders.

414.409–2 Award of classified contracts.

Disposition of classified information shall be in accordance with Departmental Regulation and Manual (3400 Series) and in accordance with direction issued by the USDA Security Officer, Policy Analysis and Coordination Center—Human Resources Management.

PART 415—CONTRACTING BY NEGOTIATION

Subpart 415.2—Solicitation and Receipt of Proposals and Information

Sec.

415.204 Contract format.
415.207 Handling proposals and information.
415.209 Solicitation provisions and contract clauses.

Subpart 415.3—Source Selection

415.303 Responsibilities.
415.305 Proposal evaluation.

Subpart 415.4—Contract Pricing

415.404–4 Profit.

Subpart 415.5—Preaward, Award, and Postaward Notifications, Protests and Mistakes

415.570 Post-award conference.

Subpart 415.6—Unsolicited Proposals

415.604 Agency points of contact.
415.606 Agency procedures.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 64 FR 52674, Sept. 30, 1999, unless otherwise noted.

Subpart 415.2—Solicitation and Receipt of Proposals and Information

415.204 Contract format.

The Senior Procurement Executive is authorized to exempt contracts from the uniform contract format.

415.207 Handling proposals and information.

(a) Throughout the source selection process, agency personnel and non-Government evaluators with access to proposal information shall disclose neither the number of offerors nor their identity except as authorized by FAR subpart 15.5. (See also FAR 5.403.)

(b) The contracting officer shall obtain the following written agreement from the non-Government evaluator prior to the release of any proposal to that evaluator.

AGREEMENT GOVERNING THE USE AND DISCLOSURE OF PROPOSALS

RFP _____

Offeror _____

1. To the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial and objective review of the offeror's proposal, or may otherwise result in a biased opinion or an unfair advantage. If a potential conflict of interest arises or if I identify such a conflict, I agree to notify the Government promptly concerning the potential conflict. In determining whether any potential conflict of interest exists, I agree to review whether my or my employer's relationships with other persons or entities, including, but not limited to, ownership of stocks, bonds, other outstanding financial interests or commitments, employment arrangements (past, present, or under consideration), and, to the extent known by me, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household, may place me in a position of conflict, real or apparent, with the evaluation proceedings.

2. I agree to use proposal information only for evaluation purposes. I understand that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information of the proposal. I agree to use my best effort to safeguard such information physically, and not to disclose the contents of, or release any information

relating to, the proposal(s) to anyone outside of the Source Evaluation Board or other panel assembled for this acquisition, the Contracting Officer, or other individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

_____
(Name and Organization)

_____
(Date)

(End of provision)

(c) The release of a proposal to a non-Government evaluator for evaluation does not constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(d) The contracting officer shall attach a cover page bearing the following notice: GOVERNMENT NOTICE FOR HANDLING PROPOSALS—This proposal shall be used and disclosed for evaluation purposes only. Attach a copy of this Government notice to every reproduction or abstract of the proposal. Any authorized restrictive notices which the submitter places on this proposal shall be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, FAR 3.104–5, FAR 15.207, and AGAR 415.207.

[64 FR 52674, Sept. 30, 1999; 64 FR 54963, Oct. 8, 1999]

415.209 Solicitation provisions and contract clauses.

(a) The provision at 452.215–71, Instructions for the Preparation of Technical and Business Proposals, may be used when offerors will be required to submit technical and business proposals. Contracting officers should tailor the clause to reflect the degree of information required for the specific acquisition.

(b) The contracting officer shall insert the provision at 452.215–72, Amendments to Proposals, in solicitations which require the submittal of lengthy, complex technical proposals.

Subpart 415.3—Source Selection

415.303 Responsibilities.

The head of the contracting activity (HCA) is authorized to appoint an individual other than the contracting officer as the source selection authority.

415.305 Proposal evaluation.

HCAs are responsible for establishing procedures regarding the release of cost information to the members of the technical evaluation team.

Subpart 415.4—Contract Pricing

415.404–4 Profit.

(a)(1) USDA will use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions when price negotiation is based on cost analysis.

(2) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.404–4(d) when analyzing profit for these contracts or actions:

(i) Architect-engineer contracts;

(ii) Construction contracts;

(iii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iv) Termination settlements; and

(v) Cost-plus-award-fee contracts;

(b) Unless otherwise restricted by contracting activity procedures, the Contracting Officer may use another Federal agency's structured approach if that approach has been formalized and is maintained as part of that Agency's acquisition regulations (*i.e.,* included in that Agency's assigned chapter of Title 48 of the Code of Federal Regulations).

(c) The HCA is responsible for establishing procedures to ensure compliance with this subpart.

Subpart 415.5—Preaward, Award, and Postaward Notifications, Protests and Mistakes

415.570 Post-award conference.

If a postaward conference is necessary, the contracting officer shall insert clause 452.215–73, Post-Award Conference.

Subpart 415.6—Unsolicited Proposals

415.604 Agency points of contact.

HCAs are responsible for establishing procedures to ensure compliance with the requirements of FAR 15.604.

415.606 Agency procedures.

HCAs are responsible for establishing the procedures for control of unsolicited proposals required by FAR 15.606(a) and for identifying the contact points as required by FAR 15.606(b).

PART 416—TYPES OF CONTRACTS

Sec.

416.000 Scope of part.

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.
416.203–4 Contract clauses.

Subpart 416.4—Incentive Contracts

416.405 Cost-reimbursement incentive contracts.
416.405–2 Cost-plus-award-fee contracts.
416.406 Contract clauses.
416.470 Solicitation provision.

Subpart 416.5—Indefinite-Delivery Contracts

416.505 Ordering.
416.506 Solicitation provision and contract clauses.

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.
416.603–2 Application.
416.603–4 Contract clauses.
416.670 Contract clauses.

Subpart 416.7—Agreements

416.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

416.000 Scope of part.

Heads of contracting activities (HCA's) are authorized to establish written procedures allowing the use of any contract type described in FAR part 16 for acquisitions made under simplified acquisition procedures in FAR part 13.

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.

416.203–4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203–4(d) after approval by the HCA and consultation with the Office of the General Counsel.

Subpart 416.4—Incentive Contracts

416.405 Cost-reimbursement incentive contracts.

416.405–2 Cost-plus-award-fee contracts.

The HCA may designate an acquisition official other than the contracting officer as the fee determination official (FDO) to make the final determination of the award fee. The designated official must have warranted contracting authority at the same level as the contracting officer or higher, and shall not have participated in preparing the contractor performance evaluation. If the HCA does not designate an FDO, the chief of the contracting office shall act as the FDO.

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26995, May 15, 1998.]

416.406 Contract clauses.

The contracting officer shall insert a clause substantially the same as the

clause at 452.216–70, Award Fee, in solicitations and contracts which contemplate the award of cost-plus-award-fee contracts.

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26995, May 15, 1998.]

416.470 Solicitation provision.

The contracting officer shall insert the provision at 452.216–71, Base Fee and Award Fee Proposal, in solicitations which contemplate the award of a cost-plus-award-fee contract.

Subpart 416.5—Indefinite-Delivery Contracts

416.505 Ordering.

(a) The Chief, Procurement Policy Division, Procurement and Property Management, Policy Analysis and Coordination Center, has been designated as the Departmental Task Order Ombudsman.

(b) The Departmental Task Order Ombudsman shall designate a task order ombudsman for each contracting activity. Contracting activity ombudsmen shall review and resolve complaints from contractors concerning task or delivery orders placed by the contracting activity.

(c) Any contractor who is not satisfied with the resolution of a complaint by a contracting activity ombudsman may request the Departmental Task Order Ombudsman to review the complaint.

416.506 Solicitation provision and contract clauses.

(a) The contracting officer shall insert a provision substantially the same as the provision at 452.216–72, Evaluation Quantities-Indefinite-Delivery Contract, in solicitations which contemplate the award of indefinite-quantity or requirements contracts to establish the basis on which offers will be evaluated.

(b) The contracting officer shall insert the clause at 452.216–73, Minimum and Maximum Contract Amounts, in indefinite-delivery, indefinite-quantity contracts when the clause at FAR 52.216–18 is used.

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.

416.603–2 Application.

The HCA is authorized to extend the period for defining a letter contract required by FAR 16.603–2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

416.603–4 Contract clauses.

The contracting officer shall insert the clause at 452.216–75, Letter Contract, in a definitive contract superseding a letter contract.

416.670 Contract clauses.

The contracting officer shall limit the Government's obligation under a time-and-materials or labor-hour contract by inserting the clause at 452.216–74, Ceiling Price.

Subpart 416.7—Agreements

416.702 Basic agreements.

Promptly after execution by the Government, the HCA shall furnish to the Senior Procurement Executive a copy of each basic agreement negotiated with contractors in accordance with FAR 16.702.

PART 417—SPECIAL CONTRACTING METHODS

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 417.2—Options

417.204 Contracts.

The head of the contracting activity is authorized to approve contracts which exceed the 5 year limitation in FAR 17.204(e).

[61 FR 53646, Oct. 15, 1996]

PART 418 [RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 419—SMALL BUSINESS PROGRAMS

Subpart 419.2—Policies

Sec.
419.201 General policy.
419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).
419.201–71 Small business coordinators.
419.201–73 Reports.

Subpart 419.5—Set-Asides for Small Business

419.508 Solicitation provisions.

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.
419.602–1 Referral.
419.602–3 Resolving differences between the agency and the Small Business Administration.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 419.2—Policies

419.201 General policy.

It is the policy of USDA to provide a fair portion of its contracting and subcontracting opportunities to small, disadvantaged, minority, and women-owned businesses.

419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization (OSDBU) develops rules, policy, procedures and guidelines for the effective administration of USDA's small and disadvantaged business procurement preference program to include minority and women-owned business.

419.201–71 Small business coordinators.

The head of the contracting activity (HCA) or a representative of the HCA shall designate in writing a small business coordinator in each contracting office. Supervisors of small business coordinators are encouraged to provide sufficient time for the coordinators to carry out their small business program duties. Coordinators' duties shall include, but not be limited to, the following:

(a) Review each proposed acquisition expected to exceed the simplified acquisition threshold prior to its solicitation. The coordinator shall:

(1) Recommend section 8(a) action and identify potential contractors, or

(2) Identify available minority and women-owned businesses to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participate in goal-setting procedures and planning activities and establish aggressive minority and women-owned business goals based on the annual review of advance acquisition plans.

(c) Participate in the review of those contracts which require the successful offeror to submit written plans for the utilization of small and small disadvantaged businesses as subcontractors.

(d) Ensure that purchases exceeding $2,500 and not exceeding the simplified acquisition threshold are reserved exclusively for small businesses, including minority and women-owned businesses. This policy shall be implemented unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

(e) Maintain comprehensive source listings of small businesses.

(f) Upon written request, provide small, minority and women-owned businesses the bidders mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled ''Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.'' These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Develop a program of contacts with local, small, minority, and women-owned trade, business, and professional associations and organizations and Indian tribal councils to apprise them of USDA's program needs and recurring contract requirements.

(h) Periodically meet with program managers to discuss requirements of the small business preference program, explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small firms, and encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(i) Establish internal operating procedures which implement the requirements of the regulations as set forth in this part 419. Compile data and prepare all reports pertaining to the small, minority and women-owned business activities. Ensure that these reports are accurate, complete and up-to-date.

(j) Assist and counsel small business firms and especially those found to be nonresponsive or nonresponsible to help qualify them for future awards.

(k) Review proposed large contract requirements to determine the potential for breaking out components suitable for purchase from small business firms.

(l) Ensure that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation that meets the dollar threshold for small business and small disadvantaged business subcontracting plans.

419.201–73 Reports.

(a) The Director, OSDBU, shall be responsible for submitting reports concerning USDA's progress and achievements in the procurement preference program.

(b) The following dates must be adhered to in regard to the reporting of subcontract award data.

SF–294 Reports
Frequency: Twice a Year.
Cut-off date (Reporting Period Ending): March 31.
Date Due at Contracting Activity: April 30.
Cut-off date (Reporting Period Ending): September 30.
Date Due at Contracting Activity: October 30.

SF–295 Reports
Frequency: Once a Year.
Cut-off date (12 Month-Period Ending): September 30.
Date Due at OSDBU: October 30.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

Subpart 419.5—Set-Asides for Small Business

419.508 Solicitation provisions.

The contracting officer shall insert the provision at 452.219–70, Size Standard and SIC Code Information, in solicitations that are set aside for small businesses.

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.

419.602–1 Referral.

Contracting officers shall refer determinations of non-responsibility regarding small businesses directly to the SBA Regional Office servicing the location where the contractor's office (home) is located.

419.602–3 Resolving differences between the agency and the Small Business Administration.

The HCA is authorized to appeal the issuance of a COC to SBA Headquarters as provided by FAR 19.602–3(a).

[63 FR 26995, May 15, 1998]

PARTS 420–421 [RESERVED]

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 422.1—Basic Labor Policies

Sec.
422.103 Overtime.
422.103–4 Approvals.

Subpart 422.3—Contract Work Hours and Safety Standards Act

422.302 Liquidated damages and overtime pay.

Subpart 422.4—Labor Standards for Contracts Involving Construction

422.404 Davis-Bacon Act wage determinations.
422.404–6 Modifications of wage determinations.
422.406 Administration and enforcement.
422.406–8 Investigations.

Subpart 422.6—Walsh-Healey Public Contracts Act

422.604 Exemptions.
422.604–2 Regulatory exemptions.
422.608 [Reserved]

Subpart 422.8—Equal Employment Opportunity

422.803 Responsibilities.
422.804 Affirmative action programs.
422.804–2 Construction.
422.807 Exemptions.

Subpart 422.13—Special Disabled and Vietnam Era Veterans

422.1303 Waivers.
422.1306 Complaint procedures.

Subpart 422.14—Employment of the Handicapped

422.1403 Waivers.
422.1406 Complaint procedures.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 422.1—Basic Labor Policies

422.103 Overtime.

422.103–4 Approvals.

Requests for the use of overtime shall be approved by an acquisition official at a level above the contracting officer in accordance with the procedures in FAR 22.103–4 (a) and (b).

Subpart 422.3—Contract Work Hours and Safety Standards Act

422.302 Liquidated damages and overtime pay.

Heads of contracting activities (HCA's) are authorized to review determinations of liquidated damages due under section 104(c) of the Contract Work Hours and Safety Standards Act, and to take remedial action, if appropriate, in accordance with FAR 22.302(c). Contractors or subcontractors may request review of administrative determinations of liquidated damages by written notice to the contracting officer. The contracting officer shall promptly forward appeals of liquidated damages determinations to the HCA.

Subpart 422.4—Labor Standards for Contracts Involving Construction

422.404 Davis-Bacon Act wage determinations.

422.404–6 Modifications of wage determinations.

HCA's are authorized to request extension of the 90 day period for award after bid opening as provided in FAR 22.404–6(b)(6).

422.406 Administration and enforcement.

422.406.8 Investigations.

Reports of violations shall be forwarded to the HCA, who shall process such reports in accordance with FAR 22.406–8(d).

Subpart 422.6—Walsh-Healey Public Contracts Act

422.604 Exemptions.

422.604–2 Regulatory exemptions.

The Assistant Secretary for Administration can request the Secretary of labor to exempt contracts from the Walsh-Healey Public Contracts Act pursuant to FAR 22.604–2(c). A written finding justifying the request for exemption shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Senior Procurement Executive (SPE) for referral to the Assistant Secretary.

422.608 [Reserved]

Subpart 422.8—Equal Employment Opportunity

422.803 Responsibilities.

The contracting office shall submit questions involving the applicability of

Executive Order 11246 and FAR subpart 22.8 through the HCA to the SPE for resolution.

422.804 Affirmative action programs.

422.804–2 Construction.

The HCA shall ensure that each contracting office, awarding nonexempt construction contracts, maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades.

422.807 Exemptions.

(a) The Assistant Secretary for Administration is authorized to make the determination in FAR 22.807(a)(1) that a contract is essential to the national security.

(b) The contracting officer shall submit requests for exemptions under FAR 22.807(a)(1), (a)(2), and (b)(5) through the HCA to the SPE for determination by the Assistant Secretary of Administration or referral to the Director, Office of Federal Contract Compliance Programs (OFCCP), as appropriate.

Subpart 422.13—Special Disabled and Vietnam Era Veterans

422.1303 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1303(a) and FAR 22.1303(b) with concurrence of the Director, OFCCP.

(b) The contracting office shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

422.1306 Complaint procedures.

The contracting officer shall forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act directly to the Department of Labor (DoL) as prescribed in FAR 22.1306.

Subpart 422.14—Employment of the Handicapped

422.1403 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a) and (b) with concurrence of the Director, OFCCP.

(b) The contracting officer shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

422.1406 Complaint procedures.

The contracting officer shall forward complaints received about the administration of Section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

PART 423—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 423.1—Pollution Control and Clean Air and Water

Sec.
423.101 Applicability.
423.103 Policy.
423.104 Exemptions.
423.106 Delaying award.
423.107 Compliance responsibilities.

Subpart 423.2—Energy Conservation

423.203 Policy.

Subpart 423.4—Use of Recovered Materials

423.400 Scope of subpart.
423.402 Definitions.
423.404 Procedures.
423.404–70 Acquisition, Recycling, and Waste Prevention Program (AR&WPP).

Subpart 423.5—Drug-Free Workplace

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

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

Subpart 423.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

423.704 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 423.1—Pollution Control and Clean Air and Water

423.101 Applicability.

In addition to the requirement in FAR 23.101, this subpart applies to indefinite-delivery contracts, other than those for commercial items, when the contracting officer estimates that the contract will exceed $100.000.

423.103 Policy.

The head of the contracting activity (HCA) shall establish a system of instructions to make available to each contracting officer the EPA *List of Violating Facilities* and to ensure the contracting officer reviews the list prior to each proposed award.

423.104 Exemptions.

(a) The Assistant Secretary for Administration is authorized to grant an exemption described in FAR 23.104.

(b) The Senior Procurement Executive (SPE) is authorized to consult with the EPA Administrator regarding a proposed class exemption.

423.106 Delaying award.

Prior to notifying EPA, the contracting officer shall advise the SPE of the need to award before the requested time period expires.

423.107 Compliance responsibilities.

The HCA is authorized to notify the Administrator of EPA of known or suspected noncompliance with clean air or water standards in facilities used in performing nonexempt contracts. A copy of the notification is to be provided to the SPE.

Subpart 423.2—Energy Conservation

423.203 Policy.

In the acquisition of products and services, USDA will give preference to those that are more energy-efficient.

Subpart 423.4—Use of Recovered Materials

423.400 Scope of subpart.

This subpart implements and supplements FAR policies and procedures for acquiring products and services when preference is given to offers of products containing recovered materials. This subpart further supplements FAR subpart 23.4 by providing guidance for recycling and waste prevention programs in accordance with Executive Order 12873 and 42 U.S.C. 6962.

423.402 Definitions.

Mission areas are USDA organizational elements headed by an Undersecretary or an Assistant Secretary.

USDA Acquisition, Recycling, and Waste Prevention Program, issued by the USDA Environmental Executive, provides implementing guidance for Departmental affirmative procurement, recycling, and waste reduction.

The *USDA Environmental Executive* is the Deputy Assistant Secretary for Administration.

423.404 Procedures.

(a) The dollar thresholds described in FAR 23.404(a) apply to USDA as a whole.

(b) *EPA designated items.* The officials identified as Acquisition, Recycling, and Waste Prevention Program (AR&WPP) Coordinators are authorized to approve determinations to buy EPA designated items which do not meet EPA or USDA minimum recovered material content standards.

(c) *Agency designated items.* The USDA Environmental Executive may, without further publication in this chapter, designate items or classes of items containing recovered material to be acquired under the procedures in FAR 23.4 and this subpart.

423.404–70 Acquisition, Recycling, and Waste Prevention Program (AR&WPP).

(a) *Applicability*. The AR&WPP applies to all USDA organizations; i.e., USDA mission areas, USDA corporations (as described in 31 U.S.C. 9101), and USDA staff offices not included within a mission area.

(b) *Authority*. The AR&WPP has been established to comply with the requirements of Executive Order 12873 to coordinate all environmental programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics.

(c) *Responsibilities.* (1) Each USDA organization will identify one or more AR&WPP Coordinators in writing to represent the mission area, serve on the Council of Coordinators, and work in conjunction with the USDA Environmental Executive.

(2) Each USDA organization periodically will conduct an audit (survey or inventory) of the waste stream generated by the organization. The goals of the audit are:

(i) To identify and measure the elements of waste generated in its operations;

(ii) To identify processes, equipment, techniques, or materials which generate waste in energy or materials;

(iii) To identify actions which can be taken to reduce and to recycle or recover the wastes generated; and

(iv) To assign time frames to accomplish those actions.

(3) Each USDA organization will implement an avoidance or recovery or recycling program based on the results of the waste stream audit.

(4) Each USDA organization will implement a plan to install on-going waste prevention techniques.

(5) Each USDA organization will ensure that responsibility for preparation, implementation, and monitoring of its affirmative procurement program is shared between program personnel and procurement personnel.

(6) Each USDA organization will establish measurable goals by which the effectiveness of its participation in AR&WPP can be assessed on an annual basis.

(7) Each USDA organization will sponsor annual awards to recognize the most innovative environmental program of the year.

(d) *Acquisition and administration*. (1) Each USDA organization will annually review its product descriptions to enhance the use of recovered materials and environmentally preferable products and services by eliminating from the product description:

(i) Any exclusion of recovered materials, and

(ii) Any requirement that items be manufactured from virgin materials.

(2) Each USDA organization will create a promotion program to internally and externally promote its desire to buy recycled products.

(3) Each USDA organization will implement the USDA electronic acquisition system to reduce waste by eliminating unnecessary paper transactions and to foster accurate data collection and reporting of acquisitions.

(4) Each USDA organization will establish an affirmative procurement program specifically for the needs and requirements of its own organization, to maximize environmental benefits, consistent with price, performance, and availability considerations.

(5) Each USDA organization will ensure that the on-going inspection and production surveillance systems in place will monitor the production or the testing of goods and services to verify the recovered material contents reported.

(6) Each USDA organization will include

(i) Requirements in contracts for contractor operation of Government-owned or leased facilities to provide for waste prevention activities and the recycling of materials and

(ii) Environmental and recycling factors in the selection process for the acquisition and management of real property.

Subpart 423.5—Drug-Free Workplace

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

(a) The contracting officer may recommend waiver of the determination

to suspend payments, to terminate a contract, or to debar or to suspend a contractor.

(b) The recommendation shall be submitted through the HCA to the SPE and shall include a full description of the disruption of USDA operations should the determination not be waived.

(c) The SPE will submit the request for a waiver to the Secretary with a recommendation for action.

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

Subpart 423.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

423.704 Policy.

In its acquisitions, USDA will give preference to environmentally preferable and energy-efficient products and services.

PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 424.1—Protection of Individual Privacy

Sec.
424.103 Procedures.
424.104 Contract clauses.

Subpart 424.2—Freedom of Information Act

424.203 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 424.1—Protection of Individual Privacy

424.103 Procedures.

USDA regulations implementing the Privacy Act are found in 7 CFR, subtitle A, part 1, subpart G. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

424.104 Contract clauses.

When applicable, the contracting officer shall insert the clause at 452.224–70, Confidentiality of Information, in contracts involving confidential information.

Subpart 424.2—Freedom of Information Act

424.203 Policy.

USDA regulations implementing the Freedom of Information Act are found in 7 CFR, subtitle A, part 1, subpart A. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26995, May 15, 1998.]

PART 425—FOREIGN ACQUISITION

Subpart 425.1—Buy American Act—Supplies

Sec.
425.102 Policy.
425.105 Evaluating offers.
425.108 Expected articles, materials, and supplies.

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.
425.203–425.204 [Reserved]

Subpart 425.3—Balance of Payments Program

425.302 Policy.
425.304 Excess and near-excess foreign currencies.

Subpart 425.4—Trade Agreements

425.402 Policy.

Subpart 425.9—Additional Foreign Acquisition Clauses

425.901 Omission of audit clause.

Subpart 425.10—Implementation of Sanctions Against Countries That Discriminate Against United States Products or Services in Government Procurement

425.1002 Trade sanctions.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 425.1—Buy American Act—Supplies

425.102 Policy.

The Senior Procurement Executive (SPE) shall make the determination prescribed in FAR 25.102(a)(3).

425.105 Evaluating offers.

The SPE shall make the determinations prescribed in FAR 25.105. Requests for SPE approval shall be submitted by the HCA, in writing, and shall provide a detailed justification supporting why the proposed award is in the best interest of the Government.

425.108 Excepted articles, materials, and supplies.

(a) Copies of determinations of nonavailability in accordance with FAR 25.102(a)(4) or 25.202(a)(3), for articles, material or supplies not listed in FAR 25.108, shall be submitted to the SPE for submission to the FAR Council.

(b) Information required by FAR 25.108(c) shall be submitted to the SPE for submission to the FAR Council.

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.

(a) The SPE shall make the determination prescribed in FAR 25.202(a)(3).

(b) If a contracting officer proposes that the use of a particular domestic construction material should be waived for a contract on the grounds that its use would be impracticable, the contracting officer shall submit a proposed determination with supporting information through the HCA to the SPE for approval or disapproval.

[63 FR 26995, May 15, 1998]

425.203–425.204 [Reserved]

Subpart 425.3—Balance of Payments Program

425.302 Policy.

The HCA shall make the determinations prescribed in FAR 25.302(b)(2) and (3) and may authorize differentials greater than 50 percent as prescribed in FAR 25.302(c).

425.304 Excess and near-excess foreign currencies.

HCA's shall make the determinations as to the feasibility of using excess or near-excess currency.

Subpart 425.4—Trade Agreements

425.402 Policy.

Whenever the U.S. Trade Representative publishes a redetermination of the dollar threshold at which the Trade Agreements Act applies, that dollar threshold will be published in a Departmental Notice, 5025 series.

Subpart 425.9—Additional Foreign Acquisition Clauses

425.901 Omission of audit clause.

The SPE shall make the determination under FAR 25.901(c)(1).

Subpart 425.10—Implementation of Sanctions Against Countries That Discriminate Against United States Products or Services in Government Procurement

425.1002 Trade sanctions.

The Secretary, without power of redelegation, has the authority to make the necessary determination(s) and authorize award(s) of contract(s) in accordance with FAR 25.1002(c).

PART 426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 426.70—Preference for Selected Biobased Products

Sec.
426.7000 Scope of subpart.
426.7001 Applicability.
426.7002 Authority.
426.7003 Policy.
426.7004 Definitions.
426.7005 Preference list.
426.7006 Use of a set-aside or a price preference.
426.7007 Use of a technical evaluation preference.
426.7008 Identification of preferred products.
426.7009 Contract provisions.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 5909; 40 U.S.C. 486(c).

SOURCE: 63 FR 26997, May 15, 1998, unless otherwise noted.

Subpart 426.70—Preference for Selected Biobased Products

426.7000 Scope of subpart.

This subpart supplements the FAR to implement the set-asides and preferences described in section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909).

426.7001 Applicability.

This subpart applies to USDA and all of its components, including corporations.

426.7002 Authority.

Section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909) authorizes USDA to establish set-asides and other preferences for products that have been assisted by the Alternative Agricultural Research and Commercialization Corporation (AARCC).

426.7003 Policy.

(a) AARCC provides financial assistance to private companies and other parties to commercialize nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (biobased products). Biobased products by their nature are environmentally friendly, and, in many instances, use agricultural material that otherwise would be waste. It is the policy of USDA to acquire AARCC products to the maximum extent practicable. This policy applies to all acquisitions of products regardless of dollar value.

(b) USDA shall satisfy its requirements for products the same or essentially the same as AARCC products by applying the preferences or set-asides described by this subpart.

426.7004 Definitions.

As used in this subpart—

AARCC products are products developed with assistance provided by AARCC as authorized by 7 U.S.C. 5905.

Acquisitions of products means an acquisition of one or more products for the use of the Government.

Acquisitions involving the use of products means an acquisition in which a Government contractor uses products in contract performance.

Price preference means an amount, expressed as a percentage, to be used in the evaluation of offers in an acquisition of products.

Set-aside means a requirement that vendors responding to a solicitation offer AARCC products.

Solicitation includes actions taken under parts 12, 13, 14, 15, and 36 of the Federal Acquisition Regulation.

Technical evaluation preference means the use of an award factor or subfactor in which the Government expresses its preference for AARCC products.

426.7005 Preference list.

(a) The Office of Procurement and Policy Management (OPPM) and AARCC jointly shall establish and maintain a Preference List for AARCC products.

(b) The Preference List shall contain the list of preferred products, source information for these products, the type(s) of preference to be applied, the beginning and ending dates for the use of preferences, and other terms established to define the preference given to a product.

(c) The Preference List will be publicized within USDA by means of AGAR Advisories (see 401.371). Copies of the Preference List may be obtained from OPPM. The Preference List will

also be posted on the World Wide Web at the USDA Procurement Home Page.

426.7006 Use of a set-aside or a price preference.

Acquisitions for products the same or essentially the same as those products appearing on the Preference List shall either be set-aside exclusively or shall include a price preference for those products shown on the Preference List. The actual price preference to be used shall be determined by the requiring office but may not exceed the percentage shown on the Preference List.

426.7007 Use of a technical evaluation preference.

Acquisitions involving the use of products the same or essentially the same as those products appearing on the Preference List shall include a technical evaluation preference, if authorized in the Preference List. The technical evaluation preference may be determined by the contracting officer specifically for each acquisition.

426.7008 Identification of preferred products.

(a) Products subject to a set-aside or technical preference shall be separately listed in the schedule, specification, or performance work statement.

(b) Products subject to a price preference shall be separately listed in the schedule.

426.7009 Contract provisions.

(a) Each solicitation containing a price or technical preference under this subpart shall contain the provision 452.226–70, Preferred Products.

(b) Each solicitation for products subject to a set-aside shall include the provision 452.226–71, Set-Aside For Mandatory Products.

(c) Each solicitation for products subject to a price preference shall include the provision 452.226–72, Price Preference for Award.

(d) Solicitations for products may contain both the provision in 452.226–71 and the provision found in 452.226–72.

(e) The provisions prescribed in this section are not required for acquisitions accomplished using the purchase card as a stand alone tool.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 427—PATENTS, DATA, AND COPYRIGHTS

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 427.1—General

427.104 General guidance.

As used in FAR part 27, the agency head or agency head designee is the Senior Procurement Executive, except under FAR 27.306(a) and (b). Under FAR 27.306(a) and (b), the agency head is the Secretary without power of redelegation.

[61 FR 53646, Oct. 15, 1996]

PART 428—BONDS AND INSURANCE

Subpart 428.1—Bonds

Sec.
428.101 Bid guarantees.
428.101–1 Policy on use.
428.106 Administration.
428.106–6 Furnishing information.

Subpart 428.2—Sureties

428.203 Acceptability of individual sureties.
428.204 Alternatives in lieu of corporate or individual sureties.
428.204–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Subpart 428.3—Insurance

428.307 Insurance under cost-reimbursement contracts.
428.307–1 Group insurance plans.
428.310 Contract clause for work on a Government installation.
428.370 Government-owned vehicles operated in foreign countries.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 428.1—Bonds

428.101 Bid guarantees.

428.101–1 Policy on use.

The Senior Procurement Executive may authorize class waivers of the requirement to obtain bid guarantees.

428.106 Administration.

428.106–6 Furnishing information.

Heads of contracting activities (HCA's) or their designees may furnish certified copies of bonds and the contracts for which they were given as provided by FAR 28.106–6(c). Requesters may be required to pay costs of certification and copying established by the Departmental Fee Schedule for records requests (7 CFR part 1, subpart A, appendix A).

Subpart 428.2—Sureties

428.203 Acceptability of individual sureties.

Evidence of possible criminal or fraudulent activities by an individual surety shall be reported to the Office of Inspector General in accordance with Departmental Regulations (1700 series).

428.204 Alternatives in lieu of corporate or individual sureties.

HCA's shall establish procedures to ensure protection and conveyance of deposited securities of the types listed in FAR 28.204–1 through 28.204–3.

428.204–2 Certified or cashier's checks, bank drafts, money orders, or currency.

The contracting officer shall insert the provision at 452.228–70, Alternative Forms of Security, in a solicitation if a bond is required.

Subpart 428.3—Insurance

428.307 Insurance under cost-reimbursement contracts.

428.307–1 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group

insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer shall use all sources of information available, such as audits, industry practice, or other sources of information, to determine whether acceptance of the plan submitted would be in the Government's best interest.

428.310 Contract clause for work on a Government installation.

The contracting officer shall insert the clause at 452.228–71, Insurance Coverage, in solicitations and contracts which include the clause at FAR 52.228–5, Insurance—Work on a Government Installation. If property liability insurance is required, the contracting officer shall use the clause with its Alternate I.

428.370 Government-owned vehicles operated in foreign countries.

USDA is authorized to obtain insurance to cover liability incurred by any of its employees while acting within the scope of their employment and operating a Government-owned vehicle in a foreign country. (7 U.S.C. 2262).

PART 429 [RESERVED]

PART 430—COST ACCOUNTING STANDARDS ADMINISTRATION

Sec.

430.070 Definitions.

Subpart 430.2—CAS Program Requirements

430.201 Contract requirements.
430.201–5 Waiver.
430.202 Disclosure requirements.
430.202–2 Impracticality of submission.
430.202–8 Subcontractor Disclosure Statements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

430.070 Definitions.

ACO, as used in this part and in FAR part 30, means *administrative contracting officer* as described in FAR part 42.

Subpart 430.2—CAS Program Requirements

430.201 Contract requirements.

430.201–5 Waiver.

The Senior Procurement Executive (SPE), without the authority to further redelegate, is authorized to request the Cost Accounting Standards Board to waive the application of the Cost Accounting Standards (CAS). Contracting officers shall prepare waiver requests in accordance with 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subsection 9903.201–5, and submit them to the SPE through the head of the contracting activity (HCA).

430.202 Disclosure requirements.

430.202–2 Impracticality of submission.

(a) The Secretary, without the power to delegate, is authorized to determine, in accordance with FAR part 99 (Appendix B), subsection 9903.202–2, that the Disclosure Statement is impractical to secure and to authorize award without obtaining the Disclosure Statement.

(b) The request for this determination is to be prepared in accordance with FAR part 99 (Appendix B), subsection 9903.202–2 and is to contain the proposed report to the CASB.

(c) Requests for a determination under paragraph (a) of this section shall be prepared by the contracting officer and submitted through the HCA to the SPE for concurrence and submittal to the Secretary.

430.202–8 Subcontractor Disclosure Statements.

(a) The Secretary, without the power to redelegate, is authorized to determine that the Disclosure Statement for a subcontractor is impractical to secure and to authorize award without obtaining the Disclosure Statement.

(b) Requests for this determination are to be prepared and forwarded as described in 430.202–2.

PART 431—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 431.1—Applicability

431.101 Objectives.

(a) The SPE is designated as the official authorized to give advance approval of an individual deviation concerning cost principles.

(b) The SPE is designated as the official authorized to give advance approval of a class deviation concerning cost principles after coordination with the Civilian Agency Acquisition Council.

(c) Requests for advance approval of class deviations concerning cost principles must be submitted to the SPE through the HCA.

[61 FR 53646, Oct. 15, 1996]

PART 432—CONTRACT FINANCING

Sec.

432.001 Definitions.
432.003 Simplified acquisition procedures financing.
432.006 Reduction or suspension of contract payments upon finding of fraud.
432.006–2 Definitions.
432.006–3 Responsibilities.
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432.102 Description of contract financing methods.
432.103 Progress payments under construction contracts.
432.111 Contract clauses for non-commercial purchases.
432.113 Customary contract financing.
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Subpart 432.2—Commercial Item Purchase Financing

432.202 General.
432.202–1 Policy.
432.202–4 Security for Government financing.
432.206 Solicitation provisions and contract clauses.
432.207 Administration and payment of commercial financing payments.

Subpart 432.3—Loan Guarantees for Defense Production

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Subpart 432.4—Advance Payments for Non-Commercial Items

432.402 General.
432.406 Letters of credit.
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Subpart 432.6—Contract Debts

432.601 Definition.
432.616 Compromise actions.

Subpart 432.7—Contract Funding

432.703 Contract funding requirements.
432.703–3 Contracts crossing fiscal years.
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Subpart 432.8—Assignment of Claims

432.802 Conditions.
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Subpart 432.9—Prompt Payment

432.905 Invoice payments.
432.906 Contract financing payments.

Subpart 432.10—Performance-Based Payments

432.1007 Administration and payment of performance-based payments.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

432.001 Definitions.

The *agency contract finance office* is the office, other than the office of the requisitioner, providing funding or performing funding record keeping for the contract action.

Responsible fiscal authority is that officer in the agency contract finance office with the responsibility to ensure that adequate funds are available and usable for the intended purpose.

432.003 Simplified acquisition procedures financing.

(a) The chief of the contracting office may approve contract financing on a

contract to be entered under the simplified acquisition procedures. Class approvals may not be made.

(b) The signed approval must contain the supporting rationale for the action and an estimate of the cost and/or risk to the government.

432.006 Reduction or suspension of contract payments upon finding of fraud.

432.006–2 Definitions.

(a) The USDA *remedy coordination official* (RCO) is the Assistant Secretary for Administration.

(b) For the purposes of this part, *head of the agency* means, exclusively, the Secretary or the Deputy Secretary.

432.006–3 Responsibilities.

When a contracting officer suspects that a request for advance, partial, or progress payment is based on fraud, the request shall be referred directly to the Office of Inspector General (OIG) in accordance with their instructions. A copy of the referral shall be submitted through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE).

432.006–4 Procedures.

(a) Immediately upon submittal of the referral described in 432.006–3, the HCA and the contracting officer shall confer with the SPE and representatives of the OIG to discuss the potential for reduction or suspension of further payments based on the considerations listed in FAR 32.006–4(d) (1) through (5).

(b) The SPE will determine whether the contractor has contracts with other Departments or contracting activities and will involve them, as necessary, in the decision making process.

(c) The OIG will determine the need for and the extent of an investigation.

(d) Immediately upon completion of the OIG investigation (or, if deemed necessary by the OIG and the SPE, before completion of the investigation) the SPE, in coordination with the HCA, the contracting officer, and the OIG, shall make a report on the action to the RCO.

(e) Upon receipt of the report, the RCO will submit a recommendation to the Secretary.

(f) Upon receipt of the RCO's report the Secretary will:

(1) Notify the contractor in writing, allowing 30 calendar days after receipt of the notice, that the contractor may submit in writing information and arguments in opposition to the recommendation; and

(2) Consider the RCO's recommendation, the SPE's report, the response of the contractor, and any other relevant information in order to make an appropriate final determination.

(g) This determination will be provided to the contractor and to the SPE for distribution to the agencies involved and for appropriate action under the determination.

(h) The determination and the supporting documentation will be placed in the contract file(s) and a copy will be maintained by the SPE.

(i) The contracting officer will advise the SPE of the actual date of the reduction or suspension action.

(j) Not later than 150 calendar days after the actual date of the reduction or suspension action, the SPE will prepare for the RCO a review of the agency head's determination, and will propose a recommendation from the RCO to the agency head as to whether the reduction or suspension action should continue. The RCO will submit the recommendation (including a recommendation for the time period of a follow up review) to the agency head. This recommendation will be considered by the Secretary and handled as a final action described in paragraph (f) of this section.

(k) The contract may not be closed nor final payment made prior to a final determination by the Secretary.

432.006–5 Reporting.

The annual report required by FAR 32.006–5 is to be prepared by the SPE and to be submitted to the Secretary within 90 calendar days after the end of the fiscal year. When signed by the Secretary, the report is to be maintained by the SPE.

Subpart 432.1—Non-Commercial Item Purchase Financing

432.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under USDA contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. Such payments also are authorized for service contracts, if the contracting officer determines that progress payments based on costs are not practicable and adequate safeguards are provided to administer progress payments based on a percentage or stage of completion. For all other contracts, progress payment provisions shall be based on costs except that the HCA may authorize progress payments based on a percentage or stage of completion on a case-by-case basis. Each authorization by the HCA shall include a determination and finding that progress payments based on costs cannot be employed practically and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

432.103 Progress payments under construction contracts.

(a) When approving a progress payment under a construction contract, the contracting officer shall indicate the amount to be paid by the payment office and include in the contract file the rationale in support of the payment.

(b) When a retainage is made on a progress payment under a construction contract, the contracting officer shall place in the contract file a written determination stating the reason(s) for the retainage.

(c) When a progress payment under a construction contract has been approved, the amount to be paid, the amount of any retainage withheld, and the reason(s) for the retainage shall be provided to the contractor by the contracting officer in writing before the payment due date.

(d) When the contractor, under a fixed-price construction contract, furnishes evidence to the contracting officer that the surety has been paid in full for bond premiums and requests reimbursement, the first subsequent progress payment shall include the total amount attributable to such bond premiums and the Government shall pay that amount in full. This amount paid for the bond premiums is not an amount in addition to the stated contract price.

432.111 Contract clauses for non-commercial purchases.

The contracting officer shall insert the clause at 452.232–70, Reimbursement for Bond Premiums—Fixed Price Construction Contracts, whenever the clause at FAR 52.232–5, Payments under Fixed-Price Construction Contracts, is used in a contract.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

432.113 Customary contract financing.

The contracting officer may determine the necessity for customary contract financing. The determination and finding that customary contract financing is needed shall be placed in the contract file.

432.114 Unusual contract financing.

The HCA is authorized to approve unusual contract financing. The signed determination and finding supporting this approval shall be included in the contract file.

Subpart 432.2—Commercial Item Purchase Financing

432.202 General.

432.202–1 Policy.

In the case of unusual contract financing, the approval by the HCA shall be recorded in a determination and finding and maintained in the contract file.

432.202–4 Security for Government financing.

Prior to determining that an offeror's financial condition is adequate security, the contracting officer must obtain the concurrence of the funding activity in the proposed determination.

432.206 Solicitation provisions and contract clauses.

The responsibility for administration of the liquidation provisions of a contract may not be transferred from the contracting officer.

432.207 Administration and payment of commercial financing payments.

The responsibility for receiving, reviewing, and approval of contract financing requests may not be transferred from the contracting officer.

Subpart 432.3—Loan Guarantees for Defense Production

432.301 Definitions.

Within this subpart, the ''agency'' or ''guaranteeing agency'' is the ''head of the contracting activity'' (HCA) and may not be redelegated.

Subpart 432.4—Advance Payments for Non-Commercial Items

432.402 General.

The HCA is designated as the individual responsible for making the findings and determination, and for approval of the contract terms concerning advance payments.

432.406 Letters of credit.

The HCA is designated as the individual responsible for coordination with the Department of Treasury concerning letters of credit.

432.407 Interest.

(a) The HCA is designated as the individual who may authorize, on a case by case basis, advance payments without interest for the contract types described in FAR 32.407(d)(1), (2), (3), and (4). The signed determination and findings supporting these authorizations shall be included in the contract files.

(b) The SPE is designated as the individual who may authorize advance payments without interest other than those described in paragraph (a) of this section.

432.412 Contract clause.

The decision to use Alternates I or III to clause 52.232–12 must be supported by a determination and finding.

Subpart 432.6—Contract Debts

432.601 Definition.

Responsible official means the contracting officer.

432.616 Compromise actions.

Compromise of a debt within the proceedings under appeal to the Board of Contract Appeals is the responsibility of the contracting officer.

Subpart 432.7—Contract Funding

432.703 Contract funding requirements.

432.703–3 Contracts crossing fiscal years.

Funds appropriated to USDA may be used for one-year contracts which are to be performed in two fiscal years so long as the total amount for such contracts is obligated in the year for which the funds are appropriated (7 U.S.C. 2209c).

432.770 USDA specific funding limitations.

(a) The USDA is authorized to subscribe for newspapers as may be necessary to carry out its authorized work: *Provided,* that such subscriptions shall not be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein (7 U.S.C. 2258).

(b) The expenditure of any USDA appropriation for any consulting service through any contract, pursuant to section 3109 of Title 5 of the U.S. Code shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law (7 U.S.C. 2225a).

Subpart 432.8—Assignment of Claims

432.802 Conditions.

Written notices of assignment and a true copy of the assigned instrument are to be sent to the contracting officer rather than the agency head. Other copies are distributed as directed in FAR 32.802.

432.803 Policies.

The HCA may make a determination of need to include a no-setoff commitment in a contract.

432.805 Procedure.

The information described in FAR 32.805 shall be filed with the contracting officer.

432.806 Contract clauses.

The contracting officer may make the determination whether to include the clause at FAR 52.232–23 in any purchase order expected to exceed the micro-purchase threshold.

Subpart 432.9—Prompt Payment

432.905 Invoice payments.

The payment terms for supplies and services on the Procurement List and provided by a Javits-Wagner-O'Day Act participating nonprofit agency are governed by FAR 8.709.

432.906 Contract financing payments.

The HCA may prescribe, on a case-by-case basis, a shorter period for financing payments.

Subpart 432.10—Performance-Based Payments

432.1007 Administration and payment of performance-based payments.

The responsibility for receiving, reviewing, and approval of performance-based payment requests may not be transferred from the contracting officer.

PART 433—PROTESTS, DISPUTES AND APPEALS

Subpart 433.1—Protests

Sec.
433.102 General.
433.103 Protests to the agency.
433.104 Protests to GAO.

Subpart 433.2—Disputes and Appeals

433.203 Applicability.
433.203–70 Agriculture Board of Contract Appeals.
433.209 Suspected fraudulent claims.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 433.1—Protests

433.102 General.

(a) The Senior Procurement Executive (SPE) is responsible for coordinating the handling of bid protests lodged with the General Accounting Office (GAO).

(b) The head of the contracting activity (HCA), on a non-delegable basis, may resolve protests and authorize reimbursement of costs in accordance with FAR 33.102(b).

433.103 Protests to the agency.

(a) Actual or prospective bidders or offerors may file protests either with the HCA, as provided by 433.102(b), or with the contracting officer. Protesters who file protests with the HCA shall furnish a complete copy to the contracting officer no later than 1 day after the protest is filed with the HCA.

(b) When a protest is received, the adjudicating official shall take prompt action towards resolution and notify the protester in writing of the action taken. The written final decision shall include a paragraph substantially as follows:

This decision shall be final and conclusive unless a further written notice of protest is filed with the General Accounting Office in accordance with 4 CFR part 21. Neither the filing of a protest with USDA nor the filing of a protest with the General Accounting Office affects your right to file an action

in a district court of the United States or the United States Court of Federal Claims.

433.104 Protests to GAO.

The contracting activity shall furnish a copy of all reports submitted to the GAO, including all relevant documents, to the SPE simultaneously with their submission to the GAO.

Subpart 433.2—Disputes and Appeals

433.203 Applicability.

The Assistant Secretary for Administration is authorized to determine the applicability of the Contract Disputes Act to contracts with foreign governments pursuant to FAR 33.203.

433.203–70 Agriculture Board of Contract Appeals.

The organization, jurisdiction, and functions of the Agriculture Board of Contract Appeals, together with its Rules of Procedure, are set out in 7 CFR part 24.

433.209 Suspected fraudulent claims.

The contracting officer shall refer all matters related to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of Inspector General for additional action or investigation.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 434—MAJOR SYSTEM ACQUISITION

Subpart 434.0—General

Sec.
434.001 Definitions.
434.002 Policy.
434.003 Responsibilities.
434.004 Acquisition strategy.
434.005 General requirements.
434.005–6 Full production.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 434.0—General

434.001 Definitions.

Pursuant to OMB Circular No. A–109 (A–109) and the definition at FAR 2.101, within USDA, a system shall be considered a major system if:

(a) The total acquisition costs with private industry are estimated to be $50 million or more, or

(b) The system has been specifically designated to be a major system by the USDA Acquisition Executive, even if the acquisition costs are not expected to exceed $50 million.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

434.002 Policy.

In addition to the policy guidance at FAR 34.002, the policies outlined in paragraph 6 of A–109 should serve as guidelines for all contracting activities in planning and developing systems, major or otherwise.

434.003 Responsibilities.

(a) The Secretary of Agriculture or other designated USDA key executive is responsible for making four key decisions in each major system acquisition process. These are listed in paragraph 9 of A–109 and elaborated on in paragraphs 10 through 13. The key executives of USDA (Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) individually or as a group will participate in this decision making process.

(b) The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive. The ASA will ensure that A–109 is implemented in USDA and that the management objectives of the Circular are realized. The ASA is responsible for designating the program manager for each major system acquisition, designating an acquisition to be a major system acquisition, and approving the written charter and project control system for each major system acquisition.

(c) The Procurement and Property Management staff is responsible for assisting the ASA in carrying out the above responsibilities.

(d) Heads of contracting activities must:

(1) Ensure compliance with the requirements of A–109, FAR part 34 and AGAR 434.

(2) Ensure that potential major system acquisitions are brought to the attention of the USDA Acquisition Executive.

(3) Recommend qualified candidates for designation as program managers for each major system acquisition within their jurisdiction.

(4) Ensure that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the ASA in implementing the requirements of A–109.

(e) The program manager is responsible for planning and executing the major system acquisition, ensuring appropriate coordination with the USDA Acquisition Executive and other key USDA executives.

434.004 Acquisition strategy.

(a) The program manager will develop, in coordination with the Acquisition Executive, a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.

(b) The program manager will develop, subject to the approval of the Acquisition Executive, a project control system to schedule, monitor, and regularly report on all aspects of the

project. The control system shall establish reporting periods and milestones consistent with the key decisions listed in paragraph 9 of A–109.

(c) Upon initiation of the project, the program manager will report regularly to the Acquisition Executive.

434.005 General requirements.

434.005–6 Full production.

The Secretary or the USDA key executive designated by the Secretary for the specific program is the agency head for the purposes of FAR 34.005–6.

PART 435—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

435.010 Scientific and technical reports.

Research and development contracts shall contain a provision requiring that the contractor send copies of all scientific and technical reports to the National Technical Information Service at the address indicated in FAR 35.010(b). The release of research and development contract results to other government activities and to the private sector is subject to the provisions of FAR subpart 4.4.

[61 FR 53646, Oct. 15, 1996]

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 436.2—Special Aspects of Contracting for Construction

Sec.

436.201 Evaluation of contractor performance.
436.203 Government estimate of construction costs.
436.204 Disclosure of the magnitude of construction projects.
436.205 Statutory cost limitations.
436.209 Construction contracts with architect-engineer firms.
436.213 Special procedures for sealed bidding in construction contracting.
436.213–2 Presolicitation notices.

Subpart 436.3 [Reserved]

Subpart 436.5—Contract Clauses

436.500 Scope of subpart.
436.571 Prohibition against the use of lead-based paint.
436.572 Use of premises.
436.573 Archeological or historic sites.
436.574 Control of erosion, sedimentation, and pollution.
436.575 Maximum workweek-construction schedule.
436.576 Samples and certificates.
436.577 Emergency response.
436.578 Standard specifications for construction of roads and bridges.
436.579 Opted timber sale road requirements.

Subpart 436.6—Architect-Engineer Services

436.601 Policy.
436.601–3 Applicable contracting procedures.
436.602 Selection of firms for architect-engineer contracts.
436.602–1 Selection criteria.
436.602–2 Evaluation boards.
436.602–3 Evaluation board functions.
436.602–4 Selection authority.
436.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
436.603 Collecting data on and appraising firms' qualifications.
436.604 Performance evaluation.
436.605 Government cost estimate for architect-engineer work.
436.609 Contract clauses.
436.609–1 Design within funding limitations.
436.670 Firms ineligible for award—construction.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 436.2—Special Aspects of Contracting for Construction

436.201 Evaluation of contractor performance.

Preparation of performance evaluation reports. In addition to the requirements of FAR 36.201, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activity's reasonable estimate of services to be ordered exceeds $500,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

436.203 Government estimate of construction costs.

For acquisitions using sealed bid procedures, the contracting officer may disclose the overall amount of the Government's estimate of construction costs following identification of the responsive bid most advantageous to the Government; verification of that bid's price reasonableness; and verification of the bidder's responsibility. For acquisitions using other than sealed bid procedures (e.g., negotiation), the contracting officer may disclose the overall amount of the estimate after contract award.

436.204 Disclosure of the magnitude of construction projects.

In the case of indefinite-delivery type contracts, the reasonable estimate of work to be done or the maximum in the solicitation, both including all options, is to be used to select the price range. Contracting officers may elect to use both a price range for the base period of services and the total, inclusive of options, to best describe the magnitude of the solicitation.

436.205 Statutory cost limitations.

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In this case, the contracting officer shall insert the provision at 452.236–70, Additive or Deductive Items, in solicitations for construction.

(b) In the alternative to the process in paragraph (a) of this section, the contracting officer may use the policies and procedures found in FAR 17.2.

436.209 Construction contracts with architect-engineer firms.

The head of the contracting activity (HCA) is authorized to approve the award of a contract to construct a project, in whole or in part, to the firm (inclusive of its subsidiaries or affiliates) that designed the project.

436.213 Special procedures for sealed bidding in construction contracting.

436.213–2 Presolicitation notices.

The authority to waive a presolicitation notice is restricted to the HCA.

[63 FR 26995, May 15, 1998]

Subpart 436.3 [Reserved]

Subpart 436.5—Contract Clauses

436.500 Scope of subpart.

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed, in contracts that exceed the simplified acquisition threshold. The contracting officer may use the clauses if the contract amount is expected to be within the simplified acquisition threshold.

436.571 Prohibition against the use of lead-based paint.

The contracting officer shall insert the clause at 452.236–71, Prohibition Against the Use of Lead-Based Paint, in solicitations and contracts, if the work involves construction or rehabilitation (including dismantling, demolition, or removal) of residential structures. This clause may be used in contracts for other than residential structures.

436.572 Use of premises.

The contracting officer shall insert the clause at 452.236–72, Use of Premises, if the contractor will be permitted to use land or premises administered by USDA.

436.573 Archeological or historic sites.

The contracting officer shall insert the clause at 452.236–73, Archeological or Historic Sites, if the contractor will be working in an area where such sites may be found. Use of the clause is optional in service contracts for on-the-ground work, e.g. reforestation, silvicultural, land stabilization, or other agricultural-related projects.

436.574 Control of erosion, sedimentation, and pollution.

The contracting officer shall insert the clause at 452.236–74, Control of Erosion, Sedimentation and Pollution, if there is a need for applying environmental controls in the performance of work. Use of the clause is optional in service contracts for on-the-ground e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

436.575 Maximum workweek-construction schedule.

The contracting officer shall insert the clause at 452.236–75, Maximum Workweek-Construction Schedule, if the clause at FAR 52.236–15 is used and the contractor's work schedule is restricted by access to the facility or must be coordinated with the schedule of contract administration personnel.

[63 FR 26996, May 15, 1998]

436.576 Samples and certificates.

The contracting officer shall insert the clause at 452.236–76, Samples and Certificates, in all contracts.

436.577 Emergency response.

The contracting officer may insert the clause at 452.236–77, Emergency Response, in construction contracts awarded for the Forest Service.

436.578 Standard specifications for construction of roads and bridges.

The contracting officer shall insert the clause at 452.236–78, Forest Service Standard Specifications for Construction of Roads and Bridges, in construction contracts that incorporate the standard specifications.

436.579 Opted timber sale road requirements.

The contracting officer shall insert the clause at 452.236–79, Opted Timber Sale Road Requirements, in road construction contracts resulting from a timber sale turnback.

Subpart 436.6—Architect-Engineer Service

436.601 Policy.

436.601–3 Applicable contracting procedures.

The technical official's listing of areas where recovered materials cannot be used shall be referred to the contracting activity's official designated in accordance with FAR 23.404. A copy of the listing and of any approval or disapproval by that official is to be retained in the solicitation file.

436.602 Selection of firms for architect-engineer contracts.

436.602–1 Selection criteria.

The HCA is authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

436.602–2 Evaluation boards.

HCA's shall establish written procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. The procedures may provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the HCA to be essential to meet the Government's minimum needs.

436.602–3 Evaluation board functions.

The selection report required in FAR 36.602–3(d) shall be prepared for the approval of the HCA. The HCA may authorize an acquisition official above the level of the contracting officer to execute the required approval.

436.602–4 Selection authority.

(a) The HCA shall serve as the selection authority in accordance with FAR 36.602–4. The HCA may authorize an acquisition official above the level of the contracting officer to serve as the selection authority.

(b) A copy of the final selection, inclusive of the supporting documents, shall be provided to the contracting officer and maintained in the solicitation file.

436.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The HCA may include either or both procedures in FAR 36.602–5 in the procedures for evaluation boards.

436.603 Collecting data on and appraising firms' qualifications.

(a) HCA's which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually.

436.604 Performance evaluation.

Preparation of performance evaluation reports. (a) In addition to the requirements of FAR 36.604, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activities reasonable estimate of services to be ordered exceeds $25,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

(b) The contracting officer may require a performance evaluation report on the work done by the architect-engineer after the completion of or during the construction of the designed project.

436.605 Government cost estimate for architect-engineer work.

The contracting officer may release the Government's total cost estimate in accordance with FAR 36.605(b).

436.609 Contract clauses.

436.609–1 Design within funding limitations.

(a) Should the head of the contracting activity appoint a designee to make the determination in FAR 36.609–1(c)(1), the appointment may be to one no lower than the official authorized to commit program funds for the work being acquired.

(b) The contracting officer, with the advice of appropriate technical representatives, may make the determination in FAR 36.609–1(c)(2) or (3).

(c) A copy of the determinations described in paragraph (b) and (c) of this section shall be maintained in the contract file.

436.670 Firms ineligible for award—construction.

The contracting officer shall insert the clause at 452.236–80, Firms Ineligible For Award—Construction, in the contract for architect-engineering services except as provided in FAR 36.209 and AGAR 436.209.

PART 437—SERVICE CONTRACTING

Subpart 437.1—Service Contracts—General

Sec.

437.104 Personal services contracts.
437.110 Solicitation provisions and contract clauses.

Subpart 437.2—Advisory and Assistance Services

437.203 Policy.
437.204 Guidelines for determining availability of personnel.
437.270 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 437.1—Service Contracts—General

437.104 Personal services contracts.

USDA has the following specific statutory authorities to contract for personal services:

(a) Section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) authorizes contracting with persons or organizations on a temporary basis, without regard to civil service compensation classification standards in 5 U.S.C., Chapter 51 and Subchapter III of Chapter 53, *Provided:*

(1) That no expenditures shall be made unless specifically provided for in the applicable appropriation, and

(2) Expenditures do not exceed any limitations prescribed in the appropriation.

(b) 7 U.S.C. 1627 authorizes the Secretary of Agriculture to contract with technically qualified persons, firms or organizations to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws, *Provided:* it is for a temporary basis and for a term not to exceed six months in any fiscal year.

437.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237–70, Loss Damage, Destruction or Repair, in contracts for equipment rental, whether the equipment is furnished with or without operator.

(b) The contracting officer shall insert a provision substantially the same as the clause at 452.237–71, Pre-Bid/Pre-Proposal Conference, in all solicitations if a conference with prospective offerors will be held prior to the submittal of bids or proposals.

(c) The contracting officer shall insert the provision at 452.237–73, Equipment Inspection visit, in solicitations if work is to be done on Government equipment and an offeror's inspection is encouraged for an understanding of the work to be performed prior to submittal of bids or proposals.

(d) The contracting officer shall insert a clause substantially the same as the clause at 452.237–74, Key Personnel, in contracts if contract performance requires identification of the contractor's key personnel.

(e) The contracting officer shall insert a clause substantially the same as the clause at 452.237–75, Restrictions Against Disclosure, in service contracts (including architect-engineer contracts) requiring restrictions on release of information developed or obtained in connection with performance of the contract.

Subpart 437.2—Advisory and Assistance Services

437.203 Policy.

Contracting for advisory and assistance services is subject to the policy and procedures in Departmental Regulations (5000 series).

437.204 Guidelines for determining availability of personnel.

The head of the contracting activity (HCA) is authorized to approve the use of non-Government evaluators in proposal evaluation. Each such decision shall be supported by a written determination in accordance with FAR 37.204.

[64 FR 52675, Sept. 30, 1999]

437.270 Solicitation and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237–76, Progress Reporting, in all contracts for advisory and assistance services. It may also be used in other service contracts.

(b) The contracting officer shall insert a clause substantially the same as the clause at 452.237–78, Contracts with Consulting Firms for Services, in solicitations and contracts for consulting services which prohibit follow-on contracts with the contracting firm.

PARTS 438–440 [RESERVED]

PART 441—ACQUISITION OF UTILITY SERVICES

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 441.2—Acquiring Utility Services

441.201 Policy.

As used in FAR 41.201(d)(2)(i) and 41.201(d)(3) the Federal agency head designee is the head of the contracting activity.

[61 FR 53646, Oct. 15, 1996]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 442—CONTRACT ADMINISTRATION

Subpart 442.1—Interagency Contract Administration and Audit Services

Sec.
442.102 Procedures.

Subpart 442.15—Contractor Performance Information

442.1502 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 442.1—Interagency Contract Administration and Audit Services

442.102 Procedures.

(a) The Office of Inspector General (OIG), Audit Division, has established a cross-servicing arrangement with the Defense Contract Audit Agency (DCAA) to provide contract audit services required by the FAR.

(b) All contract audit services required by contracting officers, except those which can be accomplished in-house, shall be coordinated through the cognizant OIG Regional Inspector General—Auditing (RIG-A). Cognizance is determined on the basis of the contractor's location. There is no charge for DCAA audit services coordinated through OIG.

(c) In order to ensure compliance with this requirement and to evaluate the results of audits, contracting officers shall forward to the RIG-A copies of all price negotiation memoranda prepared for contracts and contract modifications in excess of $500,000.

Subpart 442.15—Contractor Performance Information

442.1502 Policy.

The head of the contracting activity shall be responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

PARTS 443–444 [RESERVED]

PART 445—GOVERNMENT PROPERTY

Subpart 445.3—Providing Government Property to Contractors

Sec.
445.302 Providing facilities.
445.302–1 Policy.

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.
445.407 Non-Government use of plant equipment.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contracting inventory.
445.608–6 Waiver of screening requirements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.

445.302–1 Policy.

Heads of contracting activities (HCA's) are authorized to make determinations for providing facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.

HCA's are authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245–9 as prescribed in FAR 45.403(a).

445.407 Non-Government use of plant equipment.

Requests for non-Government use of plant equipment as prescribed in FAR 45.407 shall be submitted by the HCA to the Senior Procurement Executive (SPE) for approval.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.

445.608–6 Waiver of screening requirements.

Requests to waive screening requirements as prescribed in FAR 46.608–6 shall be submitted by the HCA to the SPE for approval.

PART 446—QUALITY ASSURANCE

AUTHORITY: 5 U.S.C. 30 and 40 U.S.C. 486(c).

Subpart 446.3—Contract Clauses

446.370 Inspection and acceptance.

The Contracting Officer shall insert the clause at 452.246–70, Inspection and Acceptance, in contracts where inspection and acceptance will be performed at the same location. The clause with its Alternate I is for use when inspection and acceptance will be performed at different locations.

[61 FR 53646, Oct. 15, 1996]

PART 447—TRANSPORTATION

Subpart 447.3—Transportation in Supply Contracts

Sec.

447.302 Place of delivery—F.O.B. point.
447.305 Solicitation provisions, contract clauses, and transportation factors.
447.305–10 Packing, marking, and consignment instructions.

AUTHORITY: 5 U.S.C. 30 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 447.3—Transportation in Supply Contracts

447.302 Place of delivery—F.O.B. point.

The contracting officer shall insert a clause substantially the same as the clause at 452.247–70, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (e.g., quantities to be delivered to each location, etc.).

447.305 Solicitation provisions, contract clauses, and transportation factors.

447.305–10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.247–71, Marking Deliverables, in solicitations and contracts if special marking on deliverables (other than reports) are required.

(b) The contracting officer shall insert the clause at 452.247–72, Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

(c) The contracting officer shall insert the clause at 452.247–73, Packing for Overseas Shipment, in contracts when item(s) will be delivered to an overseas destination for immediate use, the material specification does not specify packing levels, and the required activity has not specified such requirements.

PART 448 [RESERVED]

PART 449—TERMINATION OF CONTRACTS

Subpart 449.1—General Principles

Sec.
449.106 Fraud or other criminal conduct.
449.111 Review of proposed settlements.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.
449.402–3 Procedure for default.

Subpart 449.5—Contract Termination Clauses

449.501 General.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 449.1—General Principles

449.106 Fraud or other criminal conduct.

(a) If the contracting officer suspects fraud or other criminal conduct a written report documenting the facts shall be submitted by the head of the contracting activity (HCA) to the Office of Inspector General. Copies of documents or other information connected with the suspected fraud or criminal conduct shall be provided with the report. Concurrently, a copy of the report shall also be submitted to the Senior Procurement Executive.

(b) Depending on the findings of the Office of Inspector General, the HCA may initiate suspension or debarment action as prescribed in FAR part 9.4 and part 409.4.

449.111 Review of proposed settlements.

Proposed settlement agreements shall be reviewed and approved in accordance with contracting activity procedures.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.

449.402–3 Procedure for default.

In addition to the requirements of FAR 49.402–3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.508–1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402–7).

Subpart 449.5—Contract Termination Clauses

449.501 General.

Use of special purpose termination clauses pursuant to the authority of FAR 49.501 shall be approved in advance by the HCA.

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.
450.001 Definitions.

Subpart 450.1—General

450.104 Reports.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

Subpart 450.3—Contract Adjustments

450.303 Contract adjustment.
450.303–1 Contractor requests.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

450.001 Definitions.

Approving authority, as used in this part, means the Assistant Secretary for Administration.

Secretarial level, as used in this part means the Assistant Secretary for Administration.

Subpart 450.1—General

450.104 Reports.

The Senior Procurement Executive shall prepare the report required by FAR 50.104.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

The Assistant Secretary for Administration is authorized to approve all actions under FAR part 50 except indemnification actions listed in FAR 50.201(d) which must be approved by the Secretary, without power of delegation.

Subpart 450.3—Contract Adjustments

450.303 Contract adjustment.

450.303–1 Contractor requests.

Contractor requests shall be submitted to the contracting officer.

PART 451 [RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 452.2—Texts of Provisions and Clauses

Sec.

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452.247–73 Packing for Overseas Shipment.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 452.2—Texts of Provisions and Clauses

452.204–70 Inquiries.

As prescribed in 404.7001, insert the following provision:

INQUIRIES (FEB 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of provision)

452.211–70 Brand Name or Equal.

As prescribed in 411.171, insert the following provision:

BRAND NAME OR EQUAL (NOV 1996)

(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 by a ''brand name or equal'' description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Offers of ''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 offer (see clause 452.211–2) and are determined by the Contracting Officer to meet fully the salient characteristics requirements listed in the solicitation.

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

(c)(1) If the offeror proposes to furnish an ''equal'' product or products, the brand name(s), if any, and any other required information about the product(s) to be furnished shall be inserted in the space provided in the solicitation. The evaluation of offers and the determination as to the equality of the product(s) 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 activity. Caution to offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the offer and is not reasonably available to the contracting activity. Accordingly, to assure 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 activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If an offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offer shall include (i) a clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(End of provision)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211–71 Equal Products Offered.

As prescribed in 411.171, insert the following or substantially the same clause in solicitations seeking offers on a ''brand name or equal'' basis to allow offerors the opportunity to clearly identify the ''equal'' item being offered, and to illustrate how that item meets the salient characteristics requirements of the Government.

EQUAL PRODUCTS OFFERED (NOV 1996)

(a) Offerors proposing to furnish an ''equal'' product, in accordance with the ''Brand Name or Equal'' provision of this solicitation, shall provide the following information for each offered ''equal'' product:

Contract Line Item Number (if any): _____
Brand Name or Equal Product identified by the Government in this solicitation: _____
Offered Product Name: _____
Catalog Description or part number: _____
_____
Manufacturer's Name: _____
Manufacturer's Address: _____
_____
_____

(b) Offerors are responsible for submitting all additional information on the above product necessary for the Contracting Officer to determine whether the product offered meets the ''brand name or equal'' product's salient characteristics listed in the solicitation.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211–72 Statement of Work/Specifications.

As prescribed in 411.171, insert the following clause:

STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications referenced in Section J.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211–73 Attachments to Statement of Work/Specifications.

As prescribed in 411.171, insert the following clause:

ATTACHMENTS TO STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The attachments to the Statement of Work/Specifications listed in Section J are hereby made part of this solicitation and any resultant contract.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211–74 Period of Performance.

As prescribed in 411.404(a), insert the following clause:

PERIOD OF PERFORMANCE (FEB 1988)

The period of performance of this contract is from _____ through _____.*

(End of clause)

**Contracting Officer shall insert the appropriate dates.*

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211–75 Effective Period of the Contract.

As prescribed in 411.404(b), insert the following clause:

EFFECTIVE PERIOD OF THE CONTRACT (FEB 1988)

The effective period of this contract is from _____ through _____.*

(End of clause)

**Contracting Officer shall insert the appropriate dates.*

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.214–70 Award by Lot.

As prescribed in 414.201–6, insert a provision substantially as follows:

AWARD BY LOT (NOV 1996)

Subject to the Section L provision FAR 52.214–10, ''Contract Award—Sealed Bidding,'' award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by item within any lot when the contracting officer determines that it is advantageous to the Government.

(End of provision)

452.215–71 Instructions for the Preparation of Technical and Business Proposals.

As prescribed in 415.209(a), insert a provision substantially as follows:

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND BUSINESS PROPOSALS(SEP 1999)

(a) *General Instructions.* Proposals submitted in response to this solicitation shall be furnished in the following format with the numbers of copies as specified below.

(1) The proposal must include a technical proposal and business proposal. Each of the parts shall be separate and complete so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the contractor's understanding of the statement of work may be evaluated.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any ''alternate'' proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(4) Offerors shall submit their proposal(s) in the following format and the quantities specified:

(a) _____* copies of the completed, signed offer (Sections A through K of the solicitation package)

(b) _____* copies of the technical proposal

(c) _____* copies of the business/cost proposal

(b) *Technical Proposal Instructions.* The technical proposal will be used to make an evaluation and arrive at a determination as to whether the proposal will meet the requirements of the Government. Therefore, the technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed, description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work. Proposals which merely paraphrase the requirements of the Government's specifications/ statement of work, or use such phrases as ''will comply'' or ''standard techniques will be employed'' will be considered unacceptable and will not be considered further. As a minimum, the proposal must clearly provide the following:

(*Contracting Officer shall identify in this section the minimum information required to evaluate each technical evaluation factor listed in Section M.*)

(c) *Business Proposal Instructions.*

(1) Cost Proposal.

In addition to any other requirements for cost/pricing information required in clause FAR 52.215–20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 1997), the following is required:

(*Contracting Officer shall identify additional information required if appropriate.*)

(2) Business Proposal.

(a) Furnish financial statements for the last two years, including an interim statement for the current year, unless previously provided to the office issuing the RFP, in

which case a statement as to when and where this information was provided may be furnished instead.

(b) Specify the financial capacity, working capital and other resources available to perform the contract without assistance from any outside source.

(c) Provide the name, location, and intercompany pricing policy for other divisions, subsidiaries, parent company, or affiliated companies that will perform work or furnish materials under this contract.

(End of provision)

**Contracting officer shall insert number of copies required.*

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

452.215–72 Amendments to Proposals.

As prescribed in 415.209(b), insert the following provision:

AMENDMENTS TO PROPOSALS (FEB 1988)

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment on the lower right corner of the changed pages.

(End of provision)

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

452.215–73 Post Award Conference.

As prescribed in 415.570, insert a clause substantially as follows:

POST AWARD CONFERENCE (NOV 1996)

A post award conference with the successful offeror is required. It will be scheduled within _____* days after the date of contract award. The conference will be held at: _____*.

(End of clause)

** Contracting officer to insert number of days and location.*

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

452.216–70 Award Fee.

As prescribed in 416.405, insert a clause substantially as follows:

AWARD FEE (FEB 1988)

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with the award fee plan. The Government will determine the amount of award fee every _____* months beginning with _____*. The Fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not subject to the ''Disputes'' clause. The Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

(End of clause)

** Contracting Officer shall insert appropriate number of months.*

*** Contracting Officer shall insert appropriate date.*

452.216–71 Base Fee and Award Fee Proposal.

As prescribed in 416.470, insert the following provision:

BASE FEE AND AWARD PROPOSAL (FEB 1988)

For the purpose of this solicitation, offerors shall propose a base fee of _____* percent of the total estimated cost proposed. The award fee shall not exceed _____* percent of the total estimated cost.

(End of provision)

** Contracting Officer shall insert appropriate percentages.*

452.216–72 Evaluation Quantities—Indefinite-Delivery Contract.

As prescribed in 416.506(a), insert a provision substantially as follows:

EVALUATION QUANTITIES—INDEFINITE-DELIVERY CONTRACT (FEB 1988)

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

(End of provision)

452.216–73 Minimum and Maximum Contract Amounts.

As prescribed in 416.506(b), insert the following clause:

MINIMUM AND MAXIMUM CONTRACT AMOUNTS (FEB 1988)

During the period specified in FAR clause 52.216–18, ORDERING, the Government shall place orders totaling a minimum of _____*, but not in excess of _____*.

(End of clause)

**Contracting Officer shall insert appropriate quantity or dollar amounts.*

452.216–74 Ceiling Price.

As prescribed in 416.670, insert the following clause:

CEILING PRICE (FEB 1988)

The ceiling price of this contract is $_____*. The Contractor shall not make expenditures or incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

(End of clause)

**Contracting Officer shall insert appropriate dollar amount.*

452.216–75 Letter Contract.

As prescribed in 416.603–4, insert the following clause:

LETTER CONTRACT (FEB 1988)

This contract replaces letter contract No. _____* dated _____* and all amendments thereto.

(End of clause)

**Contracting Officer shall insert number and date.*

452.219–70 Size Standard and SIC Code Information.

As prescribed in 419.508, insert the following provision:

SIZE STANDARD AND SIC CODE INFORMATION (NOV 1996)

The Standard Industrial Classification Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed below:

Contract line item(s): _____* SIC Code _____* Size Standard _____*

(End of provision)

**Contracting Officer shall insert the appropriate data for each contract line item in the solicitation. The data entry line may be duplicated as required to describe all of the contract line items or sub-items.*

452.224–70 Confidentiality of Information.

As prescribed in 424.104, insert a clause substantially as follows:

CONFIDENTIALITY OF INFORMATION (FEB 1988)

(a) Confidential information, as used in this clause, means—

(1) information or data of a personal nature, proprietary about an individual, or (2) information or data submitted by or pertaining to an organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of primarily invalidated findings could create an erroneous conclusion which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the ''Disputes'' clause.

(d) If it is established that information to be utilized under this contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any

objections in writing within the 45 day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and Contracting Officer will be settled pursuant to the ''Disputes'' clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

452.226–70 Preferred Products.

As prescribed in 426.7009(a), include the following provision:

PREFERRED PRODUCTS (MAY 1998)

Specific products required by this solicitation and resulting contract are subject to a price or a technical preference. A list of these products, the specific preference, and the manufacturer or producer is included below.

Contract Line Item (or other location in this solicitation): * _____

Product: _____

Manufacturer/Producer: * _____

_____

_____

_____

Preference: * _____

_____

(End of provision)

**For each line item to which a preference applies, Contracting Officer shall insert appropriate information.*

[63 FR 26998, May 15, 1998]

452.226–71 Set-aside for Mandatory Products.

As prescribed in 426.7009(b), include the following provision:

SET-ASIDE FOR MANDATORY PRODUCTS (MAY 1998)

Specific products are set-aside as mandatory products. These are separately listed in the schedule, specifications, or performance work statement. Specific terms governing the set-aside, and source information for the products are shown below.

Contract Line Item (or other location in this solicitation): * _____

_____

Product: * _____

Manufacturer/Producer: * _____

_____

_____

_____

Set-Aside Terms: * _____

_____

(End of provision)

**For each line item to which a set-aside applies, Contracting Officer shall insert appropriate information.*

[63 FR 26998, May 15, 1998]

452.226–72 Price Preference for Award.

As prescribed in 426.7009(c), include the following provision:

PRICE PREFERENCE FOR AWARD (MAY 1998)

Certain products listed in the schedule of this solicitation are subject to a price preference. A list of these products, the amount of the preference, and source information is included in provision 452.226-70, Preferred Products. For purposes of evaluation of offers only, the offered prices for these products will be reduced by the price preference listed in the solicitation.

(End of provision)

[63 FR 26998, May 15, 1998]

452.228–70 Alternative Forms of Security.

As prescribed in 428.204–2, insert the following provision:

ALTERNATIVE FORMS OF SECURITY (NOV 1996)

If furnished as security, money orders, drafts, cashiers checks, or certified checks shall be drawn payable to: _____*.

(End of provision)

**Contracting Officer shall insert the name of the USDA contracting activity.*

452.228–71 Insurance Coverage.

As prescribed in 428.310, insert the following clause:

INSURANCE COVERAGE (NOV 1996)

Pursuant to FAR clause 52.228–5, Insurance-Work on a Government Installation, the Contractor will be required to present evidence to show, as a minimum, the

amounts of insurance coverage indicated below:

(a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on a comprehensive form of policy of at least $500,000 per occurrence.

(c) Automobile Liability. The Contractor shall have automobile liability insurance written on a comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage or loss.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger injury. Coverage for passenger injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

Alternate I (NOV 1996). As prescribed in 428.310, substitute the following paragraph (b), when additionally the contractor must have property damage liability coverage:

(b) General Liability. (1) The Contractor shall have bodily injury liability coverage written on a comprehensive form of policy of at least $500,000 per occurrence.

(2) The Contractor shall have property damage liability insurance shall be required in the amount of _____* per occurrence.

**Contracting Officer shall insert amount required.*

452.232–70 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.

As prescribed in 432.111, insert the following clause:

REIMBURSEMENT FOR BOND PREMIUMS—FIXED-PRICE CONSTRUCTION CONTRACTS (NOV 1996)

The Contract Price includes the total amount for premiums that the Contractor attributes to the furnishing of performance and payment bonds required by the contract. Reimbursement for bond premiums under the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contract, shall not cover any amount therefor not included in the contract price.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.236–70 Additive or Deductive Items.

As prescribed in 436.205, insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (FEB 1988)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award therein can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because of each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected first or base bid item and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that

award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of clause)

452.236–71 Prohibition Against the Use of Lead-Based Paint.

As prescribed in 436.571, insert the following clause:

PROHIBITION AGAINST THE USE OF LEAD-BASED PAINT (NOV 1996)

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more then 0.06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(End of clause)

452.236–72 Use of Premises.

As prescribed in 436.572, insert the following clause:

USE OF PREMISES (NOV 1996)

(a) Before any camp, quarry, borrow pit, storage, detour, or bypass site, other than shown on the drawings, is opened or operated on USDA land or lands administered by the USDA, the Contractor shall obtain written permission from the Contracting Officer. A camp is interpreted to include a campsite or trailer parking area of any employee working on the project for the Contractor.

(b) Unless excepted elsewhere in the contract, the Contractor shall (i) provide and maintain sanitation facilities for the work force at the site and (ii) dispose of solid waste in accordance with applicable Federal, State and local regulations.

(End of clause)

452.236–73 Archaeological or Historic Sites.

As prescribed in 436.573, insert the following clause:

ARCHAEOLOGICAL OR HISTORIC SITES (FEB 1988)

If a previously unidentified archaeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

(End of clause)

452.236–74 Control of Erosion, Sedimentation, and Pollution.

As prescribed in 436.574, insert the following clause:

CONTROL OF EROSION, SEDIMENTATION, AND POLLUTION (NOV 1996)

(a) Operations shall be scheduled and conducted to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or nearby rivers, streams, or impoundments; or into natural or man-made channels. Wash water or waste from concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.

(c) Mechanized equipment shall not be operated in flowing streams without written approval by the Contracting Officer.

(End of clause)

452.236–75 Maximum Workweek—Construction Schedule.

As prescribed in 436.575, insert the following clause:

MAXIMUM WORKWEEK—CONSTRUCTION SCHEDULE (NOV 1996)

Within ____ calendar days after receipt of a written request from the Contracting Officer, the Contractor must submit the following in writing for approval:

(a) A schedule as required by FAR clause 52.236–15, Schedules for Construction Contracts, and

(b) The hours (including the daily starting and stopping times) and days of the week the Contractor proposes to carry out the work.

The maximum workweek that will be approved is ____*.

(End of clause)

**Contracting Officer shall insert appropriate number of days and hours and/or days.*

452.236–76 Samples and Certificates.

As prescribed in 436.576, insert the following clause:

SAMPLES AND CERTIFICATES (FEB 1988)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance with materials and construction specified in the contract performance requirements.

Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

452.236–77 Emergency Response.

As prescribed in 436.577, the following clause may be used in Forest Service construction contracts:

EMERGENCY RESPONSE (NOV 1996)

(a) *Contractor's Responsibility for Fire Fighting.* (1) The Contractor, under the provisions of FAR clause 52.236–9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work.

(2) The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees.

(b) *Contractor's Responsibility for Notification in Case of Fire.* The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(c) *Contractor's Responsibility for Responding to Emergencies.* When directed by the Contracting Officer, the Contractor shall allow the Government to temporarily use employees and equipment from the work site for emergency work (anticipated to be restricted to fire fighting). An equitable adjustment for the temporary use of employees and equipment will be made under the Changes clause, FAR 52.243–4.

(End of clause)

452.236–78 Forest Service Standard Specifications for Construction of Roads and Bridges.

As prescribed in 436.578, insert the following clause:

FOREST SERVICE STANDARD SPECIFICATIONS FOR CONTSTRUCTION OF ROADS AND BRIDGES (NOV 1996)

The Forest Service Standard Specifications for Construction of Roads and Bridges, _____ 199__ are included by reference. The requirements contained in these specifications are hereby made a part of this solicitation and any resultant contract.

(End of clause)

452.236–79 Opted Timber Sale Road Requirements.

As prescribed in 436.579, insert the following clause:

OPTED TIMBER SALE ROAD REQUIREMENTS (NOV 1996)

This contract is for the construction of timber sale road(s) which a timber purchaser has opted to have the Government construct. The Government is obligated to make these roads available to the timber purchaser by _____*. Failure to make these roads available by this date could result in Government liability for delay to the timber purchaser for which the Contractor might become liable should the Contractor fail to complete this contract within the specified and allowed contract time.

(End of clause)

**Contracting Officer shall insert appropriate date.*

452.236–80 Firms Ineligible for Award—Construction.

As prescribed in 436.670, insert the following clause:

FIRMS INELIGIBLE FOR AWARD—CONSTRUCTION (NOV 1996)

The firm(s) and its subsidiaries or affiliates signatory to this contract shall be ineligible for award of any construction contract resulting from the design work performed under this contract.

(End of clause)

452.237–70 Loss, Damage, Destruction or Repair.

(a) As prescribed in 437.110(a), insert a clause substantially as follows:

LOSS, DAMAGE, DESTRUCTION OR REPAIR (FEB 1988)

(a) For equipment furnished under this contract without operator, the Government will assume liability for any loss, damage or destruction of such equipment, not to exceed

a total of $_____* except that no reimbursement will be made for loss, damage or destruction due to (1) ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.

(b) For equipment furnished under this contract with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government employee(s) while acting within the scope of their employment.

(c) All repairs to equipment furnished under this contract shall be made by the Contractor and reimbursement, if any, shall be determined in accordance with (a) or (b) above. Repairs shall be made promptly and equipment returned to use within _____** hours. In lieu of repairing equipment, the Contractor may furnish similar replacement equipment within the time specified. The Contractor may authorize the Government to make repairs upon the request of the Contracting Officer. In such case, the Contractor will be billed for labor and parts costs.

(End of clause)

**Contracting Officer shall insert amount available in current funds to cover potential liability.*

***Contracting Officer shall insert appropriate number of hours.*

452.237–71 Pre-Bid/Pre-Proposal Conference.

As prescribed in 437.110(b), insert a provision substantially as follows:

PRE-BID/PRE-PROPOSAL CONFERENCE (FEB 1988)

(a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

(e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(f) The conference will be held:

Date: _____

Time: _____

Location: _____

(End of clause)

452.237–73 Equipment Inspection Visit.

As prescribed in 437.110(c), insert the following provision:

EQUIPMENT INSPECTION VISIT (FEB 1988)

Offerors are urged and expected to inspect the equipment on which maintenance or repairs are to be performed and to satisfy themselves regarding all conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the equipment constitute grounds for a claim after contract award.

Offerors are invited to inspect the _____* at _____* by telephoning _____* on _____* for an appointment.

(End of clause)

**Contracting Officer shall insert appropriate data.*

452.237–74 Key Personnel.

As prescribed in 437.110(d), insert a clause substantially as follows:

KEY PERSONNEL (FEB 1988)

(a) The Contractor shall assign to this contract the following key personnel: _____

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete

resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

(End of clause)

452.237–75 Restrictions Against Disclosure.

As prescribed in 437.110(e), insert a clause substantially as follows:

RESTRICTIONS AGAINST DISCLOSURE (FEB 1988)

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part in any manner or form, or to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a ''need to know'' basis. The Contractor agrees to immediately notify in writing, the Contracting Officer, named herein, in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

452.237–76 Progress Reporting.

As prescribed in 437.270(a), insert a clause substantially as follows:

PROGRESS REPORTING (FEB 1988)

The Contractor shall submit a progress report _____*, covering work accomplished during that period of the contract performance. The progress report shall be brief and factual and shall be prepared in accordance with the following format:

(a) A cover page containing:

(1) Contract number and title;

(2) Type of report, sequence number of report, and period of performance being reported;

(3) Contractor's name and address;

(4) Author(s); and

(5) Date of report.

(b) Section I—An introduction covering the purpose and scope of the contract effort. This shall be limited to one paragraph in all but the first and final month's narrative.

(c) Section II—A description of overall progress plus a separate description of each task or other logical segment of work on which effort was expended during the report period. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved.

(d) Section III—A description of current technical or substantive performance, and any problem(s) which may impede performance along with proposed corrective action.

(e) Section IV—A planning schedule shall be included with the first progress report for all assigned tasks required under the contract, along with the estimated starting and completion dates for each task. The planning schedule shall be updated and submitted with each subsequent technical progress report, including an explanation of any difference between actual progress and planned progress, why the differences have occurred, and—if behind planned progress—what corrective steps are planned.

(f) Section V—If applicable, financial information shall be submitted for each major task or line item cost.

Data shall include:

(1) The total estimated cost budgeted (fee excluded).

(2) The estimated cost expended during the current reporting period.

(3) Identification of direct labor hours of prime contractor and subcontractor(s) and/or consultant(s), if applicable.

(4) Total project to-date expenditures.

(5) Total remaining funds.

(End of clause)

**Contracting Officer shall insert frequency of reporting requirement.*

452.237–78 Contracts with Consulting Firms for Services.

As prescribed in 437.270(b), insert a clause substantially as follows:

CONTRACTS WITH CONSULTING FIRMS FOR SERVICES (FEB 1988)

Offerors are specifically cautioned that any firm(s) receiving a contract award to provide the services described herein will be prohibited from competing for or receiving a follow-on contract to perform _____.*

(End of clause)

**Contracting Officer shall insert the appropriate information.*

452.246–70 Inspection and Acceptance.

As prescribed in 446.370, insert the following clause:

INSPECTION AND ACCEPTANCE (FEB 1988)

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at: _____.*

(End of clause)

**Contracting Officer shall insert appropriate identifying data.*

Alternate I (FEB 1988). As prescribed in 446.370, substitute a paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at: _____.*

(c) Acceptance will be performed at: _____.*

(End of clause)

452.247–70 Delivery Location.

As prescribed in 447.302, insert a clause substantially as follows:

DELIVERY LOCATION (FEB 1988)

Shipment of deliverable items, other than reports, shall be to: _____.*

(End of clause)

**Contracting Officer shall insert appropriate identifying data.*

452.247–71 Marking Deliverables.

As prescribed in 447.305–10(a), insert a clause substantially as follows:

MARKING DELIVERABLES (FEB 1988)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: _____.*

(End of clause)

**Contracting Officer shall insert the appropriate information.*

452.247–72 Packing for Domestic Shipment.

As prescribed in 447.305–10(b), insert the following clause:

PACKING FOR DOMESTIC SHIPMENT (FEB 1988)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with the Interstate Commerce Commission regulations, Uniform Freight Classification Rules, or regulations of other carriers as applicable to the mode of transportation.

(End of clause)

452.247–73 Packing for Overseas Shipment.

As prescribed in 447.305–10(c), insert the following clause:

PACKING FOR OVERSEAS SHIPMENT (FEB 1988)

Supplies shall be packed for overseas shipment in accordance with the best commercial export practice suitable for water movement to arrive undamaged at ultimate destination.

(End of clause)

PART 453—FORMS

Sec.
453.000 Scope of part.

Subpart 453.1—General

453.103 Exceptions.
453.108 Recommendations concerning forms.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.
453.213 Simplified Acquisition and other simplified purchase procedures (AD–838).
453.270 Request for contract action (AD–700).

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.
453.303 Agency forms.
453.303–700 Procurement Request (AD–700).
453.303–838 Purchase Order (AD–838).

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

453.000 Scope of part.

This part:

(a) Prescribes USDA (AD) forms for use in acquisition,

(b) Contains requirements and information generally applicable to AD forms and forms prescribed by FAR part 53, and

(c) Illustrates AD forms.

Subpart 453.1—General

453.103 Exceptions.

(a) The contracting officer shall submit a request for exceptions to forms prescribed in FAR part 53 through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE) for referral to the GSA.

(b) Requests for exceptions to AD forms prescribed in part 453 shall be handled as individual or class deviations, as appropriate (see subpart 401.4).

453.108 Recommendations concerning forms.

Contracting officers shall submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR part 53 and part 453 through the HCA to the SPE.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.

This subpart prescribes USDA (AD) forms for use in acquisition. Consistent with the approach used in FAR subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the AGAR in which the form usage requirements are addressed.

453.213 Simplified Acquisition and other simplified purchase procedures (AD–838).

Form AD–838, *Purchase Order,* is prescribed for use as a Simplified Acquisition Procedure/delivery order/task order document in lieu of OF 347 and OF 348 (see 413.307).

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 45895, Aug. 23, 1999]

453.270 Request for contract action (AD–700).

Form AD–700, *Procurement Request,* may be used as a contract requisition document by contracting activities in USDA.

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.

This subpart contains illustrations of USDA (AD) forms for use in acquisitions. Forms are not illustrated in the FEDERAL REGISTER or Code of Federal Regulations. Individual copies may be obtained from any USDA contracting activity or the office of the SPE.

453.303 Agency forms.

453.303–700 Procurement Request (AD–700).

453.303–838 Purchase Order (AD–838).

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

(Parts 500 to 599)

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SUBCHAPTER A—GENERAL

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Subpart 501.1—Purpose, Authority, Issuance

Sec.
501.101 Purpose.
501.103 Authority.
501.104 Applicability.
501.105 Issuance.
501.105–1 Publication and code arrangement.
501.105–2 Arrangement of regulations.
501.105–3 Copies.
501.106 OMB approval under the Paperwork Reduction Act.

Subpart 501.4—Deviations From the FAR and GSAR

501.402 Policy.
501.403 Individual deviations.
501.404 Class deviations.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37203, July 9, 1999, unless otherwise noted.

Subpart 501.1—Purpose, Authority, Issuance

501.101 Purpose.

(a) The General Services Acquisition Regulation (GSAR) contains agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors.

(b) GSAR address rules directly to you, the contracting officer, unless otherwise indicated.

501.103 Authority.

GSA's Senior Procurement Executive issues the GSAR under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

501.104 Applicability.

(a) *General.* The GSAR applies to contracts for suppliers or services, including construction.

(b) *Acquisition of leasehold interests in real property.* Part 570 establishes rules for the acquisition of leasehold interests in real property. Other provisions of 48 CFR chapter 5 (GSAR) do not apply to leases of real property unless specifically cross-reference in part 570.

(c) *Relationship to state.* Some GSAR rules implement and interpret laws and other authorities affecting procurement. A GSAR rule specifically directed by statute has the force and effect of law.

(d) *GSAR/FAR Relationship.* The GSAR may deviate from the Federal Acquisition Regulation (FAR) if authorized. If the GSAR does not implement the FAR, the FAR alone governs.

501.105 Issuance.

501.105–1 Publication and code arrangement.

The GSAR is published in the following sources:

(a) Daily issue of the FEDERAL REGISTER.

(b) Annual Code of Federal Regulations (CFR), as Chapter 5 of Title 48.

(c) GSA Acquisition Manual distributed within GSA.

(d) GSA Home Page at http://www/gas.gov. Click on either ''Government Agencies'' or on ''Business and Industry,'' the click on ''Acquisition.''

501.105–2 Arrangement of regulations.

(a) The GSAR numbers and captions policies and procedures to correspond to how they appear in the FAR, e.g., 1.104 in the FAR is 501.104 in the GSAR.

(b) GSAR rules not implementing the FAR have numbers beginning with 70, e.g., part 570, subsection 515.209–70.

(c) The GSAR may have gaps in its numbering scheme because a FAR rule may not require GSAR implementation.

501.105–3 Copies.

The GSAR in CFR form may be purchased from: Superintendent of Documents, Government Printing Office, Washington, DC 20402.

501.106 OMB approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.
509.105–1(a)	3090–0007

GSAR Reference	OMB Control No.
511.140–70	3090–0203
511.204(d)	3090–0246
511.404(a)(1)	3090–0204
511.404(a)(2)	3090–0204
511.404(a)(5)	3090–0204
514.201–7(a)	3090–0200
516.203–4(a)(1)	3090–0243
516.506	3090–0248
519.708(b)	3090–0252
522.406–6	1215–0149
523.370	3090–0205
532.111(c)	3090–0080
532.905–70	9000–0102
532.905–71	3090–0080
537.110(a)	3090–0197
537.110(b)	3090–0006
538.273(a)(1)	3090–0250
538.273(a)(3)	3090–0262
538.273(b)(1)	3090–0121
542.1107	3090–0027
546.307–70	3090–0027
546.302–71	3090–0027
549.502(b)	3090–0027
552.211–8	3090–0204
552.211–77	3090–0246
552.211–78	3090–0204
552.211–82	3090–0204
552.214–71	3090–0200
552.216–70	3090–0243
552.216–72	3090–0248
552.216–73	3090–0248
552.219–72	3090–0252
552.223–72	3090–0205
552.232–72	3090–0080
552.237–70	3090–0197
552.237–71	3090–0006
552.238–70	3090–0250
552.238–72	3090–0262
552.238–74	3090–0121
552.242–70	3090–0027
552.246–70	3090–0027
552.246–71	3090–0027
552.249–71	3090–0227
GSA–72–A	3090–0121
GSA–527	3090–0007
GSA–618–D	1215–0149
GSA–1142	3090–0080
GSA–1364	3090–0086
GSA–1678	3090–0027
GSA–2419	9000–0102
570.702(c)	3090–0086

[64 FR 37203, July 9, 1999, as amended at 65 FR 41378, July 5, 2000]

Subpart 501.4—Deviations From the FAR and GSAR

501.402 Policy.

Uniformity is a goal of GSA's Acquisition Regulation System. Despite this desire for uniformity, a contracting activity may take any of the following actions:

(a) Develop and test new procedures and techniques.

(b) Adopt alternate procedures in the public interest for unique programmatic or managerial requirements

(c) Deviate from a regulatory provision implementing a statutory requirement provided the deviation does not violate the underlying statute. Deviations must not be used to defeat the FAR and GSAR approval requirements.

501.403 Individual deviations.

(a) The Contracting Director approves individual deviations from the FAR and GSAR.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the Contracting Director in the agency receiving the delegation may approve individual deviations from the GSAR unless the agency head receiving the delegation designates another official.

(c) Send a copy of each deviation to GSA's Senior Procurement Executive (MV).

501.404 Class deviations.

(a) HCAs approve class deviations from the FAR and GSAR.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the HCA in the agency receiving the delegation may approve class deviations from the GSAR unless the agency head receiving the delegation designates another official.

(c) Send a copy of each deviation to GSA's Senior Procurement Executive (MV).

(d) A request for class deviations must be supported by statements that fully describe the need for and the nature of the deviation.

(e) Class deviations from the GSAR:

(1) Expire in 12 months if not extended.

(2) May be rescinded earlier by GSA's Senior Procurement Executive or by officials designated under paragraph (a) of this section without prejudice to any action taken previously.

PART 502—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37204, July 9, 1999, unless otherwise noted.

Subpart 502.1—Definitions

502.101 Definitions.

Agency competition advocate means the GSA Competition Advocate in the Office of Acquisition Policy.

Assigned counsel means the attorney employed by the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

Contracting activity competition advocate means the individual designated in writing by the head of the contracting activity (HCA). This authority may not be redelegated. The HCA must ensure that the designated competition advocate is not assigned any duty or responsibility that is inconsistent with the advocacy function. The identity of the designated official shall be communicated to procuring staff and the Senior Procurement Executive.

Contracting director means:

(a) Except in FSS, a director of a Central Office or Regional office Division responsible for performing contracting or contract administration functions.

(b) In FSS, a director of a Commodity Center or FSS Bureau.

Contracting officer's representative (COR), contracting officer's technical representative (COTR), or contract administrator means a Government employee designated in writing by the contracting officer to perform specific limited activities for the contracting officer, such as contract administration.

Debarring official or *suspending official* means the Senior Procurement Executive or a designee.

Head of the contracting activity means the Deputy Associate Administrator for Acquisition Policy (MV); Commissioners of the Federal Technology Service (FTS); Federal Supply Service (FSS), or Public Buildings Service (PBS); or Regional Administrators. The Deputy Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FTS, FSS, and PBS.

Senior procurement executive means the Deputy Associate Administrator for Acquisition Policy.

Senior program official means a person reporting to, and designated by, the HCA to have overall program responsibility for determining how the agency will meet its need. The official should have a position of authority over the participating offices. Examples include Assistant Regional Administrators or Deputy Commissioners.

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 503.1—Safeguards

Sec.
503.104 Procurement integrity.
503.104–3 Definitions.
503.104–9 Contract clauses.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.204 Treatment of violations.

Subpart 503.4—Contingent Fees

503.404 Contract clause.

Subpart 503.5—Other Improper Business Practices

503.570 Advertising.
503.570–1 Policy.
503.570–2 Contract clause.

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definition.
503.705 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: At 64 FR 37204, July 9, 1999, unless otherwise noted.

Subpart 503.1—Safeguards

503.104 Procurement integrity.

503.104–3 Definitions.

Federal agency procurement as used in FAR 3.104 and in this section, also means acquisitions of leasehold interests in real property.

503.104–9 Contract clauses.

Acquisitions of Leasehold Interests in Real Property

Insert a clause substantially the same as the clause at 552.203–70, Price

Adjustment for Illegal or Improper Activity, in solicitations and contracts for and modifications to leasehold interests in real property exceeding $100,000.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.204 Treatment of violations.

(a) The Senior Procurement Executive, or designee, makes determinations under FAR 3.204.

The Senior Procurement Executive, or designee, takes all the following actions:

(1) Coordinates with legal counsel.

(2) Initiates proceedings under FAR 3.204(a) by notifying the contractor that GSA is considering action against the contractor for a violation of the Gratuities clause. Notice is sent by a certified letter to the last known address of the party, its counsel, or agent for service of process. In the case of a business, notice is sent to any partner, principal officer, director, owner or co-owner, or joint venture.

(3) Presumes receipt if no return receipt is received within 10 calendar days after mailing the notice.

(b) The contractor has 30 calendar days to exercise its rights under FAR 3.204(b), unless the Senior Procurement Executive, or designee, grants an extension.

(c) If there is a dispute of fact material to making a determination, the Senior Procurement Executive, or designee, may refer the matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Referrals for fact-finding are not made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts relating to the determinations under FAR 3.204(a)(1) and (2).

(2) Conducts proceedings under rules consistent with FAR 3.204(b).

(3) Schedules a hearing within 20 calendar days of receipt of the referral. The contractor or GSA may request an extension for good cause.

(4) Delivers to the Senior Procurement Executive, or designee, written findings of fact (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(d) The Senior Procurement Executive, or designee, may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(e) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Senior Procurement Executive, or designee, conducts the hearing required by FAR 3.204(b).

(f) If the Gratuities clause was violated, the contractor may present evidence of mitigating factors to the Senior Procurement Executive, or designee, either orally or in writing, in accordance with a schedule the Senior Procurement Executive, or designee, establishes. The Senior Procurement Executive, or designee, exercises the Government's rights under FAR 3.204(c) only after considering mitigating factors.

Subpart 503.4—Contingent Fees

503.404 Contract clause.

Insert 552.203–5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed $100,000.

Subpart 503.5—Other Improper Business Practices

503.570 Advertising.

503.570–1 Policy.

GSA policy precludes contractors from referring to GSA contracts in commercial advertising in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

503.570–2 Contract clause.

Insert the clause at 552.203–71, Restriction on Advertising, in solicitations and contracts, including acquisitions of leasehold interests in real property, if the contract amount is expected to exceed the simplified acquisition threshold.

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definition.

Notice means a letter sent by certified mail with a return receipt requested to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt is presumed.

Voiding and rescinding official means the Senior Procurement Executive or designee.

503.705 Procedures.

(a) *Contracting officer's actions:*

(1) If a contract is tainted by misconduct, consult with assigned counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation.

(2) If the contractor has a final conviction for a violation under 18 U.S.C. 201–224, you may refer the matter to the voiding and rescinding official under FAR 3.705.

(i) In the referral, identify the final conviction and include the information required by FAR 3.705(d)(2) through (5).

(ii) Coordinate the referral with the Office of Inspector General to determine whether to recommend debarment.

(3) You may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract until completion of legal proceedings against the contractor.

(b) *Voiding and rescinding official's actions:*

(1) The voiding and rescinding official reviews the referral and coordinates with assigned counsel and the contracting activity.

(2) If the official decides to declare void and rescind a contract and to recover the amounts expended and the property transferred, the official takes both the following actions:

(i) Issues the notice required by FAR 3.705.

(ii) Conducts the hearing contemplated by FAR 3.705(c)(3).

(3) In case of a dispute of material fact about the agency decision, the official refers the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. The voiding and rescinding official makes this referral if the dispute of fact relates to any of the following:

(i) Contracts affected by the final conviction.

(ii) Amounts expended and property transferred by the Government under the affected contracts.

(iii) Identity and value of any tangible benefits received by the Government under the affected contracts.

(4) The voiding and rescinding official issues GSA's final decision under FAR 3.705(e) after receiving the fact-finding official's report, if a referral was made. The voiding and rescinding official may reject the fact-finding official's findings only if they are clearly erroneous or arbitrary and capricious.

(5) The official coordinates the final decision was the contracting activity and provides the activity a copy of the decision.

(c) *Fact-finding official's actions:* The fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts.

(2) Conducts the proceedings under rules consistent with FAR 3.705(c)(3).

(3) Schedules a hearing within 20 calendar days after receiving the referral. The official may grant extensions for good cause at the request of the contractor or GSA.

(4) Delivers written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.4—Safeguarding Classified Information Within Industry

Sec.
504.402 General.
504.475 Return of classified information.

Subpart 504.5—Electronic Commerce in Contracting

504.500 Scope of subpart.
504.502 Policy.
504.570 Procedures for using the EPS.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37205, July 9, 1999, unless otherwise noted.

Subpart 504.4—Safeguarding Classified Information Within Industry

504.402 General.

(a) This subpart:

(1) Prescribes procedures for safeguarding classified information required to be disclosed to contractors in connection with the solicitation of offers, and the award, performance, and termination of contracts.

(2) Implements the requirements of the Department of Defense's Industrial Security Regulation (ISR) and Industrial Security Manual for Safeguarding Classified Information (ISM). By agreement, the Department of Defense (DOD) will act for, and on behalf of, GSA in rendering security services required for safeguarding classified information released by GSA to U.S. industry.

(b) As used in this subpart, the term:

(1) ''Contractor(s)'' means prospective contractors, subcontractors, vendors, and suppliers.

(2) ''U.S. industry'' means those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

504.475 Return of classified information.

(a) You must recover classified information unless it has been destroyed as provided in paragraph 19 of the ISM. The Government agency that provided classified information to a GSA contractor is responsible for the return of the information.

(b) You must ensure that classified information furnished to prospective offerors, offerors, or contractors is returned immediately after any of the following:

(1) After bid opening or closing date for receipt of proposals by non-responding offerors.

(2) After contract award by unsuccessful offerors.

(3) Upon termination or completion of the contract.

(4) Upon notification that authorization to release classified information has been withdrawn.

(5) After notification that a facility:

(i) Does not have adequate means to safeguard classified information.

(ii) Has had its security clearance revoked or inactivated.

(6) Whenever otherwise instructed by the authority responsible for the security classification.

Subpart 504.5—Electronic Commerce in Contracting

504.500 Scope of subpart.

This subpart provides policy and procedure for use of GSA's Electronic Posting System (EPS).

504.502 Policy.

(a) The EPS is GSA's primary vehicle for disseminating synopses and written solicitations. GSA intends that the EPS will substitute for, not supplement, paper copies of solicitations. (Note that FAR 2.101 defines ''in writing'' or ''written'' to include ''electronically transmitted and stored information.'')

(b) This policy does not apply to orders placed against existing contracts, including Federal Supply Service schedule contracts.

(c) Nothing in this policy limits your authority to obtain oral quotations or proposals as authorized by regulation (e.g., FAR 13.106–1 or FAR 15.203(f)).

504.570 Procedures for using the EPS.

(a) You must use the EPS to issue any synopsis required by FAR part 5 or GSAR part 505.

(b) You must issue each written solicitation on the EPS, except as provided in paragraphs (c)(2) and (d) of this section.

(c) Although GSA intends that the EPS will substitute for paper copies of solicitations, web-based transactions are not practical in some industries or in some geographic areas at this time.

(1) If you expect that electronic access to a solicitation will result in adequate competition, distribute the solicitation only through the EPS. Include the following notice in the related synopsis:

GSA is issuing this solicitation only electronically. Interested parties may access the solicitation at *http://www.eps.gov*. This site provides instructions for downloading the solicitation file.

(2) If you believe that distribution of paper copies is necessary to ensure adequate competition, document the file to justify distribution of paper copies. Include the notice in paragraph (c)(1) of this section in the related synopsis, leaving out the first sentence.

(d) In some cases, release of construction drawings must be controlled to ensure adequate security. In other cases, an exhibit or attachment incorporated in a solicitation may not be available electronically. In either of these cases, you must explain in both the synopsis and the solicitation how interested parties may obtain a copy. In addition to the notice required by paragraph (c), include a notice substantially the same as follows in both the synopsis and solicitation. Tailor the notice as necessary for the particular acquisition.

This solicitation incorporates documents which are not available electronically. See [Identify the solicitation section that lists the subject documents]. Interested parties may request copies of these documents by writing the Contracting Officer at the address in [Identify address block in the solicitation].

(e) The Electronic Posting System Manual provides detailed instructions for using the EPS. The Manual is available at *http://www.eps.gov/buyer.html*.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 505—PUBLICIZING CONTRACT ACTIONS

Subpart 501.1—Dissemination of Information

Sec.
505.101 Methods of disseminating information.

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions.
505.203 Publicizing and response time.
505.270 Synopsis of amendments to solicitations.

Subpart 505.5—Paid Advertisements

505.502 Authority.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37206, July 9, 1999, unless otherwise noted.

Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

(a) In Regions with a Business Service Center (BSC), you may post the notice required by FAR 5.101(a)(2) at the BSC.

(b) Use GSA's Electronic Posting System (EPS) to issue each synopsis required by FAR part 5 or GSAR part 505. When synopsizing a solicitation, include the appropriate notice(s) required by 504.570(c) and (d).

(c) For acquisitions involving real property:

If the acquisition is not exempt under FAR 5.202 or GSAR 505.202, and—	Then you must publicize the proposed acquisition—
(1) The acquisition is for real property appraisal services estimated to cost $25,000 or more.	(1) Either: (i) In local newspapers. (ii) In the Commerce Business Daily through the EPS.
(2) The acquisition is for leasehold interests in real property estimated to exceed 10,000 square feet (except lease construction on a preselected site).	(2) Either: (i) In local newspapers. (ii) In the Commerce Business Daily through the EPS.
(3) The acquisition is for a leasehold interest in a building to be constructed on a preselected site.	(3) In the Commerce Business Daily through the EPS.

(d) You may publicize proposed leases of 10,000 square feet or less in local newspapers if it will serve to promote competition.

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions.

The Administrator has determined under section 18(c)(3) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 416(c)(3)) and Section 8(g)(3) of the Small Business Act, as amended (15 U.S.C. 644(g)(3)) that:

(a) Synopsizing in the CBD is not always appropriate for acquisitions of leasehold interests in real property (except lease construction on a designated site) or real property appraisal services.Your may publicize such contract actions following the procedures in 505.101 and 505.203.

(b) It is not appropriate or reasonable to publish an advance notice of any of the following:

(1) Acquisitions of works of art, including the design, execution and installation of the artwork, under the Art-in-Architecture Program.

(2) Supplemental agreements to leases of real property involving any of the following:

(i) Expansion requests within the scope of a lease (see 570.403).

(ii) Lease extensions under the conditions defined in 570.405.

(iii) Building alterations within the scope of a lease (see 570.5).

505.203 Publicizing and response time.

(a) If you publicize in local newspapers under 505.101(c), ensure that the notice appears in local newspapers at least 3 calendar days before issuance of the solicitation. Except as provided in paragraph (B) of this section, allow at least these minimum response times:

(1) For leasehold interests in real property, 20 calendar days between solicitation issuance and the date established for receipt of initial offers.

(2) For real property appraisal services valued at less than either the Trade Agreements Act (TAA) threshold or the North American Free Trade Agreement (NAFTA) threshold, 10 calendar days between solicitation issuance and the date established for receipt of initial offers. The lower of the two thresholds governs.

(3) For real property appraisal services valued at or over the TAA threshold or the NAFTA threshold, 40 calendar days from when the notice appears to receipt of initial offers. If the acquisition falls in a general category identified in an annual forecast, the period may be reduced to as few as 10 days. The lower of the two thresholds governs.

(b) The following exceptions to the publicizing and response times in paragraph (a) of this section apply only to proposed acquisitions of leasehold interests in real property:

(1) For a proposed acquisition conducted using simplified lease acquisition procedures (see 570.2), consider the individual acquisition and establish a reasonable response time.

(2) In cases of urgency, provide as much time as possible and document the file.

505.270 Synopsis of amendments to solicitations.

Synopsize in the CBD any solicitation amendment when the amendment either:

(a) Increases the anticipated value of the proposed acquisition above the dollar threshold requiring synopsis.

(b) Alters the scope of the proposed acquisition so that increased interest of contractors can be reasonably anticipated.

Subpart 505.5—Paid Advertisements

505.502 Authority.

(a) *Newspapers.* The HCA, or designee, must approve publication of paid newspaper advertisements. Approval is not required if FAR 5.101 or 505.101 requires publication. Document the contract file with the regulatory citation or written approval to support the use of paid newspaper advertisements.

(b) *Other media.* Advance approval is not required to advertise in other media.

PART 509—CONTRACTOR QUALIFICATIONS

Subpart 509.1—Responsible Prospective Contractors

Sec.
509.105 Procedures.
509.105–1 Obtaining information.
509.105–2 Determinations and documentation.
509.106 Preaward surveys.
509.106–2 Requests for preaward surveys.

Subpart 509.2—Qualifications Requirements

509.206 Acquisitions subject to qualification requirements.
509.206–2 Contract clause.

Subpart 509.3—First Article Testing and Approval

509.306 Solicitation requirements.
509.308 Contract clauses.
509.308–1 Testing performed by the contractor.
509.308–2 Testing performed by the Government.

Subpart 509.4—Debarment, Suspension, and Ineligibility

509.401 Applicability.
509.403 Definitions.
509.405 Effect of listing.
509.405–1 Continuation of current contracts.
509.405–2 Restrictions on subcontracting.
509.406 Debarment.
509.406–1 General.
509.406–3 Procedures.
509.407 Suspension.
509.407–1 General.
509.407–3 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37207, July 9, 1999, unless otherwise noted.

Subpart 509.1—Responsible Prospective Contractors

509.105 Procedures.

509.105–1 Obtaining information.

(a) *From a prospective contractor.* In making a determination of responsibility, you may use the GSA Form 527, Contractor's Qualification and Financial Information, to obtain information regarding financial capability from a prospective contractor.

(b) *From Government personnel.* Solicit and consider information from all appropriate activities, including legal counsel, quality control, contract management, credit and finance, and the auditor before determining that an offeror is responsible. ''Auditor'' is either:

(1) The Assistant Inspector General for Auditing (Central Office only).

(2) The Regional Inspector General for Auditing.

(3) Chief, Credit and Finance Section, the Heartland Region (for an evaluation of a prospective contractor's financial competence and credit).

509.105–2 Determinations and documentation.

(a) Provide written notification to a prospective contractor you determine not responsible. Include the basis for the determination. Notification provides the prospective contractor with the opportunity to correct any problem for future solicitation.

(b) Due to the potential for de facto debarment, avoid making repeated determinations of nonresponsiblity based on the same past performance information.

(c) To provide for timely consideration of the need to institute action to debar a contractor, submit a copy of each nonresponsibility determination, other than those based on capacity or financial capability, to the debarring official.

509.106 Preaward surveys.

509.106–2 Requests for preaward surveys.

Federal Supply Service (FSS). Contracting activities in FSS may use GSA Form 353, Performance Evaluation & Facilities Report, in lieu of SF 1403 through 1406. Complete Section I in accordance with instructions in 553.370–353–I.

Subpart 509.2—Qualifications Requirements

509.206 Acquisitions subject to qualification requirements.

509.206–2 Contract clause.

Insert 552.209–70, Product Removal from Qualified Products List, in solicitations and contracts containing FAR 52.209–1, Qualification Requirements.

Subpart 509.3—First Article Testing and Approval

509.306 Solicitation requirements.

(a) The clauses at FAR 52.209–3 and 52.209–4 do not cover all the solicitation requirements described in FAR 9.306. If a solicitation contains a testing and approval requirement, you must address the requirements in FAR 9.306 (d), (f), (g), (h), (i), and (j). For FSS, the clauses prescribed in 509.308 address the requirement in FAR 9.306(h).

(b) In FSS solicitations that contain FAR 52.209–3, First Article Approval—Contractor Testing, or FAR 52.209–4, First Article Approval—Government Testing, insert 552.209–71, Waiver of First Article Testing and Approval Requirement.

509.308 Contract clauses.

509.308–1 Testing performed by the contractor.

In FSS solicitations and contracts that will require the contractor to perform testing, insert 552.209–72, Supplemental Requirements for First Article Approval—Contractor Testing, and FAR 52.209–3, Alternate I.

509.308–2 Testing performed by the Government.

In FSS solicitations and contracts that will have the Government responsible for first article testing, insert 552.209.73, Supplemental Requirements for First Article Approval—Government Testing, and FAR 52.209–4, Alternate I.

Subpart 509.4—Debarment, Suspension, and Ineligibility

509.401 Applicability.

This subpart applies to all the following:

(a) Acquisitions of personal property, nonpersonal services (including construction), space in buildings, transportation services (Federal Property Management Regulations (FPMR) Subpart 101–40.4).

(b) The purchase, sale, and disposal of real property.

(c) Contracts for disposal of personal property (FPMR Subpart 101–45.6).

(d) Covered transactions as defined at General Services Property Management Regulations (GSPMR) 105–68.110(a).

509.403 Definitions.

Fact-finding official, means the Chairman of the Debarment and Suspension Board within the GSA Board of Contract Appeals or a designee.

Notice means a letter sent by certified mail, return receipt requested, to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

509.405 Effect of listing.

509.405–1 Continuation of current contracts.

(a) Consider terminating a current contract under any of the following circumstances:

(1) Any of the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract.

(2) The contractor presents a significant risk to the Government in completing the contract.

(3) The conduct that provides the cause of the suspension, proposed debarment, or debarment involved a GSA contract.

(b) Determine which of the following is in the Government's best interest:

(1) Terminate the contract for either convenience or cause.

(2) Cancel under appropriate contract clauses (e.g., 552.238–73, Cancellation).

(3) Use other available alternatives under:

(i) FAR 3.2 and 503.2.

(ii) FAR 3.7 and 503.7.

(c) Before making a decision, consult with legal counsel and consider these factors:

(1) Seriousness of the cause for debarment or suspension.

(2) Extent of contract performance.

(3) Potential costs of termination and reprocurement.

(4) Need for or urgency of the requirement, contract coverage, and the impact of delay for reprocurement.

(5) Availability of other safeguards to protect the Government's interest until completion of the contract.

(6) Availability of alternate competitive sources to meet the requirement (e.g., other multiple award contracts, readily available commercial items, etc.).

(d) The debarring official is the designee under FAR 9.405–1(c).

509.405–2 Restrictions on subcontracting.

The debarring official is the designee under FAR 9.405–2(a).

509.406 Debarment.

509.406–1 General.

The debarring official is the designee under FAR 9.406–1(c).

509.406–3 Procedures.

(a) *Investigation and referral.*

(1) Refer to the debarring official matters involving serious contract improprieties or performance deficiencies. Performance deficiencies that continue over a period of time or apply to more than one contract may warrant debarment consideration.

(2) Refer possible criminal or fraudulent activities to the Office of the Inspector General (OIG). See 5 CFR 6701.107, Reporting Waste, Fraud, Abuse, and Corruption. If, after investigation, the OIG believes a cause for debarment exists, it will refer the matter to the debarring official for consideration of debarment action.

(b) *Reports.* Include in referrals to the debarring official a report that contains at least the following:

(1) The recommendation and supporting rationale.

(2) A list of parties to be considered for possible debarment, including the contractor, principals, and affiliates. Include last known home and business addresses, zip codes, and DUNS Number.

(3) A statement of facts.

(4) Copies of documentary evidence and a list of witnesses. Include addresses and telephone numbers. Determine their availability to appear at a fact-finding proceeding and identify the subject matter of their testimony.

(5) GSA's acquisition history with the contractor. Include recent experience, copies of the pertinent contracts, and an explanation of impact debarment would have on GSA programs. OIG referrals do not require this explanation; the debarring official will obtain the information directly from the contracting activity(s).

(6) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals.

(7) A statement regarding the impact of the debarment action on GSA programs. This statement is not required for referrals by the Inspector General; the debarring official will obtain a statement directly from the contracting activity(s).

(c) *Review*. The debarring official will review the report, and after coordinating with assigned legal counsel, either:

(1) Initiate debarment action.

(2) Decline debarment action.

(3) Request additional information.

(4) Refer the matter to the OIG for further investigation and development of a case file.

(d) *Decisionmaking process.*

(1) The debarring official will provide:

(i) Notice of declinations, proposed debarments, and decisions to the referring activity.

(ii) Notice of proposed debarment to each party being considered for debarment.

(iii) Decision notices to each party after considering information in the administrative record and information and argument submitted by the affected party or parties.

(2) A party proposed for debarment:

(i) Has 30 calendar days after receipt of the notice to respond to the debarring official or the debarment becomes final.

(ii) May request and receive a copy of the administrative record that was the basis for the proposed debarment. If information is withheld, the party will be notified and provided the reason.

(iii) May request the opportunity to present information and argument in person to the debarring official. The debarring official will schedule an oral presentation within 20 calendar days of receipt of the request, unless a longer period of time is requested by the party. An oral presentation is informal and a transcript usually is not made. The party may supplement the oral presentation with written information and arguments.

(iv) May identify to the debarring official material facts in dispute and the bases. For an action other than one based on a conviction of civil judgment, a party may request review and a written finding by a fact-finding official.

(3) The debarring official will determine whether there is a genuine dispute of material fact. If so, the debarring official refers the matter to a fact-finding official, who will take the following action as appropriate:

(i) Schedule a hearing within 20 calendar days after receipt of a request to resolve disputed facts.

(ii) Grant extensions for good cause.

(iii) Provide notice of scheduled hearing.

(iv) Conduct hearings under rules consistent with FAR 9.406–3(b)(2).

(v) Resolve facts in dispute and provide the debarring official with written

findings of fact based on a preponderance of the evidence. The fact-finding official provides the written findings of fact (together with a transcription of the proceeding, unless waived) within 20 calendar days after the hearing record closes.

509.407 Suspension.

509.407–1 General.

The suspending official is the designee under FAR 9.407–1(d).

509.407–3 Procedures.

(a) *General.* The procedures in 509.406–3 apply to suspension actions except as noted in paragraph (b) of this section.

(b) *Fact-finding.*

(1) Fact-finding will not be conducted in an action:

(i) Based on an indictment.

(ii) When the suspending official finds no genuine dispute of material facts.

(2) If the action is not based on an indictment, the suspending official must coordinate with the Department of Justice or state prosecutorial authority through OIG. Based on the advice received, the suspending official will determine if fact-finding would impair substantial interests of the Federal or state Government. In an action not based on an indictment, a suspended party may:

(i) Identify to the suspending official material facts in dispute and the bases.

(ii) Request review and a written finding by a fact-finding official to resolve genuine disputes of material fact. For procedures involving a genuine dispute of material fact, see 509.406–3(d)(3).

PART 511—DESCRIBING AGENCY NEEDS

Subpart 511.1—Selecting and Developing Requirements Documents

Sec.

511.104 Use of brand name or equal purchase descriptions.
511.104–70 Solicitation provisions.

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37209, July 9, 1999, unless otherwise noted.

Subpart 511.1—Selecting and Developing Requirements Documents

511.104 Use of brand name or equal purchase descriptions.

511.104–70 Solicitation provisions.

(a) Include the following immediately after each brand name or equal item description, with instructions for the offeror to complete the information:

Offering on:
Manufacturer's Name _____
Brand _____
Model or Part No. _____

(b) If the solicitation does not require samples for ''or equal'' offers, include the following notice in the list of brand name or equal items or component parts:

NOTICE

If you offer other than brand name items identified in this solicitation, you must provide adequate information for GSA to determine the quality of the product(s) offered.

(c) If you use brand name or equal purchase descriptions for some component parts of an end item, you may limit the application of the provision at FAR 52.211–6 to the specified components

[64 FR 37209, July 9, 1999. Redesignated and amended at 65 FR 41378, July 5, 2000]

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

(a) *Construction services.* Insert the clause at 552.211–71, Standard References, in solicitations and contracts for construction services when you expect the contract amount to exceed the simplified acquisition threshold, and

the solicitation meets either of the following conditions:

(1) The solicitation cites documents or publications not furnished with the solicitation.

(2) The solicitation incorporates documents or publications by reference.

(b) *Federal specifications.* Insert the clause at 552.211–72, Reference to Specifications in Drawings, in solicitations and contracts citing Federal specifications which contain drawings.

(c) *Supply contracts that exceed the simplified acquisition threshold.* (1) Include the clause at 552.211–73, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(2) Include the clause at 552.211–74, Charges for Marking, in solicitations and contracts that include the clause at 552.211–73 or a similar clause.

(3) Include the clause at 552.211–75, Preservation, Packaging and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. You may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate.

(4) Insert a clause substantially the same as the clause at 552.211–76, Charges for Packaging and Packing, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(d) *Supply contracts.* Include the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold.

Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses.

(a) *Supply contracts.*—(1) *Single award schedules.* Insert 552.211–8, Time of Delivery, in solicitations and contracts instead of the clause at FAR 52.211–8. If you need to show different delivery times for different items or groups of items, use Alternate I.

(2) *Multiple award schedules.* Insert 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule), in solicitations issued and contracts awarded under the multiple award schedule program.

(3) *Shelf-life items.* Use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production (see 101–27.206–2 of the Federal Property Management Regulation):

(i) Insert 552.211–79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, substitute Alternate I when required by the director of the commodity center concerned.

(ii) Insert 552.211–80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(4) *Stock replenishment contracts.* Insert 552.211–81, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing and Shipment/Delivery clause at 552.211–83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, use Alternate I.

(5) *Notice of shipment.* Include 552.211–82, Notice of Shipment, in solicitation and contracts for supplies when you need to have a notice of shipment from the contractor.

(6) *Indeterminate testing time.* Insert 552.211–83, Availability for Inspection, Testing and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, use Alternate I.

(b) *Construction contracts.* Insert the clause at 552.211–84, Non-Compliance with Contract Requirements, in solicitations and contracts for construction when you expect the contract amount to exceed the simplified acquisition threshold.

PART 512—ACQUISITION OF COMMERCIAL ITEMS

AUTHORITY: 40 U.S.C. 486(c).

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

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

(a) *Solicitation provisions and clauses.* Insert these provisions or clauses in solicitations or solicitations and contracts, respectively, in accordance with the instructions provided:

(1) 552.212–70, Preparation of Offer (Multiple Award Schedule), in solicitations and contracts issued under the multiple award schedule program.

(2) 552.213–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, when listed clauses apply. The clause provides for incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

(3) 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items, when listed clauses apply. The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

(4) 552.213–73, Evaluation-Commercial Items (Multiple Award Schedule), in multiple award schedule solicitations. Use this provision instead of FAR 52.212–2.

(b) *Use of required provisions and clauses.* Use only those provisions and clauses prescribed in this part. Unless the use of a provision or clause prescribed elsewhere in the GSAR is consistent with customary commercial practice for the item being acquired, disregard contrary instructions. Provisions and clauses prescribed in this part will be revised to reflect the applicability of new statutes and executive orders.

(c) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR 12.302(c), include in solicitations and contracts by addendum other GSAR provisions and clauses.

(d) *Use of additional provisions and clauses.* The Senior Procurement Executive must approve the use of a provision or clause that is either not:

(1) Prescribed in the FAR or GSAR for use in contracts for commercial items.

(2) Consistent with customary commercial practice.

[64 FR 37210, July 9, 1999, as amended at 65 FR 41378, July 5, 2000]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 513.3—Simplified Acquisition Methods

Sec.
513.302 Purchase orders.
513.302–70 Purchase order and related forms.
513.303 Blanket purchase agreements (BPAs).
513.303–3 Preparation of BPAs.
513.307 Forms.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37211, July 9, 1999, unless otherwise noted.

Subpart 513.3—Simplified Acquisition Methods

513.302 Purchase orders.

513.302–70 Purchase order and related forms.

(a) See GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1), for forms required for purchase card actions.

(b) Use GSA Form 3000 or 300–1 (pin-feed format), Order for Supplies and Services, instead of OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and Reporting (NEAR) System.

(1) This form may also be used to make other purchases when a specific form is not prescribed. It may be used as a delivery or task order instead of SF 1449, Solicitation/Contract/Order for Commercial Items.

(2) Prepare and process GSA Form 300 following the instructions at 553.370–300–I. Use GSA Form 300A or 300–A(1) (pin-feed format), order for Supplies or Services (continuation), if additional space is needed.

(c) Use GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, instead of the OF 347 when making purchases in connection with the maintenance, servicing or repair of GSA fleet management vehicles.

(d) Use GSA Form 3186, Order for Supplies or Services or GSA Form 3186–B, Order for Supplies or Services (EDI), instead of OF 347, Order for Supplies or Services, when making simplified acquisitions or placing orders against established contracts through the FSS–19 system.

(1) Use GSA Form 3186 for mail orders placed against established contracts.

(2) Document the file for a delivery, task, or purchase order transmitted to contractors electronically using Electronic Data Interchange (EDI) procedures by generating a GSA Form 3186–B.

(e) Use GSA Form 8002B, Motor Vehicle Delivery Order, to order fleet management vehicles. Do not use this form as a purchase order for simplified acquisitions. Use GSA Form 8002A to notify the consignee of the status of motor vehicle requisitions.

[64 FR 37211, July 9, 1999, as amended at 65 FR 11247, Mar. 2, 2000]

513.303 Blanket purchase agreements (BPAs).

513.303–3 Preparation of BPAs.

(a) *Description of agreement.* Describe limitations, if any, on the geographic area to be served.

(b) *Delivery tickets.* Instruct the contractor to include the name of the individual placing the order on the delivery ticket. The individual receiving the item or service must sign and date the delivery or service ticket. Both the supplier and the receiving office must retain a copy of the delivery ticket.

513.307 Forms.

You may use the GSA Form 3521, Blanket Purchase Agreement, to prepare a blanket purchase agreement.

PART 514—SEALED BIDDING

Subpart 514.2—Solicitation of Bids

Sec.
514.201 Preparation of invitations for bids.
514.201–1 Uniform contract format.
514.201–2 Part I—The Schedule.
514.201–6 Solicitation provisions.

514.201–7 Contract clauses.
514.202 General rules for solicitation of bids.
514.202–4 Bid samples.
514.203 Methods of soliciting bids.
514.203–1 Transmittal to prospective bidders.
514.270 Aggregate awards.
514.270–1 Definition.
514.270–2 Guidelines for use.
514.270–3 Evaluation factors for award.
514.270–4 Grouping line items for aggregate award.
514.270–5 Evaluation methodologies for aggregate awards.
514.270–6 Guidelines for using the weight factors method.
514.270–7 Guidelines for using the price list method.

Subpart 514.4—Opening of Bids and Award of Contract

514.407 Mistakes in bids.
514.407–3 Other mistakes disclosed before award.
514.407–4 Mistakes after award.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37211, July 9, 1999, unless otherwise noted.

Subpart 514.2—Solicitation of Bids

514.201 Preparation of invitations for bids.

514.201–1 Uniform contract format.

Include the following notice in each solicitation:

The information collection requirements contained in this solicitation/contract, are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0162.

514.201–2 Part I—The Schedule.

(a) When you use Standard Form 33, Solicitation, Offer and Award, include the following cautionary notice:

Notice to Bidders—Use Item 13 of the Standard Form 33, Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this solicitation sets forth payment terms. Do not insert any statement in Item 13 which requires payment sooner than the time stipulated in the Prompt Payment clause. *Example:* If you insert ''NET 20'' in Item 13, GSA will reject your offer as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.

(b) When you use any other authorized form (e.g., Standard Form 1447, Solicitation/Contract), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

§ 514.201–6 Solicitation provisions.

When you will consider all or none bids, insert the provision at 552.214–70, ''All or None'' Offers, in the solicitation. For requirements or indefinite quantity contracts, use Alternate I. Do not include this provision in solicitations when you require the bidder to submit bids on all items and will make only one award.

514.201–7 Contract clauses.

(a) *Stock replenishment contracts.* For some stock replenishment contracts, individual contractors may be unable to furnish the Government's monthly requirements. You may determine that progressive awards will be more expedient. In such cases, insert a clause substantially the same as the clause 552.214–71, Progressive Awards and Monthly Quantity Allocations, in the solicitation and contract.

(b) *Examinations of Records.* (1) Insert 552.214–70, Examination of Records by GSA, in solicitations and contracts for supplies or services that exceed $100,000, and acquisitions of leasehold interests in real property that exceed the simplified lease acquisition threshold, that meet at least one of the following conditions:

(i) Involve the use or disposition of Government-furnished property.

(ii) Provide for advance payments, progress payments based on cost, or guaranteed loan.

(iii) Contain a price warranty or price reduction clause.

(iv) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

(v) Are requirements, indefinite-quantity, or letter contracts as defined in FAR part 16.

(vi) Contain the provision at FAR 52.223–4, Recovered Materials Certification.

(2) You may modify the clause to define the specific area of audit (e.g., the

use or disposition of Government-furnished property). Legal Counsel and the Assistant Inspector General—Auditing or Regional Inspector General—Auditing, as appropriate, must concur in any modifications to the clause.

514.202 General rules for solicitation of bids.

514.202–4 Bid samples.

(a) *Solicitation requirements.* (1) When you require bid samples, require bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(2) The FAR limits use of bid samples to cases where you cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics. You may determine that you need to examine objective characteristics of bid samples to determine the responsiveness of a bid. Base your determination on past experience or other valid considerations. In the solicitation, separately list ''Subjective Characteristics'' and ''Objective Characteristics.''

(3) A sample provision appears at 552.214–72, Bid Sample Requirements. You may use this provision as shown or modify it to fit the circumstances of a procurement.

(b) *Handling and disposition of samples.* (1) Retain samples from accepted bids for the period of contract performance. If you have no outstanding claims regarding the contract, dispose of the samples at the end of the contract term following the bidder's instructions.

(2) If you anticipate a claim regarding the contract, retain the bid samples until the claim is resolved.

(3) Retain samples from unsuccessful bids until you make award. After award, dispose of these samples following the bidder's instructions.

(c) *Using bid samples.* Include the information required by FAR 14.202–4(e) in the solicitation. Provide the number, size, and full description of samples with instructions on how to submit bids. List the characteristics that you will examine. The list needs to include any aspect of the bid sample the acquisition team will examine to determine the product(s) acceptability.

514.203 Methods of soliciting bids.

514.203–1 Transmittal to prospective bidders.

Prospective bidders, as used in FAR 14.203–1, include both the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR subpart 5.2 states a negative interest.

(b) Bidders that responded to recent solicitations for the same or similar items.

514.270 Aggregate awards.

514.270–1 Definition.

Aggregate award means an arrangement whereby two or more separately-priced line items are combined for award to that bidder whose bid will result in the lowest overall cost to the Government for the line items as a group. The individual price for each item does not have to be the lowest bid received. (See also the definition of a ''line item'' in FAR 3.302.)

514.270–2 Guidelines for use.

(a) GSA usually solicits prices and reserves the right to make award for individual line items. In some cases it serves GSA's best interest to combine two or more line items for an aggregate award. Such cases include when:

(1) Users desire uniformity of design, style, and finish (e.g., suites of household furniture).

(2) The articles will be assembled and used as a unit, and different manufacturers' components may not be interchangeable.

(3) Users have high demand for certain articles, but demand for related articles is insufficient to attract competitive bids (e.g., various sized of socket wrenches). Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

(4) One location (delivery point) has a large requirement, and another location has a requirement too small to individually attract competitive bids.

(5) Awarding and administering numerous small contracts for similar articles or services is impractical.

(b) Before deciding to combine items for aggregate award, consider the following factors:

(1) The capability of bidders to furnish the types and quantities of supplies or services in the aggregate.

(2) How grouping delivery points will affect bidders.

(3) Which combinations will accurately project the lowest overall cost to the Government.

(c) Do not use an aggregate award if it will significantly restrict the number of eligible bidders.

514.270–3 Evaluation factors for award.

Clearly state in the solicitation the basis for evaluating bids for aggregate award. Require bidders to submit a price on each item within the group or a percentage to be added or subtracted from a list price. Advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

514.270–4 Grouping line items for aggregate award.

(a) *Type of contract.* While this section addresses supply contracts (articles and delivery points), the same principles apply to service contracts (types of services and service areas).

(b) *Effect on compeition.* Provide for full and open competition when you group items for award. Grouping items for award may preclude a significant of firms from bidding. This occurs if firms are unable to provide all the types or quanities of supplies or services, or make deliveries to the various delivery points included in the prospective aggregate group.

(c) *Grouping different articles.* Include only related articles in an aggregate group. Related articles are those normally manufactured or produced by a majority of prospective bidders. Grouping unrelated articles often restricts competition unnecessarily.

(d) *Grouping geographic locations or delivery points.* Consider the following guidelines before deciding to group different geographic locations or delivery points:

(1) A delivery point may have sufficient requirements so that individual shipments involve economic production runs and carload or truckload quanities. In this case, list it as a separate line item.

(2) The types of bidders (i.e., small or large firms, manufacturers or distributors, etc.) who respond to previous solicitations can provide important information. For example, if previous bidders are distributors with franchises in certain territories, grouping different territories could tend to restrict competition.

(3) Transportation costs can affect competition and pricing. They may constitute a significant portion of the total delivered cost. Obtain the advice and assistance of transportation specialists before grouping geographic locations or delivery points. Depending upon the supplies being acquired:

(i) Grouping widespread geographic locations or delivery points may reduce competition or result in higher prices. It can cause you to lose ''area pricing'' advantages provided by a supplier with a single production point.

(ii) Conversely, for many small commercial items (hand tools, locks, etc.), manufacturers may quote the same price for delivery anywhere in the U.S..

(iii) Tariff boundaries can also affect how manufacturers price deliveries to different areas.

514.270–5 Evaluation methodologies for aggregate awards.

(a) *Definite quantity contracts without options.* For definite quantity contracts without options, the evaluated bid price is the total bid price, as adjusted for any price-related factors identified in the solicitation. This reflects the actual cost to the Government and will identify the most advantageous bid.

(b) *Indefinite quantity contracts, requirements contracts, and options.* Indefinite quantity and requirements contracts use estimated quantities. Options involve the probability of whether and when the options will be exercised. These situations may result in unbalanced bids (see FAR 15.404–1(g)), leading to inaccurate evaluation of the projected cost and award to other than the most advantageous bid. To avoid

unbalanced bids, GSA has two preferred methods for evaluating bids for aggregate awards: weight factors and price list.

(1) *Weight factors method.* Assign a weight to each item in a group. The weight is based on the portion of quantities that item represents. To evaluate bids, multiply each unit price by its weight factor, then total the results.

(2) *Price list method.* Establish prices for bidders to use as a base for preparing their bids. Prepare a list that identifies a base price for each item in a group. Bidders bid a percentage factor to add to or subtract from the base price.

514.270–6 Guidelines for using the weight factors method.

(a) Use the weight factors method when you have reliable estimates for the quantities needed in an acquisition. Reliable estimates of quantities form the foundation for:

(1) Accurate evaluation of the projected cost of each bid.

(2) An appropriate determination of which bid is most advantageous to the Government for the aggregate group.

(b) Assign a weight factor to each item in a group. Develop the weight factor by calculating the portion of the total quantity in a defined group that each item represents.

(c) To evaluate bid prices, first multiply the price bid for each item (unit price X quantity) by its weight factor. Then, add the subtotals together to project the cost for the aggregate group.

(d) You may reduce estimated quantities to smaller numbers by a common denominator. This may help facilitate the computations involved in evaluating bids.

(e) Consider all price-related factors you identified in the solicitation. Award to the responsive and responsible bidder with the lowest evaluated overall cost to the Government for the aggregate group. This represents the most advantageous bid.

514.270–7 Guidelines for using the price list method.

(a) *General.* The price list method helps avoid unbalanced bidding when you need to make aggregate awards, but lack accurate estimates of anticipated quantities. This method establishes base prices for bidders to use in preparing their bids.

(b) *Solicitation requirements.* When you use the price list methods, in the solicitation:

(1) Include the price list.

(2) Include an estimate of requirements.

(3) Require the bidder to express its price as ''net'' or as a percentage added to or subtracted from the list prices for each group. Require the bidder to quote only one percentage factor for each group. This means that the bidder provides one percentage factor that applies to every item in a group; not a separate percentage for each item. ''Net'' indicates the bidder chooses to submit the list prices as its bid.

(4) Identify the percentage factor in paragraph (b)(3) of this section as a price related evaluation factor.

(c) *Developing list prices.* You may develop price lists using one or more of the following sources:

(1) Industry published prices.

(2) Industry surveys.

(3) Government cost estimates based on knowledge of the supplies or services and previous contract prices.

(d) *First time use for an item or service.* The first time you use list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. You may provide this information in a draft solicitation.

(e) *Balanced prices.* Ensure that the list prices for the grouped items bear a reasonable and balanced relationship to one another. You may use prices from previous awards made using the weight factors method to develop price lists. Review those prices first to ensure they did not result from unbalanced bidding.

(f) *Evaluation and award.* Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder whose percentage factor produces the most favorable price to the Government. This represents the most advantageous bid.

(g) *Example.* The following illustrates a bidding schedule arrangement for a

group of items for aggregate award under the price list method:

DRILLS, TWIST, HIGH SPEED, UNDER FEDERAL SPECIFICATION (NO. AND DATE), AND AMENDMENT (NO. AND DATE), AMENDMENT (NO. AND DATE) WIRE GAUGE SIZES, STRAIGHT SHANK, SHORT LENGTH, TYPE C

Item No.	National Stock No.	Drill size	Est. quantity	Unit	List price
Group 1 (Items 1 through 5)					
1	5133–00–189–9246	1	2,800	Pkg	$11.16
2	5133–00–189–9247	2	2,400	Pkg	11.16
3	5133–00–189–9248	3	2,800	Pkg	10.44
4	5133–00–189–9249	4	1,600	Pkg	10.80
5	5133–00–189–9250	5	2,000	Pkg	10.80

The bid on each item above is the list price shown minus/plus ____ percent. (Bidder, insert ''net'' or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)

(h) *Special considerations for contracts for store stock items.* Show estimated quantities only if estimates of demand for each item within a group can be derived from Government records or verified contractor sales reports. Use only current estimates. If you cannot estimate the Government's needs, the solicitation may include past orders. (See CG Decision, B–209037, 82–2 CPD para 323 (1982).)

(i) *Special considerations for repair and alteration contracts.* In the solicitation:

(1) List the estimated quantities for work to be performed during both normal working hours and outside of normal working hours.

(2) State the percent of work anticipated to be performed during normal working hours.

(3) List the unit prices for work to be performed during both normal working hours and outside of normal working hours.

(4) Define ''normal'' in terms of hours and days of the week.

(5) Advise bidders of the previous year's total expenditures or portions of that total attributable to the listed items.

(6) If you provide quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

(7) Solicit two percentage factors for the line item unit prices listed: one for the unit prices for work performed during normal working hours and the second for the unit prices for work performed outside of normal working hours.

(8) You may require multiple percentages when the solicitation further groups unit prices by trade or business category.

(9) For the evaluated bid price, add together the following percentages:

(i) The percentage of work performed during normal work hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work, plus

(ii) The percentage of work performed during other than normal working hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work.

(10) Consider other price-related factors identified in the solicitation. Make award to the responsible and responsive bidder submitting the lowest overall evaluated bid price for the aggregate group. This represents the most advantageous bid.

Subpart 514.4—Opening of Bids and Award of Contract

514.407 Mistakes in bids.

514.407–3 Other mistakes disclosed before award.

(a) *Delegation of authority by head of the agency.* Under FAR 14.407–3(e), contracting directors (see 502.101) are authorized, without power of redelegation, to make:

(1) The determinations regarding corrections and withdrawals under FAR 14.407–3(a), (b), and (c).

(2) The corollary determinations not to permit withdrawal or correction under FAR 14.407–3(d).

(b) *Legal review and approval.* Assigned counsel must approve determinations by the contracting director and contracting officer regarding mistakes in bid.

514.407–4 Mistakes after award.

The contracting director and assigned counsel review and approve your determinations under FAR 14.407–4(b) and (c).

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.2—Solicitation and Receipt of Proposals and Information

Sec.
515.204 Contract format.
515.204–1 Uniform contract format.
515.205 Issuing solicitations.
515.209 Solicitation provisions and contract clauses.
515.209–70 Examination of records by GSA clause.

Subpart 515.3—Source Selection

515.305 Proposal evaluation.
515.305–70 Use of outside evaluators.

Subpart 515.4—Contract Pricing

515.408 Solicitation provisions and contract clauses.

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.506 Postaward debriefing of offerors.

Subpart 515.70—Use of Samples

515.7002 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37214, July 9, 1999, unless otherwise noted.

Subpart 515.2—Solicitation and Receipt of Proposals and Information

515.204 Contract format.

515.204–1 Uniform contract format.

(a) The uniform contract format is not required for leases of real property.

(b) Each solicitation and contract must include the two notices in paragraphs (b)(1) and (b)(2) of this section, except that acquisitions of interests in real property, must include only the notice in (b)(1):

(1) ''The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.''

(2) ''GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.''

515.205 Issuing solicitations.

Potential sources, as used in FAR 15.205, include both of the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR subpart 5.2 states a negative interest.

(b) Offerors that responded to recent solicitations for the same or similar items.

515.209 Solicitation provisions and contract clauses.

515.209–70 Examination of records by GSA clause.

Clause for Other Than Multiple Award Schedules

(a) For other than multiple award schedule (MAS) contracts, insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts over $100,000, including acquisitions of leasehold interests in real property, that meet any of the following conditions:

(1) Involve the use or disposition of Government-furnished property.

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan.

(3) Contain a price warranty or price reduction clause.

(4) Involve income to the Government where income is based on operations under the control of the contractor.

(5) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR part 6.

(7) Are subject to adjustment based on a negotiated cost escalation base.

(8) Contain the provision of FAR 52.223–4, Recovered Material Certification.

(b) You may modify the clause at 552.215–70 to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General—Auditing or Regional Inspector General— Auditing, as appropriate, must concur in any modifications to the clause.

Clause for Multiple Award Schedules

(c) Insert the clause at 552.215–71, Examination of Records by GSA (Multiple Award Schedule), in solicitations and contracts for MAS contracts.

(d) With the Senior Procurement's Executive approval, you may modify the clause at 552.215–71 to provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/modification was accurate, current, and complete. The following procedures apply:

(1) Such a modification of the clause must provide for the right of access to expire 2 years after award or modification.

(2) Before modifying the clause, you must make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval.

(3) The determinations under paragraph (d)(2) of this section must be made on a schedule-by-schedule basis.

Subpart 515.3—Source Selection

515.305 Proposal evaluation.

(a) *Restrictions placed on a proposal by the submitter.* If you receive a proposal with more restrictive conditions than those in the provision at FAR 52.215–1(e), ask whether the submitter is willing to accept the conditions of the paragraph at FAR 52.215–1(e). If the submitter refuses, consult with legal counsel on whether to accept the proposal as marked or return it.

(b) *Actions before releasing proposal.* Before releasing any proposal to an evaluator you must take all the following actions:

(1) Obtain the signed original ''Conflict of Interest Acknowledgment and Nondisclosure Agreement'' from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in Figure 515.3–1.

(i) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgement/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(ii) for nongovernment evaluators, substitute paragraph (c) of the Acknowledgement/Agreement with the following language and delete paragraph (h):

(c) I have read and understand the requirements of subsection 27(a) and 27(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 423).

(2) Attach to each proposal a cover page bearing the following notice:

GOVERNMENT NOTICE FOR HANDLING PROPOSALS

To anyone receiving this proposal or proposal abstract:

(1) This proposal must be used and disclosed for evaluation purposes only.

(2) You must apply a copy of this Government notice to any reproduction or abstract of this proposal.

(3) You must comply strictly with any authorized restrictive notices which the submitter places on this proposal.

(4) You must *not* disclose this proposal outside the Government for evaluation purposes except to the extent authorized by, and in accordance with, the procedures in 48 CFR 515.305–71.

515.305–70 Use of outside evaluators.

(a) *Conditions.* To use outside evaluators, you must meet the restrictions in FAR 37.203 and 537.2.

(b) *Limitations on disclosing proposal information.* You may disclose proposal information outside the Government before the Government's decision as to contract award only to the extent authorized in this section. Disclosure and handling must comply with FAR 3.1 and 503.1.

(c) *Solicitation notice.* Include in the solicitation a notice substantially as follows:

NOTICE ABOUT RELEASING PROPOSALS

(1) The Government intends to disclose proposals received in response to this solicitation to nongovernment evaluators.

(2) Each evaluator will sign and provide to GSA a ''Conflict of Interest Acknowledgment and Nondisclosure Agreement.''

FIGURE 515.3–1—CONFLICT OF INTEREST ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT

CONFLICT OF INTEREST ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT

For proposals submitted in response to GAS solicitation no. _____, I agree to the following:

(a) To the best of my knowledge and belief, no conflict of interest exists that may either:

(1) Diminish my capacity to impartially review the proposals submitted.

(2) Or result in a biased opinion or unfair advantage.

(b) In making the above statement, I have considered all the following factors that might place me in a position of conflict, real or apparent, with the evaluation proceedings:

(1) All my stocks, bonds, other outstanding financial interests or commitments.

(2) All my employment arrangements (past, present, and under consideration).

(3) As far as I know, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household.

(c) I have read and understand the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635) and Supplemental Standards of Ethical Conduct for Employees of the General Service Administration (5 CFR Part 6701).

(d) I have a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Contracting Officer. I will perform no more duties related to evaluating proposals until I receive instructions on the matter.

(e) I will use proposal information for evaluation purposes only. I understand that any authorized restriction on disclosure placed on the proposal by the prospective contractor, prospective subcontractor, or the Government applies to any reproduction or abstracted information of the proposal.

(f) I will use my best efforts to safeguard proposal information physically. I will not disclose the contents of, nor release any information about, the proposals to anyone other than:

(1) The Source Selection Evaluation Board or other panel assembled to evaluate proposals submitted in response to the solicitation identified above.

(2) Other individuals designed by the contracting Officer.

(g) After completing evaluation, I will return to the Government all copies of the proposals and any abstracts.

(h) GSA Appropriations Act restriction: These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosure of Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Codes, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.

_____

(Enter name of evaluator and organization)

Date

Subpart 515.4—Contract Pricing

515.408 Solicitation provisions and contract clauses.

MAS REQUESTS FOR INFORMATION OTHER THAN COST OR PRICING DATA

(a) You should use Alternative IV of the FAR provision at 52.215–20, Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, for MAS contracts to provide the format for submission of information other than cost or pricing data for MAS contracts. To provide uniformity in request under the MAS program, you should insert the following in paragraph (b) of the provision:

(1) An offer prepared and submitted in accordance with the clause at 552.212–70, Preparation of Offer (Multuiple Award Schedule).

(2) Commercial sales practices. The Offeror shall submit information in the format provided in this solicitation in accordance with the instructions at Figure 515.4 of the GSA Acquisition Regulation (48 CFR 515–2), or submit information in the Offeror's own format.

(3) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(4) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Offeror's cost or profit information of other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation and resulting contract (see FAR 12.303).

COMMERCIAL SALES PRACTICES FORMAT

Name of Offeror _____ SIN(s) _____

NOTE: Please refer to Clause 552.212–70, Preparation of Offer (Multiple Award Schedule), for additional information concerning your offer. Provide the following information for each SIN (or group of SINs or SubSIN for which information is the same).

(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period or the offerors last fiscal year: $_____. State beginning and ending of the 12 month period. Beginning _____ ending _____. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12 months of sales under that contract.

SIN _____ $_____
SIN _____ $_____
SIN _____ $_____

(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES___ NO___ (See definition of ''concession'' and ''discount'' in 552.212–70.)

(4)(a) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at Figure 515.4, which is provided in this solicitation for your convenience. The information should be provided in the chart below or in an equivalent format developed by the offeror. Rows should be added to accommodate as many customers as required.

Column 1 Customer	Column 2 Discount	Column 3 Quantity/Volume	Column 4 FOB Term	Column 5 Concessions

(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result

in better discounts (lower prices) or concessions than indicated? YES__ NO__. If YES, explain deviations in accordance with the instructions at Figure 515.4, which is provided in this solicitation for your convenience.

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers' information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed $500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

(a) Manufacturer's Name.
(b) Manufacturer's Part Number.
(c) Dealer's/Reseller's Part Number.
(d) Product Description.
(e) Manufacturer's List Price.
(f) Dealer's/Reseller's percentage discount from list price or net prices.

(End of Format)

(c) Include the instructions for completing the commercial sales practices format in Figure 515.4 in solicitations issued under the MAS program.

FIGURE 515.4—INSTRUCTIONS FOR COMMERCIAL SALES PRACTICES FORMAT

If you responded ''yes'' to question (3), on the Commercial Sales Practices Format in paragraph (b) of this section, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded ''no'', complete the chart in question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customers categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reductions clause at 552.238–75. The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calender days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

COLUMN 1—IDENTIFY THE APPLICABLE CUSTOMER OR CATEGORY OF CUSTOMER

A ''customer'' is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local Governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the Offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

COLUMN 2—IDENTIFY THE DISCOUNT

The term ''discount'' is as defined in solicitation clause 552.212–70, Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified

in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

COLUMN 3—IDENTIFY THE QUANTITY OR VOLUME OF SALES

Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn a discount indicate the time period.

COLUMN 4—INDICATE THE FOB DELIVERY TERM FOR EACH IDENTIFIED CUSTOMER

See FAR 47.3 for an explanation of FOB delivery terms.

COLUMN 5—INDICATE CONCESSIONS REGARDLESS OF QUANTITY GRANTED TO THE IDENTIFIED CUSTOMER OR CATEGORY OF CUSTOMER

Concessions are defined in solicitation clause 552.12–70, Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond ''yes'' to question 4(b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer, or the sales of prototype goods for testing purposes.

If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practices Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

(End of figure)

(d) Insert the clause at 552.215–72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts under the MAS program.

(e) You should use Alternate IV of FAR 52.215–21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost or pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, you should insert the following in paragraph (b) of the clause:

(1) Information required by the clause at 552.243–72, Modifications (Multiple Award Schedule).

(2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, record, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extent to Contractor's cost or profit information or other data related solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

[64 FR 37214, July 9, 1999, as amended at 65 FR 11247, Mar. 2, 2000]

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.506 Postaward debriefing of offerors.

For purposes of determining the date of receipt of a request for a post award debriefing, GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Request received after 4:30 p.m. will be considered received the following business day.

Subpart 515.70—Use of Samples

515.7002 Procedures.

(a) *Unsolicited samples.* The reference to FAR 14.404–2(d) in FAR 14.202–4(g) does not apply.

However, qualifications in the proposal that are at variance with the Government's requirements, constitute deficiencies. Resolve these as provided in FAR 15.306.

(b) *Solicitation requirements.*

(1) Use the clause at FR 52.214–20. The second sentence in paragraph (c) of the clause does not apply. Substitute a sentence substantially as follows:

Failure of the bid samples to conform to all the required characteristics listed in the solicitation constitutes a deficiency in the proposal (see FAR 15.306).

(2) In addition to listing subjective characteristics that you cannot adequately describe in the specification, you may list and evaluate objective characteristics. To include objective characteristics, you must determine that examination of such characteristics is essential to the acquisition of any acceptable product. Base your determination on past experience or other valid considerations.

(c) FAR 52.215–1(c)(3) applies to samples received after the time set for receipt of offers.

PART 516—TYPES OF CONTRACTS

Subpart 516.2—Fixed Price Contracts

Sec.
516.203–4 Contract clauses.

Subpart 516.5—Indefinite-Delivery Contracts

516.506 Solicitation provisions and contract clauses.

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.
516.603–3 Limitations.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37218, July 9, 1999, unless otherwise noted.

Subpart 516.2—Fixed Price Contracts

516.203–4 Contract clauses.

(a) *Multiple award schedules.* Do not use FAR 52.216–2, 52.216–3, or 52.216–4 in negotiated acquisitions based on discounts from established commercial catalogs or pricelists. Instead, use:

(1) 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, in a 1-year solicitation or contract.

(2) 552.216–70 (Alternate I) in multiyear solicitations and contracts.

(b) *Stock or Special Order Program Contracts.* In multiyear solicitations and contracts, after making the determination required by FAR 16.203–2, use 552.216–71, Economic Price Adjustment-Stock and Special Order Program Contract, or a clause prepared as authorized in paragraph (a)(2)(ii) of this subsection.

(1) If the contract includes one or more options to extend the term of the contract, use the clause with its Alternate I or a clause substantially the same as 552.216–71 with its Alternate I suitably modified.

(2) In a contract requiring a minimum adjustment before the price adjustment mechanism is effectuated, use the basic clause with Alternate II or with Alternate I and Alternative II.

(3) If the Producer Price Index is not an appropriate indicator for price adjustment, modify the clause to use an alternate indicator for adjusting prices. Similarly, if other aspects of 552.216–71 are not appropriate, use an alternate clause following established procedures.

(c) *Adjustments based on cost indexes of labor or material.* (1) If you decide to provide for adjustments based on cost indexes of labor or material, prepare a clause that defines each of the following elements:

(i) The type of labor and/or material subject to adjustment.

(ii) The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased.

(iii) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured.

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

Subpart 516.5—Indefinite-Delivery Contracts

516.506 Solicitation provisions and contract clauses.

(a) In solicitations and contracts for stock or special order program items, when the contract authorizes FSS and other activities to issue delivery or task orders, insert the clause at 552.216–72, Placement of Orders. If only FSS will issue delivery or task orders, insert the clause with its Alternate I.

(b) In solicitations and contracts for single or multiple award schedule program items, insert the clause at 552.216–72, Placement of Orders, with its Alternate II.

(c) If the clause at 552.216–72 is prescribed, insert the provision at 552.216–73, Ordering Information, in solicitations for stock items and in other FSS solicitations. Use 552.216–73 Alternate I when 552.216–72 Alternate I is prescribed. Use 552.216–73 Alternate II when 552.72 Alternate II is prescribed.

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.

516.603–3 Limitations.

Architect-Engineer (A–E) Services

(a) *Requirement for a price proposal.* Before you award a letter contract, the proposed A–E must provide a price proposal for the non-design effort.

(b) *Contents of each letter contract.* You must include the following information in the letter contract:

(1) The scope. If you include the design effort, only authorize the A–E to perform those services that are independent of the design effort (for example, feasibility studies, existing facility surveys or site investigation, etc.). Do not authorize the A–E to begin the design effort before the letter contract is definitized.

(2) A definitization schedule. Include dates for each of the following:

(i) Submission of the design fee proposal.

(ii) Start of negotiations.

(iii) Definitization. This date must be no later than 90 days after the date of the letter contract.

(3) A limitation on the Government's liability for the non-design effort to be performed under the contract. Insert this amount in FAR 52.216–24, Limitation of Government Liability.

(c) *Unilateral price decision.* If you must issue a unilateral price decision, the maximum contract amount must not exceed a reasonable price for the excludable items plus the 6 percent statutory fee limitation for the project.

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.1—Multiyear Contracting

Sec.
517.109 Contract clauses.

Subpart 517.2—Options

17.200 Scope of subpart.
17.202 Use of options.
17.203 Solicitations.
17.207 Exercise of options.
17.208 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37218, July 9, 1999, unless otherwise noted.

Subpart 517.1—Multiyear Contracting

517.109 Contract clauses.

Use of FAR 52.217–2, Cancellation Under Multi-year Contracts, is optional in multiyear contracts authorized by 40 U.S.C. 490(a)(14) for maintenance and repair of fixed equipment in federally-owned buildings and services and 40 U.S.C. 481(a)(3) for public utility services.

Subpart 517.2—Options

517.200 Scope of subpart.

(a) This subpart applies to all GSA contracts for supplies and services, including:

(1) Services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

(2) Architect-engineer services.

(b) If a requirement in this subpart is inconsistent with FAR 17.2, this subpart takes precedence.

517.202 Use of options.

(a) *Supplies or services.*

(1) You should use options when they meet one or more of the following objectives:

(i) Reduce procurement lead time and associated costs.

(ii) Ensure continuity of contract support.

(iii) Improve overall contractor performance.

(iv) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(2) An option is normally in the Government's interest in the following circumstances:

(i) You anticipate a need for additional supplies or services during the contract term.

(ii) Multiyear contracting authority is not available or its use is inappropriate and you anticipate a need for additional supplies or services beyond the initial contract term.

(iii) There is a need for continuity of supply or service support.

(iv) Funds are not available for the entirety of the Government's needs, but are likely to become available during the contract term.

(v) The initial contract will be used to evaluate the performance of an emerging small business.

(3) Do not use an option if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

(b) *Construction.* For limitations on the use of options, see 536.213 and 536.270.

517.203 Solicitations.

A solicitation that includes an option to extend should inform offerors that the contract could result in a long term contractual relationship subject to both of the following conditions:

(a) Continuing need by GSA.

(b) Level of contract performance that at least meets GSA's quality performance expectations.

517.207 Exercise of options.

Before exercising an option, you must:

(a) Synopsize it unless you meet of the following conditions:

(1) The option was evaluated as part of the original competition.

(2) The contract action meets an exception in FAR 5.202.

(b) Conclude that the contractor's performance under the contract met or exceeded the Government's expectation

for quality performance, unless another circumstance justifies an extended contractual relationship.

(c) Determine that the option price is fair and reasonable.

517.208 Solicitation provisions and contract clauses.

(a) For solicitations under FSS's Stock or Special Order Program, insert a provision substantially the same as the provision at 552.217–70, Evaluation of Options, if both of the following conditions apply:

(1) The solicitation contains an option to extend the term of the contract.

(2) The contract will be fixed price and contain an economic price adjustment clause.

(b) Insert the provision at 552.217–71, Notice Regarding Option(s), or a similar provision, in solicitations that include an option for increased quantities of supplies or services or an option to extend.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 519—SMALL BUSINESS PROGRAMS

Subpart 519.5—Set-Asides for Small Business

Sec.
519.508 Soliciation provisions for contract clauses.

Subpart 519.7—The Small Business Subcontracting Program

519.708 Contract clauses.
519.708–70 Solicitation provisions.

Subpart 519.8—Contracting With the Small Business Administration (The 8(a) Program)

519.870 Direct 8(a) contracting.
519.870–8 Contract clauses.

Subpart 519.12—Small Disadvantaged Business Participation Program

519.1202 Evaluation factor or subfactor.
519.1202–2 Applicability.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37219, July 9, 1999, unless otherwise noted.

Subpart 519.5—Set-Asides for Small Business

519.508 Solicitation provisions for contract clauses.

Insert 552.219–70, Allocation of Orders—Partially Set-Asides Items, in solicitations and requirements type supply contracts that are partially set aside for small business.

Subpart 519.7—The Small Business Subcontracting Program

519.708 Contract clauses.

519.708–70 Solicitation provisions.

Insert the following provisions as directed:

(a) 552.219–71, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of solicitations containing the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(b) 552.219–72, Preparation, Submission, and Negotiations of Subcontracting Plans, in solicitations requiring submission of the subcontracting plan with initial offers.

(c) 552.219–73, Goals for Subcontracting Plan as follows:

(1) Use the basic provision in sealed bid solicitations containing FAR 52.219–9 if you are able to establish realistic target goals.

(2) Use Alternate I in:

(i) sealed bid solicitations if you cannot establish target goals.

(ii) Negotiated solicitations that include FAR 52.219–9, but do not include 552.219–72.

Subpart 519.8—Contracting With the Small Business Administration (The 8(a) Program)

519.870 Direct 8(a) contracting.

519.870–8 Contract clauses.

(a) Insert the following clauses in solicitations, contracts, and orders issued under the MOU:

(1) Insert the clause at 552.219–74, Section 8(a) Direct Award.

(2) Insert the clause at FAR 52.219–14, Limitation on Subcontracting.

(3) Insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, Substitute the following paragraph for paragraph (c) of the clause. Add the word ''Deviation'' at the end of the clause title.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(b) Do not use the clauses at FAR 52.219–11, Special 8(a) Contract Conditions, FAR 52.219–12, Special 8(a) Subcontract Conditions, or FAR 52.219–17, Section 8(a) Award.

Subpart 519.12—Small Disadvantaged Business Participation Program

519.1202 Evaluation factor or subfactor.

519.1202–2 Applicability.

In addition to the exception in FAR 19.1202–2, do not evaluate the extent of participation of SDB concerns in performance of multiple award schedule contracts when all fair and reasonable offers from responsible sources are accepted.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
522.001 Defintion.

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.
522.101–1 General.
522.103–5 Contract clauses.

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.406 Administration and enforcement.
522.406–6 Payrolls and statements.

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.
522.804 Affirmative action programs.
522.804–1 Nonconstruction.
522.805 Procedures.
522.807 Exemptions.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37220, July 9, 1999, unless otherwise noted.

522.001 Definition.

Agency labor advisory, as used in this part, means the Director of the GSA Acquisition Policy Division, Office of Acquisition Policy.

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.

522.101–1 General.

(a) GSA personnel performing official duties must maintain GSA's impartiality in disputes between labor and contractor management by refraining from involvement in or expressing a position on:

(1) Labor negotiations between contractors and unions.

(2) The merits of any dispute between labor and a contractor's management.

(b) The Office of General Counsel (OGC) and the agency labor advisor:

(1) Serve as focal points on contractor labor relations.

(2) Initiate contact on contractor labor relations matters with national offices of labor organizations, Government departments, agencies or other governmental organizations.

(3) Serve as a clearinghouse for information on labor laws applicable to Government acquisitions.

(4) Respond to questions involving FAR Part 22, this part, or other contractor labor relations matters concerning GSA acquisition programs. OGC determines the agency's legal position.

522.103–5 Contract clauses.

Insert FAR 52.222–1, Notice to the Government of Labor Disputes, in solicitations and contracts for items on the DoD Master Urgency List.

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.406 Administration and enforcement.

522.406–6 Payrolls and statements.

STATEMENT FROM PRIME CONTRACTORS OR SUBCONTRACTORS THAT PERSONALLY PERFORM WORK

(a) Weekly payrolls and statements of compliance with respect to payment of wages are not required from a prime contractor or a subcontractor that personally performs work.

(b) Instead, a prime contractor or a subcontractor that personally performs work must submit weekly certified statements clearly showing the following information:

(1) The individual's contractual relationship.

(2) The scope and date(s) the individual performed the work.

(3) The individual received no wages for the labor performed.

(4) No mechanics or laborers were employed in the prosecution of the work.

(c) Use GSA Form 618–D, Statement to be Submitted When Work is Performed Personally, to furnish this information.

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.

Submit questions on the applicability of E.O. 11246 and implementing regulations to assigned legal counsel.

522.804 Affirmative action programs.

522.804–1 Nonconstruction.

(a) The requirements of FAR 22.804 also apply to each contractor and subcontractor with 50 or more employees who either:

(1) Serves as a depository of Government funds.

(2) Is a financial institution serving as an issuing and paying agent for U.S. savings bonds and savings notes.

(b) Contractors, subcontractors, and financial institutions must develop a written affirmative action compliance program for each of its establishments even if the amount held is less than $50,000.

522.805 Procedures.

(a) To determine whether the contract meets the threshold in FAR 22.805(a), include the value of the basic contract plus priced options. A contract modification exercising a priced option is not a contract award under FAR 22.805(a)(1)(ii) and does not a require a preaward clearance.

(b) Submit preaward review requests directly.

Furnishing Information to Contractors

(c) In addition to the poster required by FAR 22.805(b), provide each nonexempt contractor a copy of SF 100.

522.807 Exemptions.

The agency labor advisor submits a request for exemption.

PART 523—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY AND DRUG-FREE WORKPLACE

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

Sec.
523.303 Contract clause.
523.370 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37220, July 9, 1999, unless otherwise noted.

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.

(a) Insert 552.223–70, Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

(b) Insert 552.223–71, Nonconforming Hazardous Materials, in solicitations and contracts for supplies that contain hazardous materials.

523.370 Solicitation provision.

Insert 552.223–72, Hazardous Material Information, in any solicitation that provides for delivery of hazardous materials on an f.o.b. origin basis.

PART 525—FOREIGN ACQUISITION

Subpart 525.1—Buy American Act-Supplies [Reserved]

Subpart 525.3—Balance of Payments Program

Sec.
525.302 Policy.
525.302–70 Procurements for agencies under the Foreign Assistance Act.

Subpart 525.5—Evaluating Foreign Officers—Supply Contracts

525.570 Procurement of hand or measuring tools or stainless steel flatware for DOD.

Subpart 525.11—Solicitation Provisions and Contract Clauses

525.1101 Acquisition of supplies.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37221, July 9, 1999, unless otherwise noted.

Subpart 525.1—Buy American Act-Supplies [Reserved]

Subpart 525.3—Balance of Payments Program

525.302 Policy.

525.302–70 Procurements for agencies under the Foreign Assistance Act.

GSA procurements made directly for other agencies of items to be used outside the United States are made the Balance of Payments Program. The only exception is if GSA contracts as the agent for an agency governed by the Foreign Assistance Act (22 U.S.C. 2151 *et seq.*). If this exception applies, the contract will be governed by the policies and procedures of the agency instead of FAR 25.3 and 525.3. For example, GSA sometimes acts as agent for the Agency for International Development and the Bureau of International Narcotics Matters.

Subpart 525.5—Evaluating Foreign Officers—Supply Contracts

525.570 Procurement of hand or measuring tools or stainless steel flatware for DOD.

(a) *Stainless steel flatware* means special order and stock items of stainless steel flatware purchased for DOD, including, but not limited to, the following National Stock Numbers (NSN):

7340–00–060–6057

7340–00–205–3340

7340–00–241–8171

7340–00–559–8357

7340–00–205–3341

7340–00–241–8169

7340–00–241–8170

7340–00–688–1055

7340–00–721–6316

7340–00–721–6971

(b) Purchases of hand or measuring tools or stainless steel flatware exceeding the simplified acquisition threshold by DOD must be domestic end products. In the case of stainless steel flatware, the Secretary of the Department concerned can make an exception. The individual must determine that a satisfactory quality and sufficient quantity produced in the United States or its possessions are not available when needed at domestic market prices.

(c) If GSA solicitations of hand or measuring tools or stainless steel flatware include DOD requirements, GSA will apply the DOD restrictions. The bases for applying the DOD restriction to GSA acquisitions are:

(1) DOD's restrictions apply to requisitions of such items from the GSA stock program.

(2) The impracticality of establishing a dual supply system to satisfy the requirements of civilian and military agencies.

(3) GSA may reject any offer when it is considered necessary for reasons of national interest.

[65 FR 41379, July 5, 2000]

Subpart 525.11—Solicitation Provisions and Contract Clauses

525.1101 Acquisition of supplies.

If you include DOD requirements for hand or measuring tools or stainless steel flatware in the solicitation for an acquisition estimated to exceed the simplified acquisition threshold, insert 552.225–70, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, in the solicitation and resulting contract(s).

[65 FR 41379, July 5, 2000]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 527—PATENTS, DATA, AND COPYRIGHTS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37221, July 9, 1999, unless otherwise noted.

Subpart 527.4—Rights in Data and Copyrights

527.409 Solicitation provisions and contract clauses.

Architect-Engineer Services and Construction Contracts Involving Architect-Engineer Services

Insert the following in solicitations and contracts for architect-engineer services and construction contracts involving architect-engineer services:

(a) Insert 552.227–70, Government Rights (Unlimited), instead of FAR 52.227–17, Rights in Data-Special Works, in contracts, except if 552.227–71 is prescribed.

(b) If the Government requires sole property rights and exclusive control over the design and data, insert 552.227–71, Drawings and Other Data to Become Property of Government, instead of FAR 52.227–17.

PART 528—BONDS AND INSURANCE

Subpart 528.2—Sureties and Other Security for Bonds

Sec.

528.202 Acceptability of corporate sureties.

Subpart 528.3—Insurance

528.310 Contract clause for work on a Government installation.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37221, July 9, 1999, unless otherwise noted.

Subpart 528.2—Sureties and Other Security for Bonds

528.202 Acceptability of corporate sureties.

Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. You may waive failure of the surety to affix the corporate seal as a minor informality. (See B–184120, July 2, 1975, 75–2 CPD 9.)

Subpart 528.3—Insurance

528.310 Contract clause for work on a Government installation.

(a) Insert the clause at 552.228–70, Workers' Compensation Laws, in each solicitation and contract that meets all the following conditions:

(1) The contract amount is expected to exceed the simplified acquisition threshold.

(2) The contract will require work to be performed on Government property.

(b) In the case of an owner-controlled insurance program, or wrap-up insurance, the clause will be a part of the policy holder's requirements.

PART 529—TAXES

Subpart 529.4—Contract Clauses

Sec.

529.401 Domestic contracts.
529.401–70 Purchases at or under the simplified acquisition threshold.
529.401–71 Contracts for supplies and services usable by the DC Government.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37222, July 9, 1999, unless otherwise noted.

Subpart 529.4—Contract Clauses

529.401 Domestic contracts.

529.401–70 Purchases at or under the simplified acquisition threshold.

Insert 552.229–70, Federal, State, and Local Taxes, in purchases and contracts estimated to exceed the micro-purchase threshold, but not the simplified acquisition threshold.

529.401–71 Contracts for supplies and services usable by the DC Government.

Insert 552.229–71, Federal Tax-DC Government, in solicitations and contracts that permit the District of Columbia Government to place orders.

PART 532—CONTRACT FINANCING

Subpart 532.1—Non-Commercial Item Purchase Financing

Sec.
532.111 Contract clauses for non-commercial purchases.

Subpart 532.2—Commercial Item Purchase Financing

532.206 Solicitation provisions and contract clauses.

Subpart 532.7—Contract Funding

532.705 Contract clauses.
532.705–1 Clauses for contracting in advance of funds.

Subpart 532.8—Assignment of Claims

532.806 Contract clauses.

Subpart 532.9—Prompt Payment

532.902 Definitions.
532–905 Invoice payments.
532.905–70 Certification of payment to subcontractors and suppliers under fixed-price construction contracts.
532.905–71 Final payment—construction and building service contracts.
532.908 Contract clauses.

Subpart 532.70—Authorizing Payment by Governmentwide Commercial Purchase Card

532.7001 Definition.
532.7002 Solicitation requirements.
532.7003 Contract clause.

Subpart 532.71—Payments for Recurring Services

532.7101 Definitions.
532.7102 Applicability.
532.7104 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37222, July 9, 1999, unless otherwise noted.

Subpart 532.1—Non-Commercial Item Purchase Financing

532.111 Contract clauses for non-commercial purchases.

(a) *Invoice requirements.* Insert 552.232–70, Invoice Requirements, or something substantially the same, in all solicitations and contracts for supplies, services, construction, architect-engineer services, or the acquisition of leasehold interests in real property that require the submission of invoices for payment. Delete subparagraph (b) of the clause if an Accounting Control Transaction (ACT) number is not required for payment.

(b) *Adjusting payments.* Insert 552.232–71, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the simplified acquisition threshold.

(c) *Final payment.* Insert 552.232–72, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the simplified acquisition threshold.

Subpart 532.2—Commercial Item Purchase Financing

532.206 Solicitation provisions and contract clauses.

Discounts for prompt payment. Include 552.232–8, Discounts for Prompt Payments, in multiple award schedule solicitations and contracts insted of the clause at FAR 52.232–8.

Subpart 532.7—Contract Funding

532.705 Contract clauses.

532.705–1 Clauses for contracting in advance of funds.

Insert 552.232–73, Availability of Funds, in solicitations and contracts for services which are ''severable''

when both of the following conditions apply:

(a) The contract, or a portion of the contract, will be chargeable to funds of the new fiscal year.

(b) The circumstances described in the prescriptions for FAR 52.232–18 or 52.232–19 do not apply.

Subpart 532.8—Assignment of Claims

532.806 Contract clauses.

Insert the clause at 552.232–23, Assignment of Claims, in solicitations and requirements or indefinite quantity contracts under which more than one agency may place orders.

Subpart 532.9—Prompt Payment

532.902 Definitions.

Full cycle electronic commerce means the use of electronic data interchange (EDI), Internet-based invoice processing, and electronic funds transfer (EFT):

(a) By the Government, to place purchase, delivery, or task orders, receive invoices, and pay invoices.

(b) By the Contractor, to accept and fill orders, submit invoices, and receive payment.

532.905 Invoice payments.

(a) *General and architect-engineer contracts.* Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in the clauses listed in this section, you must prepare a written justification explaining why a longer period is necessary. An official one level above you must approve your justification. Determine the time needed on a case-by-case basis.

(1) In subdivision (a)(6)(i) of the clause at FAR 52.232–25, Prompt Payment, do not specify a constructive acceptance period that exceeds 30 days.

(2) In subdivision (a)(4)(i)(A) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, do not specify a constructive acceptance period that exceeds 30 days.

(3) In subdivision (a)(4)(i)(B) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, do not specify a period for constructive approval of progress payments that exceeds 7 days.

(b) *Construction contracts.* (1) Determine on a case-by-case basis the time specified for payment of progress payments in subdivision (a)(1)(i)(A) of the clause at FAR 52.232–27, Prompt Payment for Construction Contracts. Justify in writing periods longer than 14 days. An official one level above you must approve your justification. Under no circumstances may more than 30 days be specified.

(2) Determine the time to be specified in subdivision (a)(4)(i) of FAR clause 52.232–27, for constructive acceptance or approval, on a case-by-case basis. This time may not exceed 7 days unless you justify a longer period in writing, and obtain the approval of an official one level above you. Under no circumstances may more than 30 days be specified.

(c) *Federal Supply Service.* (1) To increase efficiency and reduce costs to the Government, Federal Supply Service contracts under the Stock, Special Order, and Schedules Programs may authorize payment within 10 days of receipt of a proper invoice. The contract must meet all the following conditions:

(i) The contractor agrees to full cycle electronic commerce.

(ii) The contract includes FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment.

(2) The 10 day payment terms apply to each order that meets all the following conditions:

(i) FSS places the order using EDI in accordance with the Trading Partner Agreement.

(ii) The contractor submits EDI invoices in accordance with the Trading Partner Agreement or invoices through the GSA Finance Center Internet-based invoice process.

(iii) A GSA Finance Center pays the invoices using EFT.

(3) The 10 day payment terms do not apply to any order:

(i) Placed by a GSA contracting activity other than FSS.

(ii) Placed by or paid by another agency.

532.905–70 Certification of payment to subcontractors and suppliers under fixed-price construction contracts.

The contractor may use GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, for the certification required by FAR 52.232–5.

532.905–71 Final payment—construction and building service contracts.

The following procedures apply to construction and building service contracts.

(a) Do not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims. If, after repeated attempts, you are unable to obtain a release of claims from the contractor, you may process the final payment with the approval of assigned legal counsel.

(b) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amounts withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

532.908 Contract clauses.

(a) *Federal Supply Service.* For FSS Stock, Special Order, and Schedules solicitations and contracts that provide payment in 10 days under 532.905(c):

(1) If the contract will include FAR 52.212–4 insert the clause at 552.232–74, Invoice Payments. GSA received a class deviation to allow use of 552.232–74 for commercial items.

(2) If the contract will not include FAR 52.212–4, insert 552.232–25, Prompt Payment, instead of FAR 552.232–25.

(b) *Leasehold Interests in Real Property.* (1) Insert 552.232–75, Prompt Payment, in solicitations and contracts for acquiring leasehold interests in real property.

(i) You may modify the date for constructive acceptance in subparagraph (b)(2) of the clause to specify a period longer than 7 calendar days (but not to exceed 30 days) if necessary because of the nature of the services to be received, inspected or accepted by the Government. Prepare a written justification for specifying the longer period and obtain your contracting director's approval.

(ii) Use Alternate I if the lease contract does not contain provisions for ordering alterations or overtime utility services.

(2) Insert 552.232–76, Electronic Funds Transfer Payment, in solicitations and contracts for acquisition of leasehold interests in real property.

(c) *Solicitations, purchase orders, contracts, and leases over the micropurchase theshold.* Insert 552.232–78, Payment information:

(1) In all solicitations, purchase orders, and contracts, including acquisitions of leasehold interests in real property.

(2) In task and delivery orders if the contract that the order is placed against does not include the clause.

[64 FR 37222, July 9, 1999, as amended at 65 FR 41379, July 5, 2000]

Subpart 532.70—Authorizing Payment by Governmentwide Commercial Purchase Card

532.7001 Definition.

Governmentwide commercial purchase card has the same meaning as in FAR 13.101.

532.7002 Solicitation requirements.

(a) In solicitations for supplies and services, except FSS schedule solicitations, request offerors to indicate if they will accept payment by Governmentwide commercial purchase card. Identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract, on the cover page or in Section L of the solicitation.

(b) For FSS schedule contracts, identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract in the contract award letter.

(c) For orders placed by GSA, you may authorize payment by Governmentwide commercial purchase card only for orders that do not exceed $100,000 (see GSA Order, Guidance on

Use of the Credit Card for Purchases (CFO 4200.1)).

(d) Consider requesting offerors to designate different levels for which they may accept payment by Governmentwide commercial purchase card, for example:

''If awarded a contract under this solicitation, the offeror agrees to accept payment by Governmentwide commercial purchase card for orders of:

—$2,500 or less
—$25,000 or less
—$50,000 or less
—$100,000 or less''

[65 FR 11247, Mar. 2, 2000]

532.7003 Contract clause.

(a) *Indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Federal Supply Service.* Insert the clause at 552.232–77, Payment by Governmentwide Commercial Purchase Card, in IDIQ solicitations and contracts for supplies and services if the contract will provide for payment by Governmentwide commercial purchase card as an alternative method of payment for orders.

(b) *Federal Supply Service Contracts.* Use Alternate I of the clause at 552.232–77 for all FSS schedule solicitations and contracts. You may use the clause in other FSS IDIQ contract as appropriate.

[65 FR 11247, Mar. 2, 2000]

Subpart 532.71—Payments for Recurring Services

532.7101 Definitions.

Fixed roll payment means automatic payment of fixed amounts at regular intervals without submission of an invoice or receiving report.

532.7102 Applicability.

You may use fixed roll payments in any contract that meets all four of the following conditions:

(a) The contract provides for recurring services at a constant level for a period of at least two months.

(b) The contract does not contain any discount items.

(c) Payment is due 30 days following completion of the service month.

(d) For a commercial item acquisition, fixed roll payments are consistent with customary commercial practice.

532.7104 Contract clauses.

(a) *Noncommercial item acquisitions.* For solicitations and contracts to be paid by fixed roll payment, include the clause at 552.232–1, Payments. Do not include the clauses at FAR 52.232–1, Payments, or 552,232–70, Invoice Requirements.

(b) *Commercial item acquisitions.* For solicitations and contracts to be paid by fixed roll payment, tailor the clause at FAR 52.212–4 by an addendum as noted in paragraphs (b) (1) and (2) of this section. This tailoring is authorized by a deviation approved on January 5, 1999.

(1) Delete paragraph FAR 52.212–4(g), Invoice.

(2) Add the following to paragraph FAR 52.212–4(i), Payment:

The Government shall pay the Contractor, without submission of invoices or vouchers, 30 days after the service period, the prices stipulated in this contract for services rendered and accepted, less any deductions provided in this contract.

PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1—Protests

Sec.
533.103 Protests to the agency.
533.103–72 Solicitation provisions.

Subpart 533.2—Disputes and Appeals

533.211 Contracting officer's decision.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37224, July 9, 1999, unless otherwise noted.

Subpart 533.1—Protests

§ 533.103 Protests to the agency.

§ 533.103–72 Solicitation provisions.

Include the provision at 552.233–70, Protests Filed Directly With the General Services Administration, in each solicitation for either:

(a) Supplies, services, construction, or architect-engineer services expected to exceed the simplified acquisition threshold.

(b) Acquisition of leasehold interests in real property expected to exceed the simplified lease acquisition threshold.

Subpart 533.2—Disputes and Appeals

§ 533.211 Contracting officer's decision.

In addition to the information in FAR 33.211(a)(4)(v), advise the contractor in your written decision that a notice of appeal must:

(a) Describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute considered important.

(b) Be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 536.1—General

Sec.
536.101 Applicability.

Subpart 536.2—Special Aspects of Contracting for Construction

536.213 Special procedures for sealed bidding in construction contracting.
536.213–3 Invitations for bids.
536.213–370 Bids that include alternates.
536.213–371 Bids that include options.
536.213–372 Bids that include both alternates and options.
536.270 Exercise of options.
536.271 Project labor agreements.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.
536.570–1 Definitions.
536.570–2 Authorities and limitations.
536.570–3 Specialist.
536.570–4 Basis of award—construction contract.
536.570–5 Working hours.
536.570–6 Use of premises.
536.570–7 Measurements.
536.570–8 Specifications and drawings.
536.570–9 Shop drawings, coordination drawings, and schedules.
536.570–10 Samples.
536.570–11 Heat.
536.570–12 Use of equipment by the Government.
536.570–13 Subcontracts.
536.570–14 Requirement for a Project Labor Agreement.

Subpart 536.6—Architect-Engineer Services

536.602 Selection of firms for architect-engineer contracts.
536.602–1 Selection criteria.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37224, July 9, 1999, unless otherwise noted.

Subpart 536.1—General

536.101 Applicability.

If a requirement in this part is inconsistent with a requirement in another GSAR part, this part takes precedence.

Subpart 536.2—Special Aspects of Contracting for Construction

536.213 Special procedures for sealed bidding in construction contracting.

536.213–3 Invitations for bids.

536.213–370 Bids that include alternates.

(a) The base bid must include all features essential to a sound and adequate building design. If it appears that funds available for a project may be insufficient to include all desired features in the base bid, you may issue a solicitation for a base bid and include one or more alternates in the order of priority. Use alternates only if they are clearly justified and involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only ''add'' alternates.

(b) Before opening bids that include alternates, determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. The amount is the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to award to the low bidder if the following condition is met: the award amount of the base bid plus the combination of alternate items does not exceed the amount offered for the base bid and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the alternates to be used.

536.213–371 Bids that include options.

(a) Subject to the limitations in paragraph (c) of this section, you may include options in contracts if it is in the Government's interest.

(b) the appropriate use of options may include, but is not limited to, any of the following:

(1) If additional work is anticipated but funds are not expected to be available at the time of award, and it would

not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) If fixed building equipment, e.g. elevators or escalators, will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) You must not use options under any of the following conditions:

(1) the prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded.

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions must state the period within which the options may be exercised.

(e) Solicitations must state whether the basis of award is inclusive or exclusive of the options. Before issuing a solicitation that includes evaluated options, you must determine that there is reasonable certainty that funds will be made available to permit exercise of the option.

536.213–372 Bids that include both alternates and options.

(a) Solicitations may include both alternates and options if the conditions in 536.213–370, Bids that include alternates, and 536.213–371, Bids that include options, are satisfied. In these solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and the alternates, in the order of priority listed in the solicitation, that provide the most work features within the funds available at bid opening, plus all options designated to be evaluated.

(b) The basis of award may require the evaluation of options associated with alternates if the related alternate is selected.

(c) Before opening bids that include both alternates and options, determine, and record in the contract file, the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options plus the alternate items does not exceed the amount offered for the base bid, the evaluated options, and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation.

536.270 Exercise of options.

(a) If exercising an option, notify the contractor, in writing, within the time period specified in the contract.

(b) Exercise options only after determining that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(c) Before exercising an option, you must determine that the action complies with the option's terms and this section's requirements. Include your written determination in the contract file.

(d) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and 517.207).

536.271 Project labor agreements.

(a) *Authority.* This subpart implements the Presidential memorandum of June 5, 1997, on using project labor agreements (PLAs) on Federal construction projects. The Presidential memorandum authorizes executive departments and agencies to require PLAs on large and significant construction projects for facilities to be owned by a Federal department or agency.

(b) *Applicability.* These policies and procedures apply to all GSA activities

authorized to award contracts for construction of facilities to be owned by a Federal department or agency. You may use a PLA in leasehold arrangement, Federally funded projects, and other appropriate circumstances.

(c) *Definitions. Construction* means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. The terms buildings, structures, or other real property are defined further in Federal Acquisition Regulation (FAR) 36.102.

Labor organization means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, and any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization (42 U.S.C. 2000e(d)).

Large and significant project means a Federal construction project with a total cost to the Federal Government of more than $5 million.

Project Labor Agreement (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

(d) *Policy.* (1) You may, on a project-by-project basis, use a PLA on a large and significant project when both of the following conditions apply:

(i) A PLA will advance the Government's procurement interests.

(ii) No laws that apply to the specific construction project preclude the use of the PLA.

(2) Do not require any contractor to enter into a PLA with any particular labor organization.

(3) The use of a PLA is not intended to create any right or benefit, substantive or procedural enforceable by a nonfederal party against the United States, its departments, and agencies, its officers or employees, or any other person.

(e) *Procedures.* (1) As part of procurement planning for construction projects with a total estimated cost to the Federal Government of more than $5 million, you may consider requiring a PLA.

(2) To require a PLA, you must determine whether use of a PLA will advance the Government's procurement interests in all the following areas:

(i) Cost, efficiency, and quality.

(ii) Promoting labor-management stability.

(iii) Promoting compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other matters.

(3) In making the determination required by paragraph (b) of this section, consult with the agency project or program manager and obtain guidance from the Agency Labor Advisor and assigned legal counsel. You should consider the following factors:

(i) Whether past experience with construction projects in the location where the project will be performed indicates that a PLA will be effective.

(ii) Whether delays in performance of the construction contract would have significant adverse impact on the mission of the agency or operation of the installation or facility.

(iii) Whether any law applies to the specific construction project that would impede use of a PLA.

(iv) Whether the labor organizations in the area can provide a reliable source of skilled, experienced building trades workers in all crafts needed on the job site for the project's duration (taking into consideration other major construction work in the area).

(v) Whether the Government can benefit from uniform work rules and working conditions and established procedures for resolving labor disputes, no strike/no lock-out protections.

(vi) Whether the Government can benefit from increased stability and

labor peace that derives from greater labor-management cooperation.

(vii) Whether the requirements for a PLA will unreasonably restrict competition.

(viii) Other relevant information.

(4) Document the rationale supporting your decision to require a PLA in the contract file.

(5) Provide the following information to the Agency Labor Advisor (GSA Acquisition Policy Division (MVP)):

(i) A brief description of the project.

(ii) The estimated cost.

(iii) A copy of the document supporting your decision to require a PLA.

(iv) A copy of the solicitation.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.

536.570–1 Definitions.

Insert 552.236–70, Definitions, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–2 Authorities and limitations.

Insert 552.236–71, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–3 Specialist.

Insert 552.236–72, Specialist, in solicitations and contracts for construction if the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

536.570–4 Basis of award—construction contract.

(a) Insert a provision substantially the same as 552.236–73, Basis of Award—Construction Contract, in solicitations for fixed-price construction contracts except if any of the following conditions apply:

(1) The solicitation requires the submission of a lump-sum bid only.

(2) The solicitation is for an indefinite quantity contract.

(3) The contract amount is not expected to exceed the simplified acquisition threshold.

(b) *Instructions for use.*

If the solicitation requests the submission of a . . .	Then use the . . .
(1) Base bid and unit prices ..	Basic provision.
(2) Base bid and options	Provision with its Alternate I.
(3) Base bid and alternates ...	Provision with its Alternate II.
(4) Base bid, alternates, and options.	Provision with its Alternate III.

536.570–5 Working hours.

Insert 552.236–74, Working Hours, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–6 Use of premises.

Insert 552.236–75, Use of Premises, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–7 Measurements.

Insert 552.236–76, Measurements, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–8 Specifications and drawings.

Insert the clause at 552.236–77, Specifications and Drawings, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–9 Shop drawings, coordination drawings, and schedules.

Insert the clause at 552.236–78, Shop Drawings, Coordination Drawings, and Schedules, in solicitations and contracts if construction is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–10 Samples.

Insert the clause at 552.236–79, Samples, in solicitations and contracts for construction if the technical sections

of the contract require the submission and approval of samples.

536.570–11 Heat.

Insert the clause at 552.236–80, Heat, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–12 Use of equipment by the Government.

Insert the clause at 552.236–81, Use of Equipment by the Government, in contracts requiring heating and air-conditioning of existing buildings if it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

536.570–13 Subcontracts.

Insert 552.236–82, Subcontracts, in solicitations and contracts for construction if the contract amount is expected to exceed the simplified acquisition threshold.

536.570–14 Requirement for a Project Labor Agreement.

Insert a clause substantially the same as 552.236–83, Requirement for a Project Labor Agreement, in solicitations and contracts that will require a project labor agreement.

SUBPART 536.6—Architect-Engineer Services

536.602 Selection of firms for architect-engineer contracts.

536.602–1 Selection criteria.

(a) FAR 36.602–1 requires that agencies include ''location in the general geographical area of the project and knowledge of locality of the project'' as one of several selection criteria.

(1) Do not use this evaluation factor as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor must not exceed 5 percent of the total weight of all evaluation criteria. In order to receive maximum score for this factor, the architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based on the total contract price) will be accomplished within the geographical boundaries established for the project.

(3) Under an approved class deviation from FAR 36.602–1(a)(5), this factor does not apply to projects that the Chief Architect of GSA determines have national significance.

(b) The public announcement (Commerce Business Daily notice) for a proposed project should identify the general geographical area of the project by either:

(1) A radius in miles or other appropriate unit of measure.

(2) The Standard Metropolitan Statistical Area, county(ies), state(s) surrounding the project, or other appropriate geographic boundaries.

(c) Architect-engineer selections under the Design Excellence Program must apply the geographical evaluation criteria in the second phase.

(d) The public announcement (Commerce Business Daily notice) must provide the number of calendar days the architect-engineer of record has to establish a production capability within the general geographical area of the project. You may allow the architect-engineer of record up to 45 calendar days after contract award to establish this production capability.

[65 FR 11247, Mar. 2, 2000]

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.
537.101 Definitions.
537.110 Solicitation provisions and contract clauses.

Subpart 537.2—Advisory and Assistance Services

537.270 Contract clause.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37226, July 9, 1999, unless otherwise noted.

Subpart 537.1—Service Contracts—General

537.101 Definitions.

Contracts for building services means contracts for services relating to the

operation and maintenance of a building (for example, janitorial; window washing; snow removal; trash removal; lawn and grounds care; inspection, maintenance and repair of fixed equipment (e.g., elevators, air-conditioning, hearing systems)) and protection or guard service.

537.110 Solicitation provisions and contract clauses.

The following provision and clauses apply to contracts for building services:

(a) If the contract is expected to exceed the simplified acquisition threshold and it is not initiated under the Javits-Wagner-O'Day Act:

(1) Insert 552.237–70, Qualifications of Offerors, in the solicitation.

(2) Insert 552.237–71, Qualifications of Employees, in the solicitation and contract. If needed, use supplemental provisions or clauses to describe specific requirements for employees performing work on the contract.

(b) Insert 552.237–72, Prohibition Regaring ''Quasi-Military Armed Forces,'' in solicitations and contracts for guard service.

[65 FR 41379, July 5, 2000]

Subpart 537.2—Advisory and Assistance Services

537.270 Contract clause.

Insert the clause at 552.237–73, Restriction on Disclosure of Information, in solicitations and contracts for proposal evaluation and analysis services.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

Subpart 538.2—Establishing and Administering Federal Supply Schedules

Sec.

538.270 Evaluation of multiple award schedule (MAS) offers.
538.271 MAS contract awards.
538.272 MAS price reductions.
538.273 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37227, July 9, 1999, unless otherwise noted.

Subpart 538.2—Establishing and Administering Federal Supply Schedules

538.270 Evaluation of multiple award schedule (MAS) offers.

(a) The Government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(b) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(c) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. When determining the Government's price negotiation objectives, consider the following factors:

(1) Aggregate volume of anticipated purchases.

(2) The purchase of a minimum quantity or a pattern of historic purchases.

(3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers.

(4) Length of the contract period.

(5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices.

(6) Ordering and delivery practices.

(7) Any other relevant information, including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an offeror may incur more expense selling to the Government than to the customer who receives the offeror's best price, or the customer (e.g., dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform. In such cases, some reduction in the discount

given to the Government may be appropriate. If the best price is not offered to the Government, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(d) You may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist:

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated.

(2) Award is otherwise in the best interest of the Government.

538.271 MAS contract awards.

(a) MAS awards will be for commercial items as defined in FAR 2.101. Negotiate contracts as a discount from established catalog prices.

(b) Before awarding any MAS contract, determine that the offered prices are fair and reasonable (see FAR subpart 15.4 and 538.270). Document the negotiation and your determination using FAR 15.406–3 as guidance.

(c) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) on which the award is predicated.

538.272 MAS price reductions.

(a) Section 552.238–75, Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the Government and the offeror's customer or category of customers on which the contract award was predicated (see 538.271(c)). If a change occurs in the contractor's commercial pricing or discount arrangement applicable to the identified commercial customer (or category of customers) that results in a less advantageous relationship between the Government and this customer or category of customers, the change constitutes a ''price reduction.''

(b) Make sure that the contractor understands the requirements of section 552.238–75 and agrees to report to you all price reductions as provided for in the clause.

538.273 Contract clauses.

(a) *Multiple award schedules.* Insert in solicitations and contracts:

(1) 552.238–70, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped, if you include electronic office equipment items.

(2) 552.238–71, Submission and Distribution of Authorized FSS Schedule Pricelists. If GSA is not prepared to accept electronic submissions for a particular schedule delete:

(i) Subparagraphs (c)(1)(ii) and (c)(3).

(ii) The subparagraph identifier ''(i)'' in (c)(1) and the word ''and'' at the end of subparagraph (i).

(3) 552.238–72, Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes.

(4) 552.238–73, Cancellation.

(b) *Multiple and single award schedules.* Insert in solicitations and contracts:

(1) 552.238–74, Contractor's Report of Sales.

(2) 552.238–75, Price Reductions.

(3) 552.238–76, Industrial Funding Fee.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 542.11—Production Surveillance and Reporting

Sec.
542.1107 Contract clause.

Subpart 542.15—Contractor Performance Information

542.1503 Procedures.
542.1503–71 Information to collect.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37228, July 9, 1999, unless otherwise noted.

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clause.

FSS STOCK OR SPECIAL ORDER PROGRAM

Insert 552.242–70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for stock or special order program items. You also may use the clause in indefinite delivery definite quantity contracts for stock or special order program items when close monitoring is necessary because numerous shipments are involved.

Subpart 542.15—Contractor Performance Information

542.1503 Procedures.

542.1503–71 Information to collect.

The system for collecting contractor performance data should include, as appropriate:

(a) Timeliness of delivery or performance, for example:

(1) Adherence to contract delivery schedules.

(2) Resolution of delays

(3) Number of ''show cause'' letters and ''cure notices'' issued.

(4) Number of delinquent deliveries.

(5) Number of contract extensions resulting from contractor-caused delays.

(6) Timely submission or performance or required tests.

(b) Conformance of product or service to contract requirements, for example:

(1) Quality of workmanship.

(2) Reliability.

(3) Adequacy of correction of defects.

(4) Number of safety defects.

(5) Number of product rejections.

(6) Results of laboratory tests.

(7) Number and extent of warranty problems.

(c) Customer comments, for example:

(1) Number and quality of positive comments.

(2) Number and nature of complaints.

(3) Adequacy of resolving customer complaints.

(d) Terminations for default.

(e) On-the-job safety performance record, including the number of lost or restricted workdays due to occupational injuries in comparison to the national average.

(f) Adequacy of contractor's quality assurance system.

(g) Compliance with other key contract provisions, for example:

(1) Subcontracting program.

(2) Labor standards.

(3) Safety standards.

(4) Reporting requirements.

(h) Exhibiting customer-oriented behavior.

(i) Other performance elements identified by the Service.

PART 543—CONTRACT MODIFICATIONS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37228, July 9, 1999, unless otherwise noted.

Subpart 543.2—Change Orders

543.205 Contract clauses.

(a) *Construction.* (1) Insert 552.243–70, Pricing of Adjustments, in solicitations and contracts if the contract:

(i) Amount is expected to exceed the simplified acquisition threshold.

(ii) Will be other than a cost type.

(2) Insert 552.243–71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243–4.

(b) *Multiple award schedules (MAS).* Insert 552.243–72, Modifications (Multiple Award Schedule), in MAS solicitations and contracts issued by GSA. For solicitations and contracts issued under Federal Supply Classification (FSC) 65 you may use the clause with its Alternate I for products ordered from authorized Prime Vendors.

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

Sec.
546.302 Fixed-price supply contracts.
546.302–70 Source inspection by Quality Approved Manufacturer.
546.302–71 Source inspection.
546.312 Construction contracts.

Subpart 546.4—Government Contract Quality Assurance

546.470–2 Certification testing.

Subpart 546.7—Warranties

546.708 Warranties of data.
546.710 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37228, July 9, 1999, unless otherwise noted.

Subpart 546.3—Contract Clauses

546.302 Fixed-price supply contracts.

546.302–70 Source inspection by Quality Approved Manufacturer.

For contracts and solicitations issued by FSS:

(a) Insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection, except:

(1) Multiple award schedule contracts.

(2) Motor vehicle contracts.

(3) Contracts awarded by the FSS Services Acquisition Center, unless you decide, together with the Central Office Quality Assurance Division (FQA), that inspection by Government personnel is necessary.

(b) You may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the Virgin Islands, under paragraph (a)(1) of the clause at 552.246–70 under any of the circumstances listed in this paragraph. Coordinate the authorization with FQA and document it in the file.

(1) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(2) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(3) The procurement is for the Agency for International Development and specifies the area of source.

(4) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

546.302–71 Source inspection.

For solicitations and contracts issued by FSS, if Government personnel at the source will perform inspection, insert 552.246–71, Source Inspection by Government.

546.312 Construction contracts.

Insert the clause at 552.246–72, Final Inspection and Tests, in solicitations and contracts for construction that include FAR 52.246–12, Inspection of Construction.

Subpart 546.4—Government Contract Quality Assurance

546.470–2 Certification testing.

Certification testing determines whether an item conforms with a specification for the purpose of executing a certificate of compliance required by the specification. The contractor has responsibility for certification testing.

Subpart 546.7—Warranties

546.708 Warranties of data.

(a) Use warranties of data only when you meet both of the following conditions:

(1) You decide the use of a warranty is in the Government's interest.

(2) The contracting director concurs in your decision.

(b) The technical or specification manager has responsibility for developing any warranties of data.

546.710 Contract clauses.

(a) Insert the clause at 552.246–17, Warranty of Supplies of a Noncomplex Nature, instead of FAR 52.246–17 in solicitations and contracts. Use the following alternates as applicable:

(1) *Commercial item acquisitions other than multiple award schedules.* Use the clause at 552.246–17 with its Alternate I.

(2) *Other than commercial items in Class 8010.* Use the clause at 552.246–17 with its Alternate II.

(3) *Other than commercial items in Class 8030 or 8040.* Use the clause at 552.246–17 with its Alternate III. In addition, specify in the solicitation whether the items are ''noncritical end use items'' or ''critical end use items''.

(b) *Multiple award schedules.* Insert the clause at 552.246–73, Warranty—Multiple Award Schedule, in solicitations and contracts.

(c) *Construction contracts expected to exceed the simplified acquisition threshold.* Insert the clause at 552.246–75, Guarantees, in solicitations and contracts.

(d) *Pesticides.* Insert the clause at 552.246–76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

[64 FR 37228, July 9, 1999, as amended at 65 FR 11248, Mar. 2, 2000]

PART 547—TRANSPORTATION

Subpart 547.3—Transportation in Supply Contracts

Sec.

547.300 Scope of subpart.
547.303 Standard delivery terms and contract clauses.
547.303–1 F.o.b origin.
547.304 Determination of delivery terms.
547.304–5 Exceptions.
547.305 Solicitation provisions, contract clauses, and transportation factors.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37229, July 9, 1999, unless otherwise noted.

Subpart 547.3—Transportation in Supply Contracts

547.300 Scope of subpart.

This subpart applies to FSS acquisitions.

547.303 Standard delivery terms and contract clauses.

547.303–1 F.o.b origin.

CONTRACTOR RESPONSIBILITIES

The contractor must both:

(a) Request a carrier routing from the applicable transportation zone office on all shipments weighing 10,000 pounds or more.

(b) Mail the original of the commercial bill of lading (CBL), to the office that authorized the CBL (applies to shipment on a CBL). Ensure that the signature of the carrier's agent and the annotation required by FAR 52.247–1 appear on the original and all copies of the CBL.

547.304 Determination of delivery terms.

547.304–5 Exceptions.

(a) *Solicitations that provide for delivery to Alaska, Hawaii, or Puerto Rico.* Include notice that the offeror may specify delivery f.o.b. origin; f.o.b. vessel, part of shipment; f.o.b. destination; or any combination of these. If appropriate, provide for other delivery terms.

(b) *Federal Supply Schedules.* If f.o.b. destination is offered for delivery within CONUS, attempt to obtain the same delivery term for shipment to Alaska, Hawaii, or Puerto Rico.

547.305 Solicitation provisions, contract clauses, and transportation factors.

(a) Insert 552.247–70, Placarding Railcar Shipments, in solicitations and contracts if it is essential that the railcar doors be especially positioned next to the unloading dock, platform, or warehouse door.

(b) Insert 552.247–71, Diversion of Shipment Under f.o.b. Destination Contracts, in Stock, Special Order Program (SOP), and Single Award Schedule solicitations and contracts which provide for f.o.b. destination shipment.

PART 549—TERMINATION OF CONTRACTS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37229, July 9, 1999, unless otherwise noted.

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.

ACQUISITIONS FUNDED THROUGH THE INFORMATION TECHNOLOGY (IT) FUND

(a) You may use the clause at 552.249–70, Termination for Convenience of the Government (Fixed-Price) (Short Form), when appropriate, in solicitations and contracts for the acquisition and maintenance of telephone systems funded through the Information Technology (IT) Fund. Use this clause with FAR 52.249–1 or FAR 52.249–3 and 52.249–4.

(b) If you use the clause at 552.249–70, you must also insert 552.249–71, Submission of Termination Liability Schedule, in the solicitation and contract.

SUBCHAPTER H—CLAUSES AND FORMS

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

552.000 Scope of part.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.101–70 Using part 552.
552.102 Incorporating provisions and clauses.
552.103 Identification of provisions and clauses.
552.104 Procedures for modifying and completing provisions and clauses.
552.105 Procedures for using alternates.
552.107–70 Provisions and clauses prescribed in subpart 552.1.

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.
552.203–5 Covenant Against Contingent Fees.
552.203–70 Price Adjustment for Illegal or Improper Activity.
552.203–71 Restriction on Advertising.
552.209–70 Product Removal from Qualified Products List.
552.209–71 Waiver of First Article Testing and Approval Requirement.
552.209–72 Supplemental Requirements for First Article Approval—Contractor Testing.
552.209–73 Supplemental Requirements for First Article Approval—Government Testing.
552.211–8 Time of Delivery.
552.211–70 [Reserved]
552.211–71 Standard References.
552.211–72 Reference to Specifications in Drawings.
552.211–73 Marking.
552.211–74 Charges for Marking.
552.211–75 Preservation, Packaging and Packing.
552.211–76 Charges for Packaging and Packing.
552.211–77 Packing List.
552.211–78 Commercial Delivery Schedule (Multiple Award Schedule).
552.211–79 Acceptable Age of Supplies.
552.211–80 Age on Delivery.
552.211–81 Time of Shipment.
552.211–82 Notice of Shipment.
552.211–83 Availability for Inspection, Testing, and Shipment/Delivery.
552.211–84 Non-Compliance With Contract Requirements.
552.212–70 Preparation of Offer (Multiple Award Schedule).
552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.
552.212–72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.
552.212–73 Evaluation—Commerical Items (Multiple Award Schedule).
552.214–70 ''All or None'' Offers.
552.214–71 Progressive Awards and Monthly Quantity Allocations.
552.214–72 Bid Sample Requirements.
552.215–70 Examination of Records by GSA.
552.215–71 Examination of Records by GSA (Multiple Award Schedule).
552.215–72 Price Adjustment—Failure to Provide Accurate Information.
552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.
552.216–71 Economic Price Adjustment—Stock and Special Order Program Contracts.
552.216–72 Placement of Orders.
552.216–73 Ordering Information.
552.217–70 Evaluation of Options.
552.217–71 Notice Regarding Option(s).
552.219–70 Allocation of Orders—Partially Set-Aside Items.
552.219–71 Notice to Offerors of Subcontracting Plan Requirements.
552.219–72 Preparation, Submission, and Negotiation of Subcontracting Plans.
552.219–73 Goals for Subcontracting Plan.
552.219–74 Section 8(a) Direct Award.
552.223–70 Hazardous Substances.
552.223–71 Nonconforming Hazardous Materials.
552.223–72 Hazardous Material Information.
552.225–70 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.
552.227–70 Government Rights (Unlimited).
552.227–71 Drawings and Other Data to Become Property of Government.
552.228–70 Workers' Compensation Laws.
552.229–70 Federal, State, and Local Taxes.
552.229–71 Federal Excise Tax—DC Government.
552.232–1 Payments.
552.232–8 Discounts for Prompt Payment.
552.232–23 Assignment of Claims.
552.232–25 Prompt Payment.
552.232–70 Invoice Requirements.
552.232–71 Adjusting Payments.
552.232–72 Final Payment.
552.232–73 Availability of Funds.
552.232–74 Invoice Payments.
552.232–75 Prompt Payment.
552.232–76 Electronic Funds Transfer Payment.
552.232–77 Payment By Governmentwide Commercial Purchase Card.

552.232–78 Payment Information.
552.233–70 Protests Filed Directly with the General Services Administration.
552.236–70 Definitions.
552.236–71 Authorities and Limitations.
552.236–72 Specialist.
552.236–73 Basis of Award—Construction Contract.
552.236–74 Working Hours.
552.236–75 Use of Premises.
552.236–76 Measurements.
552.236–77 Specifications and Drawings.
552.236–78 Shop Drawings, Coordination Drawings, and Schedules.
552.236–79 Samples.
552.236–80 Heat.
552.236–81 Use of Equipment by the Government.
552.236–82 Subcontracts.
552.236–83 Requirement for a Project Labor Agreement.
552.237–70 Qualifications of Offerors.
552.237–71 Qualifications of Employees.
552.237–72 Prohibition Regarding ''Quasi-Military Armed Forces.''
552.237–73 Restriction on Disclosure of Information.
552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.
552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists.
552.238–72 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes.
552.238–73 Cancellation.
552.238–74 Contractor's Report of Sales.
552.238–75 Price Reductions.
552.238–76 Industrial Funding Fee.
552.242–70 Status Report of Orders and Shipments.
552.243–70 Pricing of Adjustments.
552.243–71 Equitable Adjustments.
552.243–72 Modifications (Multiple Award Schedule).
552.246–17 Warranty of Supplies of a Noncomplex Nature.
552.246–70 Source Inspection by Quality Approved Manufacturer.
552.246–71 Source Inspection by Government.
552.246–72 Final Inspection and Tests.
552.246–73 Warranty—Multiple Award Schedule.
552.246–74 [Reserved]
552.246–75 Guarantees.
552.246–76 Warranty of Pesticides.
552.247–70 Placarding Railcar Shipments.
552.247–71 Diversion of Shipment Under F.O.B. Destination Contracts.
552.249–70 Termination for Convenience of the Government (Fixed Price) (Short Form).
552.249–71 Submission of Termination Liability Schedule.
552.252–5 Authorized Deviations in Provisions.
552.252–6 Authorized Deviations in Clauses.
552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.
552.270–2 Historic Preference.
552.270–3 Parties to Execute Lease.
552.270–4 Definitions.
552.270–5 Subletting and Assignment.
552.270–6 Maintenance of Building and Premises—Right of Entry.
552.270–7 Fire and Casualty Damage.
552.270–8 Compliance with Applicable Law.
552.270–9 Inspection—Right of Entry.
552.270–10 Failure in Performance.
552.270–11 Successors Bound.
552.270–12 Alterations.
552.270–13 Proposals for Adjustment.
552.270–14 Changes.
552.270–15 Liquidated Damages.
552.270–16 Adjustment for Vacant Premises.
552.270–17 Delivery and Condition.
552.270–18 Default in Delivery—Time Extensions.
552.270–19 Progressive Occupancy.
552.270–20 Payment.
552.270–21 Effect of Acceptance and Occupancy.
552.270–22 Default by Lessor During the Term.
552.270–23 Subordination, Nondisturbance and Attornment.
552.270–24 Statement of Lease.
552.270–25 Substitution of Tenant Agency.
552.270–26 No Waiver.
552.270–27 Integrated Agreement.
552.270–28 Mutuality of Obligation.
552.270–29 Acceptance of Space.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37229, July 9, 1999, unless otherwise noted.

552.000 Scope of part.

This part provides the text of provisions and clauses which are unique to GSA or supplement the FAR.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.101–70 Using part 552.

(a) *Definition.* ''Clause,'' as used in this subpart, means provision or clause as defined in FAR 52.101(a).

(b) *Numbering.* (1) Clauses which are ''substantially'' the same as FAR clauses and clauses to be used instead of FAR clauses are identified as follows:

(i) The clause has the same title as a clause in the FAR.

(ii) The number 5 precedes the clause.

(iii) The clause appears under the same subsection number and caption as in the FAR.

(2) Supplemental clauses are numbered in the same manner as the FAR, except:

(i) The chapter number precedes the clause.

(ii) The subsection numbers begin with 70.

(iii) The clauses are sequentially numbered, e.g., 552.232–70, 552.232–71, etc.

552.102 Incorporating provisions and clauses.

You may incorporate clauses prescribed in the GSAR for solicitations and contracts by reference.

552.103 Identification of provisions and clauses.

Deviations. If the GSAR prescribes a class deviation from a FAR clause, identify the clause by the GSAR citation (e.g., 552.232–8 PROMPT PAYMENT DISCOUNT (NOV 1987) (DEVIATION FAR 552.232–8)).

552.104 Procedures for modifying and completing provisions and clauses.

(a) The procedures in FAR 52.104 apply when you modify or complete a GSAR provision or clause. Provisions and clauses shall not be modified unless the GSAR authorizes their modification.

(b) You do not need to identify modifications of clauses which result from negotiations unless you issue an amendment to the solicitation.

(c) In general, you should modify FAR or GSAR clauses only for individual cases. If a contracting activity develops a modification for repeated use, furnish a copy to the Office of GSA Acquisition Policy (MV) for potential inclusion in the GSAR.

552.105 Procedures for using alternates.

The procedures in FAR 52.105 apply to GSAR part 552.

552.107–70 Provisions and clauses prescribed in subpart 552.1.

(a) Insert the provision at 552.252–5, Authorized Deviations in Provisions, in solicitation that include any FAR or GSAR clause with an authorized deviation. You must use this provision in lieu of the FAR provision at 552.252–5.

(b) Insert the clause at 552.252–6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation. You must use this clause in lieu of the FAR clause at 52.252–6.

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.

This subpart sets forth the text of all GSAR provisions and clauses. It also cross-references the location in the GSAR that prescribes the use of each provision and clause.

552.203–5 Covenant Against Contingent Fees.

As prescribed in 502.404, insert the following clause:

COVENANT AGAINST CONTINGENT FEES (FEB 1990)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warrant, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) ''Bona fide agency,'' as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

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

''Contingent fee,'' as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the

success that a person or concern has in securing a Government contract.

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

(End of clause)

552.203–70 Price Adjustment for Illegal or Improper Activity.

As prescribed in 503.104–9, insert the following clause:

PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1999)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of clause)

552.203–71 Restriction on Advertising.

As prescribed in 503.570–2, insert the following clause:

RESTRICTION ON ADVERTISING (SEP 1999)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: ''This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government.''

(End of clause)

552.209–70 Product Removal from Qualified Products List.

As prescribed in 509.206–2, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (SEP 1999)

If, during the performance of this contract, the product being furnished is for any reason (except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification for security cabinets, security vault doors and changeable combination padlocks) removed from the Qualified Products List, the Government may terminate this contract for default.

(End of clause)

552.209–71 Waiver of First Article Testing and Approval Requirement.

As prescribed in 509.306, insert the following provision:

WAIVER OF FIRST ARTICLE TESTING AND APPROVAL REQUIREMENT (SEP 1999)

(a) Offerors must submit an offer including testing and approval, however, an offeror may submit an alternate offer excluding testing and approval, provided the offeror satisfies the requirements for the waiving of first article testing.

(b) Before a waiver of the first article testing requirement of this solicitation will be considered, the offeror is requested to identify the procurement under which the product offered was previously approved and accepted:

_____

(Offeror to insert both contract number and applicable national stock number.)

(End of provision)

552.209–72 Supplemental Requirements for First Article Approval—Contractor Testing.

As prescribed in 509.308–1, insert the following clause:

SUPPLEMENTAL REQUIREMENTS FOR FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (SEP 1999)

(a) The term ''Contracting Officer'' as used in FAR 52.209–3, First Article Approval—Contractor Testing, means the Administrative Contracting Officer (ACO).

(b) The Contractor shall have either (1) the necessary inspection and test equipment at the Contractor's plant to perform first article testing, or (2) if the inspection and test equipment is not available, a letter of commitment from a laboratory acceptable to the Government to perform the inspection and testing.

(c) When the Government elects to witness the first article testing, the Contractor shall conduct the testing between the hours of 7:00 AM and 5:00 PM, Monday thru Friday, unless a different time is agreed to by the ACO.

(d) The first article test report shall contain:

(1) The complete test data, the test method(s) used and date of test;

(2) Signature and printed name of the individual who performed the inspection;

(3) Applicable specification/CID and/or drawing numbers;

(4) Name and type of test equipment used; and

(5) All numerical values as a result of testing with each noted as to whether it passes or fails the contract test requirements.

(e) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under control of the Quality Assurance Specialist (QAS), to protest against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(f) If the Contractor delivers the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of clause)

552.209–73 Supplemental Requirements for First Article Approval—Government Testing.

As prescribed in 509.308–2, insert the following clause:

SUPPLEMENTAL REQUIREMENTS FOR FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (SEP 1999)

(a) The term ''Contracting Officer'' as used in FAR 52.209–4, First Article Approval—Government Testing, means the Administrative Contracting Officer (ACO).

(b) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under the control of the Quality Assurance Specialist (QAS) to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(c) If the Contractor deliver the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of clause)

552.211–8 Time of Delivery.

As prescribed in 511.404(a)(1) insert the following clause:

TIME OF DELIVERY (SEP 1999)

(a) The time of delivery for each item means the time required after receipt of an order (1) to make delivery to a destination in the case of delivered prices, or (2) to place shipment in transit in the case of f.o.b. origin prices.

(b) Delivery is required to be made at the point(s) specified within _____ days after receipt of order.

(End of clause)

Alternate I (SEP 1999). It it is necessary to show different delivery times for different items or groups of items, the Contracting Officer may substitute the following paragraph (b) for paragraph (b) of the basis clause.

(b) Delivery is required to be made at the point(s) specified within the number of calender days after receipt of order as indicated below:

Items or groups of items (Special Item Numbers or Nomenclature)	Required delivery time (DAYS ARO)

552.211–70 [Reserved]

552.211–71 Standard References.

As prescribed in 511.204(a), insert the following clause:

STANDARD REFERENCES (SEP 1999)

(a) All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

(1) Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract.

(2) Wherever reference is made to any such document other than those specified in subparagraph (1) above, the Contractor shall comply with the requirements set out in the edition specified in this contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

(b) Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship.

(End of clause)

552.211–72 Reference to Specifications in Drawings.

As prescribed in 511.204(b), insert the following clause:

REFERENCES TO SPECIFICATIONS IN DRAWINGS (FEB 1996)

If military or other drawings are made a part of this contract, any reference in the drawings to Federal specifications or standards will be considered to be a reference to the date of such Federal specification or standard identified in the contract. If the date of the Federal specification or standard is not identified in the contract, the edition, including revisions thereto, in effect on the date the solicitation is issued will apply.

(End of clause)

552.211–73 Marking.

As prescribed in 511.204(c)(1), insert the following clause:

MARKING (FEB 1996)

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards:

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required marking, by contract or otherwise, and charge the Contractor therefor at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

552.211–74 Charges for Marking.

As prescribed in 511.204(c)(2), insert a clause substantially as follows:

CHARGES FOR MARKING (FEB 1996)

The rate provided for in paragraph (b) of 552.211–73, Marking, is $_____* per manhour or fraction thereof.

(End of clause)

** The rate to be inserted in the above clause shall be determined and published by the Commissioner, Federal Supply Service, or a designee.*

552.211–75 Preservation, Packaging and Packing.

As prescribed in 511.204(c)(3), insert the following clause:

PRESERVATION, PACKAGING, AND PACKING (FEB 1996)

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of clause)

552.211–76 Charges for Packaging and Packing.

As prescribed in 511.204(c)(4), insert a clause substantially as follows:

CHARGES FOR PACKAGING AND PACKING (FEB 1996)

If supplies shipped to a GSA wholesale distribution center are not packaged and packed in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking, by contract or otherwise, and charge the Contractor therefore at the rate of $___*___ per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

** The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Supply Service, or a designee.*

552.211–77 Packing List.

As prescribed in 511.204(d), insert the following clause:

PACKING LIST (FEB 1996)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate:

(1) Name and address of the consignor;

(2) Name and complete address of the consignee;

(3) Government order or requisition number;

(4) Government bill of lading number covering the shipment (if any); and

(5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

(1) Cardholder name and telephone number and

(2) The term ''Credit Card.''

(End of clause)

552.211–78 Commercial Delivery Schedule (Multiple Award Schedule).

As prescribed in 511.404(a)(2), insert the following clause:

COMMERCIAL DELIVERY SCHEDULE (MULTIPLE AWARD SCHEDULE) (FEB 1996)

(a) *Time of Delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices, or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the ''Time of Delivery (days ARO)'' column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal commercial practice. The Government requires the Contractor's normal commercial delivery time, as long as it is less than the ''STATED'' delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time as stated below:

Items or group of items (Special Item Number or Nomenclature)	Government's stated delivery time (days ARO)	Contractor's normal commercial delivery time
	.....	.....
	.....	.....
	.....	.....

(b) *Expedited Delivery Times.* For those items that can be delivered quicker than the delivery times in paragraph (a), above, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Item or group of items (Special Item Number or Nomenclature)	Expedited delivery time (HOURS/DAYS ARO)
	.....
	.....

Item or group of items (Special Item Number or Nomenclature)	Expedited delivery time (HOURS/ DAYS ARO)
	.....

(c) *Overnight and 2-Day Delivery Times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

(End of clause)

552.211–79 Acceptable Age of Supplies.

As prescribed in 511.404(a)(3)(i), insert the following clause:

ACCEPTABLE AGE OF SUPPLIES (FEB 1996)

The supplies furnished under this contract shall not be more than ___ months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if shipment is authorized to be made without prior inspection by the Government. If the age of the supplies furnished under this contract is greater than the specified period, the Government may exercise its right to reject the supplies.

(End of clause)

Alternate I (FEB 1996). For items having a limited shelf-life, the sentence below should be substituted for the first sentence of the basic clause when authorized:

The supplies furnished under this contract shall not be more than ___ days old, beginning with the date of manufacture (month, day, year) marked on the container.

552.211–80 Age on Delivery.

As prescribed in 511.404(a)(3)(ii) insert the following clause:

AGE ON DELIVERY (FEB 1996)

Included in the description of each shelf-life item is a statement regarding the ''age on delivery.'' The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month after the month of manufacture to the date of delivery to the specified delivery point(s). If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its right to reject the supplies.

(End of clause)

552.211–81 Time of Shipment.

As prescribed in 511.404(a)(4), insert the following clause:

TIME OF SHIPMENT (FEB 1996)

Shipment is required within _____ calendar days after receipt of order.

(End of clause)

Alternate I (FEB 1996). If the contract will require shipment more than 45 calendar days after receipt of the order, the following paragraph should be added to the basic clause.

Each delivery order will specify that shipment is required no later than the number of days shown above. If such order also states that ''Early Shipment is Precluded,'' the Contractor agrees to make shipment no sooner than _____ calendar days after receipt of order. Earlier shipments may result in nonacceptance of the supplies at the delivery point at the time of arrival.

(The second number to be inserted should be 15 calendar days less than the first number.)

552.211–82 Notice of Shipment.

As prescribed in 511.404(a)(5), insert the following clause:

NOTICE OF SHIPMENT (FEB 1996)

If specified in an order placed under this contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee or the ordering office or both, as specified. This requirement may be satisfied by completion and return of appropriate forms furnished by the ordering office or by the furnishing of copies of bills of lading, freight bills, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing, and the name of initial carrier.

(End of clause)

552.211–83 Availability for Inspection, Testing, and Shipment/Delivery.

As prescribed in 511.404(a)(6), insert the following clause:

AVAILABILITY FOR INSPECTION, TESTING, AND SHIPMENT/DELIVERY (FEB 1996)

(a) The Government requires that the supplies be made available for inspection and testing within _____*_____ calendar days after receipt of [*Insert ''Notice of Award'' or ''order''*], and be [*Insert ''shipped'' or ''delivered''*] within _____*_____ calendar days after receipt of (1) notice of approval and release by the Government inspector or (2) authorization to ship without Government inspection.

(b) Failure to make supplies available for inspection and testing or to [*Insert ''ship'' or ''deliver''*] as required by this clause may result in termination of this contract for default.

(End of clause)

Alternate I (FEB 1996). If the contract is for stock items, the Contracting Officer shall insert ''shipped'' or ''ship'' in the basic clause, add the following paragraph (b) and redesignate paragraph (b) of the basic clause as paragraph (c).

(b) If notice of approval and release by the Government inspector or authorization to ship without Government inspection is received before _____*_____ calendar days after receipt of the [*Insert ''Notice of Award'' or ''order''*], receipt of such notice shall be deemed to be received on the _____*_____ calendar day after receipt of [*Insert ''Notice of Award'' or ''order''*]. Shipments shall not be made before the _____*_____ calendar day after receipt of the [*Insert ''Notice of Award'' or ''order''*] unless authorized in writing by the Contracting Officer.

*Entries are normally the same number of days specified for availability.

552.211–84 Non-Compliance With Contract Requirements.

As prescribed in 511.404(b), insert the following clause:

NON-COMPLIANCE WITH CONTRACT REQUIREMENTS (FEB 1996)

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of clause)

552.212–70 Preparation of Offer (Multiple Award Schedule).

As prescribed in 512.301(a)(1), insert the following clause:

PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE) (AUG 1997)

(a) Definitions. *Concession*, as used in this solicitation, means a benefit, enhancement or privilege (other than a discount), which either reduces the overall cost of a customer's acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to freight allowance, extended warranty, extended price guarantees, free installation and bonus goods.

Discount, as used in this solicitation, means a reduction to catalog prices (published or unpublished). Discounts include, but are not limited to, rebates, quantity discounts, purchase option credits, and any other terms or conditions other than concessions) which reduce the amount of money a customer ultimately pays for goods or services ordered or received. Any net price lower than the list price is considered a ''discount'' by the percentage difference from the list price to the net price.

(b) For each Special Item Number (SIN) included in an offer, the Offeror shall provide the information outlined in paragraph (c). Offerors may provide a single response covering more than one SIN, if the information disclosed is the same for all products under each SIN. If discounts and concessions vary by model or product line, offerors shall ensure that information is clearly annotated as to item or items referenced.

(c) Provide information described below for each SIN:

(1) Two copies of the offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or price list(s) from which discounts are offered. If special catalogs or price lists are printed for the purpose of this offer, such descriptive catalogs or price lists shall include a statement indicating the special catalog or price list represent a verbatim extract from the Offeror's commercial catalog and/or price list and identify the descriptive catalog and/or price list from which the information has been extracted.

(2) Next to each offered item in the commercial catalog and/or price list, the Offeror shall write the special item number (SIN) under which the item is being offered. Unless a special catalog or price list is submitted,

all other items shall be marked ''excluded,'' lined out, and initiated by the offeror.

(3) The discount(s) offered under this solicitation. The description of discounts offered shall include all discounts, such as prompt payment discounts, quantity/dollar volume discounts (indicate whether models/products can be combined within the SIN or whether SINs can be combined to earn discounts), blanket purchase agreement discounts, or purchase option credits. If the terms of sale appearing in the commercial catalogs or price list on which an offer is based are in conflict with the terms of this solicitation, the latter shall govern.

(4) A description of concessions offered under this solicitation which are not granted to other customers. Such concessions may include, but are not limited to, an extended warranty, a return/exchange goods policy, or enhanced or additional services.

(5) If the Offeror is a dealer/reseller or the Offeror will use dealers to perform any aspect of contract awarded under this solicitation, describe the functions, if any, that the dealer/reseller will perform.

(End of clause)

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

As prescribed in 512.301(a)(2), insert the following clause:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (JUL 2000)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[*The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.*]

(a) *Provisions.*

____552.237–70 Qualifications of Offerors

(b) *Clauses.*

____552.203–71 Restriction on Advertising
____552.211–73 Marking
____552.2215–70 Examination of Records by GSA
____552.215–71 Examination of Records by GSA (Multiple Award Schedule)
____552.215–72 Price Adjustment—Failure to Provide Accurate Information
____552.219–70 Allocation of Orders—Partially Set-Aside Items
____552.228–70 Workers' Compensation Laws
____552.229–70 Federal, State, and Local Taxes
____552.232–8 Discounts for Prompt Payment
____552.232–23 Assignment of Claims
____552.232–71 Adjusting Payments
____552.232–72 Final Payment
____552.232–73 Availability of Funds
____552.232–78 Payment Information
____552.237–71 Qualifications of Employees
____552.238–71 Submission and Distribution of Authorized FSS Schedule Price List
____552.238–74 Contractor's Report of Sales
____552.238–75 Price Reductions
____552.242–70 Status Report of Orders and Shipments
____552.243–72 Modifications (Multiple Award Schedule)
____552.246–73 Warranty—Multiple Award Schedule
____552.246–76 Warranty of Pesticides

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 41379, July 5, 2000]

552.212–72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

As prescribed in 512.301(a)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (JUL 2000)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[*The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.*]

(a) *Provisions.*

____552.223–72 Hazardous Material Information

(b) *Clauses.*

____552.223–70 Hazardous Substances
____552.223–71 Nonconforming Hazardous Material

___552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped
___552.238–72 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes
___552.238–76 Industrial Funding Fee

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 41379, July 5, 2000]

552.212–73 Evaluation—Commercial Items (Multiple Award Schedule).

As prescribed in 512.301(a)(4), insert the following provision:

EVALUATION—COMMERCIAL ITEMS (MULTIPLE AWARD SCHEDULE) (AUG 1997)

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the definition of a ''commercial item'' in FAR 52.202–1. Awards may be made to those responsible offerors that offer reasonable pricing, conforming to the solicitation, and will be most advantageous to the Government, taking into consideration the multiplicity and complexity of items of various manufacturers and the differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, and other pertinent factors. By providing a selection of comparable supplies or services, ordering activities are afforded the opportunity to fulfill their requirements with the item(s) that constitute the best value and that meet their needs at the lowest overall cost.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

Alternate I (AUG 1997). When anticipating competition of identical items, add the following paragraph after paragraph (b) of the basic provision.

(c) The Government reserves the right to award only one contract for all or a part of a manufacturer's product line. When two or more offerors (e.g., dealers/resellers) offer the identical product, award may be made competitively to only one offeror on the basis of the lowest price. (Discounts for early payment will not be considered as an evaluation factor in determining the low offeror). During initial open season for an option period, any offers that are equal to or lower than the current contract price received for identical items will be considered. Current contractors will also be allowed to submit offers for identical items during this initial open season. The current contractor which has the identical item on contract will be included in the evaluation process. The Government will evaluate all offers and may award only one contract for each specified product or aggregate group.

552.214–70 "All or None" Offers.

As prescribed in 514.201–6, insert the following provision:

''ALL OR NONE'' OFFERS (SEP 1999)

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on all ''all or none'' basis as provided below.

(b) An offer submitted on an ''all or none'' or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the ''all or none'' offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable ''all or none'' offer. Award will be made to result in the lowest total cost to the Government.

(End of provision)

Alternate I (SEP 1999). For a requirements or indefinite quantity contract, the following paragraph (b) shall be substituted in the basic provision:

(b) An offer submitted on an ''all or none'' or similar basis will not be considered unless the offer is low on each item to which the ''all or none'' offer is made applicable. The term ''each item'' as used in this provision refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate.

552.214–71 Progressive Awards and Monthly Quantity Allocations.

As prescribed in 514.201–7(a), insert the following clause:

PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS (SEP 1999)

(a) *Monthly quantity allocation.*

(1) Set forth below are the Government's estimated annual and monthly requirements

for each stock item covered by this solicitation. Offerors shall indicate, in the spaces provided, the monthly quantity which they are willing to furnish of any item or group of items involving the use of the same production facilities. In making monthly allocations, offerors are urged to group as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each offeror.

(2) Offerors need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If an offeror does not insert monthly allocation quantities, it will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

National stock number	Estimated annual requirements	Estimated monthly requirements

BIDDERS MONTHLY QUANTITY ALLOCATIONS

Items or groups of items	Monthly allocation quantity

(b) *Progressive awards.* If the low responsive offeror's monthly quantity allocation is less than the Government's estimated requirements, the Government may make progressive awards beginning with the low responsive offeror and including each next low responsive offeror to the extent necessary to meet the estimated requirements.

(c) *Ordering procedures.* If progressive awards are made, orders will be placed first with the Contractor offering the lowest price on each item normally up to that Contractor's maximum quantity allocation and then, in the same manner, successively to other Contractors. When cumulative orders during any month, placed with a lower priced Contractor, equal or exceed 95 percent of its monthly quantity allocation, to avoid the placement of unduly small orders or the splitting of a subsequent order, the Government reserves the right to award the full quantity of the subsequent order to the next lower priced Contractor. In no case will orders be placed with any Contractor in excess of its monthly quantity allocation.

(End of clause)

552.214–72 Bid Sample Requirements.

As prescribed in 514.202–4(a)(3), insert the following provision:

BID SAMPLE REQUIREMENTS (SEP 1999)

This provision supplements FAR 52.214–20, which is incorporated by reference. Samples shall be from the production of the manufacturer whose products will be supplied under resultant contracts.

(a) Two bid samples are required for each of the following items in this solicitation:

(b) Two representative samples shall be submitted for each of the following items upon which a bid is submitted:

Items	Acceptable representative samples

NOTE: (1) Bidders ☐ are or ☐ are not authorized to re-apply samples being retained by GSA in connection with previous solicitations and/or resultant contracts. When the block ''are'' is marked by the government, FAR 52.214–20, Alternate II, shall apply.

(2) Bidders who propose to furnish an item or group of items from more than one manufacturer or production point must submit two samples from the production of each manufacturer or production point.

(c) Samples will be evaluated to determine compliance with all characteristics listed below:

Subjective characteristics	Objective characteristics

(d) Forward samples addressed to the Sample Room indicated below. Except for samples delivered by U.S. Mail, deliveries will be accepted between the hours of _____ Mondays through Fridays, official holidays excluded.

CAUTION: Use proper address for method of shipment selected.

Mail and Parcel Post
(Insert Address of Bid Sample Room)
Freight or Express
(Insert address of Bid Sample Room)

(End of provision)

552.215–70 Examination of Records by GSA.

As prescribed in 514.201–7(b) and 515.209–70(a) insert the following clause:

EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR

4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term ''subcontract'' as used in this clause excludes (a) purchase orders not exceeding $100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

552.215–71 Examination of Records by GSA (Multiple Award Schedule).

As prescribed in 515.209–70(c), insert the following clause:

EXAMINATION OF RECORDS BY GSA (MULTIPLE AWARD SCHEDULE) (AUG 1997)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall have access to and the right to examine any books, documents, papers and records of the contractor involving transactions related to this contract for overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee clause of this contract. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

(End of clause)

552.215–72 Price Adjustment—Failure to Provide Accurate Information.

As prescribed in 515.408(d), insert the following clause:

PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION (AUG 1997)

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) Provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) Submit information that was current, accurate, and complete; or

(3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—

(1) The amount of the overpayment; and

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C. 6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

As prescribed in 516.203–4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP 1999)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases under the following conditions:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) Only three increases will be considered during the contract period.

(3) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) The aggregate of the increases in any contract unit price under this clause shall not exceed _____* percent of the original contract unit price. The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase.

(d) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/pricelist showing the price increase and the effective date for commercial customers.

(2) Commercial Sales Practice format regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price-list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Documentation supporting the reasonableness of the price increase.

(e) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;

(2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,

(3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) The contract modification reflecting the price adjustment shall be signed by the Government and made effective upon receipt of notification from the Contractor that the new catalog/pricelist has been mailed to the addresses previously furnished by the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

(End of clause)

**Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.*

Alternate I (SEP 1999). The following is substituted for paragraphs (b) and (c) of the clause:

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed *_____ percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

**Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the Contracting Director.*

[64 FR 37229, July 9, 1999; 64 FR 49844, Sept. 14, 1999]

552.216–71 Economic Price Adjustment—Stock and Special Order Program Contracts.

As prescribed in 516.203–4(b), insert the following clause:

ECONOMIC PRICE ADJUSTMENT-STOCK AND SPECIAL ORDER PROGRAM CONTRACTS (SEP 1999)

(a) ''Producer Price Index'' (PPI), as used in this clause, means the originally released index, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor (Labor) for product code _____ found under Table _____.

(b) During the term of the contract, the award price may be adjusted once upward or downward a maximum of *_____ percent.

Any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released 12 months later (the updated index). The formula for determining the Adjusted Contract Price (ACP) applicable to shipments for the balance of the contract period is-

$$\text{ACP} = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(c) If the PPI is not available for the month of the base index or the updated index, the month with the most recently published PPI prior to the month determining the base index or updated index shall be used.

(d) If a product code is discontinued, the Government and the Contractor will mutually agree to substitute a similar product code. If Labor designates an index with a new title and/or code number as continuous with the product code specified above, the new index shall be used.

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formula in (b) above is received by the Contracting Officer within 30 calendar days of the release of the updated index, the Contractor shall have waived its right to an upward price adjustment for the balance of the contract. Alternatively, the Contracting Officer will unilaterally adjust the award price downward when appropriate using the updated index defined in (b) above.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the 31st day following the release of the updated index, whichever is later, shall indicate the updated index and percent of change as well as the ACP, and shall not apply to delivery orders issued before the effective date.

(End of clause)

Alternate I (SEP 1999). As prescribed in 516.203–4(b) (1) and (2), substitute the following paragraphs (b), (e) and (f) for paragraphs (b), (e) and (f) of the basic clause:

(b) In any option period, the contract price may be adjusted upward or downward a maximum of *_____ percent.

(1) For the first option period, any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released in the third month before completion of the initial contract period stated in the solicitation (the updated index). This initial contract period may be less than 12 months. The formula for determining the Adjusted Contract Price (ACP) applicable to shipments during the first option period is—

$$\text{ACP} = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(2) For any subsequent option period, the price adjustment shall be the percentage change between the previously updated index (the new base index) and the PPI released 12 months later (the most recent updated index). This percentage shall be applied to the Current Contract Price (CCP). The formula for determining the ACP applicable to shipments for the subsequent option period(s) is—

$$\text{ACP} = \frac{\text{Most Recent Updated Index}}{\text{New Base Index}} \times \text{CCP}$$

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formulas in (b) (1) or (2) above is received by the Contracting Officer within 30 calendar days of the date of the Government's preliminary written notice of its intent to exercise the option, the Contractors shall have waived its right to an upward price adjustment for that option period. Alternatively, the Contracting Officer in its written notice shall exercise the option at the CCP or at a reduced price when appropriate using the formulas in (b) (1) or (2) above.

(f) Price adjustments shall be effected by execution of a contract modification by the Government indicating the most recent updated index and percent of change and shall apply to delivery orders placed on or after the first day of the option period.

Alternate II (SEP 1999). As prescribed in 516.203–4(b)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage in the PPI is at least **___ percent.

**The appropriate percentage should be determined based upon the historical trend in the PPI for the product code. A ceiling of more than 10 percent must be approved by the Contracting Director.*

***The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.*

552.216–72 Placement of Orders.

As prescribed in 516.506, inset the following clause:

PLACEMENT OF ORDERS (SEP 1999)

(a) Delivery orders (orders) will be placed by:

[Contracting Officer insert names of Federal agencies]

(b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, GSA's Federal Supply Service (FSS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FSS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other agencies may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each Federal agency placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Federal agencies may obtain a sample format to customize as needed from the office specified in (g) below.

(e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.

(f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.

(g) The basic content and format of the TPA will be provided by:

General Services Administration, Acquisition Operations and Electronic Commerce Center (FCS), Washington, DC 20406

Telephone: [Contracting officer insert appropriate telephone numbers]

FAX:

(End of clause)

Alternate I (SEP 1999). As prescribed in 516.506, substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) All delivery orders (orders) under this contract will be placed by the General Services Administration's Federal Supply Service (FSS). The Contractor is not authorized to accept orders from any other agency. Violation of this restriction may result in termination of the contract pursuant to the default clause of this contract.

(b) All orders shall be placed by Electronic Data Interchange (EDI) using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, transmission will be computer-to-computer EDI. If computer-to-computer EDI is not possible, FSS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into a Trading Partner Agreement (TPA) with FSS in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation.

Alternate II (SEP 1999). As prescribed in 516.506(c), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The organizations listed below may place orders under this contract. Questions regarding organizations authorized to use this schedule should be directed to the Contracting Officer.

(1) Executive agencies.

(2) Other Federal agencies.

(3) Mixed-ownership Government corporations.

(4) The District of Columbia.

(5) Government contractors authorized in writing by a Federal agency pursuant to 48 CFR 51.1.

(6) Other activities and organizations authorized by statute or regulation to use GSA as a source of supply.

552.216–73 Ordering Information.

As prescribed in 516.506(c), insert the following provision:

ORDERING INFORMATION (SEP 1999)

(a) In accordance with the Placement of Orders clause of this solicitation, the offeror elects to receive orders placed by GSA's Federal Supply Service (FSS) by either ☐ facsimile transmission or ☐ computer-to-computer Electronic Data Interchange (EDI).

(b) An offeror electing to receive computer-to-computer EDI is requested to indicate below the name, address, and telephone number of the representative to be contacted regarding establishment of an EDI interface.

_____

_____

_____

(c) An offeror electing to receive orders by facsimile transmission is requested to indicate below the telephone number(s) for facsimile transmission equipment where orders should be forwarded.

_____

_____

_____

(d) For mailed orders, the offeror is requested to include the postal mailing address(es) where paper form orders should be mailed.

_____

_____

_____

(End of provision)

Alternate I (SEP 1999). As prescribed in 516.506(b), delete paragraph (d) of the basic provision.

Alternate II (SEP 1999). As prescribed in 516.506(b), add paragraph (e) to the basic provision.

(e) Offerors marketing through dealers are requested to indicate below whether those dealers will be participating in the proposed contract.

Yes ( ) No ( )

If ''yes'' is checked, ordering information to be inserted above shall reflect that in addition to offeror's name, address, and facsimile transmission telephone number, orders can be addressed to the offeror's name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor's Federal Supply Schedule pricelist.

552.217–70 Evaluation of Options.

As prescribed in 517.208(a), insert the following provision:

EVALUATION OF OPTIONS (AUG 1990)

(a) The Government will evaluate offers for award purposes by determining the lowest base period price. When option year pricing is based on a formula (e.g., changes in the Producer Price Index or other common standard); option year pricing is automatically' considered when evaluating the base year price, as any change in price will be uniformly related to changes in market conditions. All options are therefore considered to be evaluated. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government will reject the offer if exceptions are taken to the price provisions of the Economic Price Adjustment clause, unless the exception results in a lower maximum option year price. Such offers will be evaluated without regard to the lower option year(s) maximum. However, if the offeror offering a lower maximum is awarded a contract, the award will reflect the lower maximum.

552.217–71 Notice Regarding Option(s).

As prescribed in 517.208(b), insert the following provision:

NOTICE REGARDING OPTION(S) (NOV 1992)

The General Services Administration (GSA) has included an option to [*Insert ''purchase additional quantities of supplies or services'' or ''extend the term of this contract'' or ''purchase additional quantities of supplies or services and to extend the term of this contract''*] in order to demonstrate the value it places on quality performance by providing a mechanism for continuing a contractual relationship with a successful Offeror that performs at a level which meets or exceeds GSA's quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's past performance under this contract in accordance with 48 CFR 517.207.

(End of provision)

552.219–70 Allocation of Orders—Partially Set-Aside Items.

As prescribed in 519.508, insert the following clause:

ALLOCATION OF ORDERS—PARTIALLY SET-ASIDE ITEMS (SEP 1999)

Where the set-aside portion of an item or group of items is awarded to a Contractor other than the one receiving the award on the corresponding non-set-aside portion, the Government will divide the requirements to be ordered between the two Contractors with the objective of achieving, as nearly as possible, a 50/50 division of the total value of orders placed after the award of the set-aside portion. In no case will this division vary by more than a 60/40 division (with either the non-set-aside or set-aside Contractor receiving the larger portion) from the time of the award of the set-aside portion.

(End of clause)

552.219–71 Notice to Offerors of Subcontracting Plan Requirements.

As prescribed in 519.708, insert the following provision:

NOTICE TO OFFERORS OF SUBCONTRACTING PLAN REQUIREMENTS (SEP 1999)

The General Services Administration (GSA) is committed to assuring that maximum practicable opportunity is provided to small, HUBZone small, small disadvantaged, and women-owned small business concerns to participate in the performance of this contract consistent with its efficient performance. GSA expects any subcontracting plan submitted pursuant to FAR 52.219–9, Small Business Subcontracting Plan, to reflect this commitment. Consequently, an offeror, other than a small business concern, before being awarded a contract exceeding $500,000 ($1,000,000 for construction), must demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors in the performance of this contract.

(End of provision)

552.219–72 Preparation, Submission, and Negotiation of Subcontracting Plans.

As prescribed in 519.708(b), insert the following provision:

PREPARATION, SUBMISSION, AND NEGOTIATION OF SUBCONTRACTING PLANS (SEP 1999)

(a) An offeror, other than a small business concern, submitting an offer that exceeds $500,000 ($1,000,000 for construction) shall submit a subcontracting plan with its initial offer. The subcontracting plan will be negotiated concurrently with price and any required technical and management proposals, unless the offeror submits a previously-approved commercial products plan.

(b) Maximum practicable utilization of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. The General Services Administration (GSA) expects that an offeror's subcontracting plan will reflect a commitment to assuring that small, HUBZone small, small disadvantaged, and women-owned small business concerns are provided the maximum practicable opportunity, consistent with efficient contract performance, to participate as subcontractors in the performance of the resulting contract. An offeror submitting a commercial products plan can reflect this commitment through subcontracting opportunities it provides that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(c) GSA believes that this potential contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors. Consequently, in addressing the eleven elements described at FAR 52.219–9(d) of the clause in this contract entitled Small Business Subcontracting Plan, the offeror shall:

(1) Demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, and women-owned small business concerns in performing the contract.

(2) Include a description of the offeror's subcontracting strategies used in any previous contracts, significant achievements, and how this plan will build upon those earlier achievements.

(3) Demonstrate through its plan that it understands the small business subcontracting program's objectives and GSA's expectations, and it is committed to taking those actions necessary to meet these goals or objectives.

(d) In determining the acceptability of any subcontracting plan, the Contracting Officer will take each of the following actions:

(1) Review the plan to verify that the offeror demonstrates an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the program and has included all the information, goals, and assurances required by FAR 52.219–9.

(2) Consider previous goals and achievements of contractors in the small industry.

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, and women-owned small business concerns.

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, and women-owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(e) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

(End of provision)

552.219–73 Goals for Subcontracting Plan.

As prescribed in 519.708(c), insert the following provision:

GOALS FOR SUBCONTRACTING PLAN (SEP 1999)

(a) Maximum practicable utilization of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits.

(1) The General Service Administration's (GSA's) commitment to ensuring that maximum practicable opportunity is provided to small, HUBZone small, small disdvantaged, and women-owned small business concerns to participate as subcontractors in the performance of this contract, consistent with its efficient performance, must be reflected in the offeror's subcontracting plan submitted pursuant to the clause of this contract at FAR 52.219–9, Small Business Subcontracting Plan.

(2) In addressing the eleven elements described at FAR 52.219–9(d), the offeror shall demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, and women-owned small business concerns in performing this contract. An offeror submitting a commercial products plan can demonstrate its commitment in providing maximum practicable opportunities through subcontracting opportunities it provides to small, HUBZone small, small disadvantaged, and women-owned small business concerns that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(3) The subcontracting plan shall include a description of the offeror's subcontracting strategies used in previous contracts and significant achievements, with an explanation of how this plan will build upon those earlier achievements. Additionally, the offeror shall demonstrate through its plan that it understands the small business subcontracting program's objectives, GSA's expectations, and is committed to taking those actions necessary to meet these goals or objectives.

(b) GSA believes that this contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors. Accordingly, it is anticipated that an acceptable subcontracting plan will contain at least the following goals:

Small Business	____ percent.
HUBZone Small Business	____ percent.
Small Disadvantaged Business	____ percent.
Women-Owned Small Business	____ percent.

NOTE: Target goals are expressed as a percentage of planned subcontracting dollars.

(c) In determining the acceptability of any subcontracting plan, the Contracting Officer will—

(1) Review the plan to verify that the offeror has demonstrated an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the programs and has included all the information, goals, and assurances required by FAR 52.219–9;

(2) Consider previous goals and achievements of contractors in the same industry;

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, and women-owned small business concerns; and

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, and women-owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(d) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

(End of provision)

Alternate I (SEP 1999). As prescribed in 519.708(c)(2), delete paragraph (b) of the basic provision and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

552.219–74 Section 8(a) Direct Award.

As prescribed in 519.870–8, insert the following clause:

SECTION 8(a) DIRECT AWARD (SEP 1999)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the General Services Administration. SBA retains the responsibility for 8(a) certifications, 8(a) eligibility determinations, and related issues, and will provide counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [*Complete at time of award*]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any advance payments or novation agreements. The contracting activity may assign contract administration functions to a contract administration office.

(c) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To the requirements of 52.219–14, Limitations on Subcontracting.

(End of clause)

552.223–70 Hazardous Substances.

As prescribed in 523.303(a), insert the following clause:

HAZARDOUS SUBSTANCES (MAY 1989)

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Materials Act, as amended (15 U.S.C. 1261–1276), implementing regulations thereof (16 CFR Chapter II), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

(End of clause)

552.223–71 Nonconforming Hazardous Materials.

As prescribed in 523.303(b), insert the following clause:

NONCONFORMING HAZARDOUS MATERIALS (SEP 1999)

(a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) ''Hazardous materials,'' as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure:

(1) may be interpreted as a willful failure to perform,

(2) may result in termination of the contract for default and

(3) shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104–3(b) and 9.406–2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

(End of clause)

552.223–72 Hazardous Material Information.

As prescribed in 523.370, insert the following provision:

HAZARDOUS MATERIAL INFORMATION (SEP 1999)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT shipping name	DOT hazard class	DOT label required
			Yes [ ] No [ ] Yes [ ] No [ ] Yes [ ] No [ ]

(End of provision)

552.225–70 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.

As prescribed in 525.1101, insert the following clause:

NOTICE OF PROCUREMENT RESTRICTION—HAND OR MEASURING TOOLS OR STAINLESS STEEL FLATWARE (SEP 1999)

(a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools or stainless steel flatware that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with Section 6–104.4 of the Armed Services Procurement Regulation (6/15/70)(32 CFR 6–104.4), that it is in the national interest to reject foreign products.

As used in this clause, a ''domestic end product'' is—

(1) Any hand or measuring tool, except for an electric or air-motor driven hand tool, or stainless steel flatware, wholly produced or manufactured, including all components, in the United States or its possessions; or

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

(b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this clause. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 41379, July 5, 2000]

552.227–70 Government Rights (Unlimited).

As prescribed in 527.409, insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAY 1989)

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

552.227–71 Drawings and Other Data to Become Property of Government.

As prescribed in 527.409(b), substitute the following clause:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAY 1989)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the ''person for whom the work was prepared'' for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of works beyond such period.

(End of clause)

552.228–70 Workers' Compensation Laws.

As prescribed in 528.310(a), insert the following clause:

WORKERS' COMPENSATION LAWS (SEP 1999)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workers' compensation laws to all lands and premises owned or held by the United States.

(End of clause)

552.229–70 Federal, State, and Local Taxes.

As prescribed in 529.401–70, insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (APR 1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of clause)

552.229–71 Federal Excise Tax—DC Government.

As prescribed in 529.401–71, insert the following clause:

FEDERAL EXCISE TAX—DC GOVERNMENT (SEP 1999)

If the District of Columbia cites an Internal Revenue Tax Exempt Certificate Number on orders placed under this contract, the Contractor shall bill shipments to the District of Columbia at prices exclusive of Federal excise tax and show the amount of such tax on the invoice.

(End of clause)

552.232–1 Payments.

As prescribed in 532.7104, insert the following clause:

PAYMENTS (APR 1984) (DEVIATION FAR 52.232–1)

(a) The Government shall pay the Contractor, without submission of invoices or vouchers, 30 days after the service period, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

(b) Unless otherwise specified in this contract, the Government will make payment on partial deliveries accepted by the Government if either:

(1) The amount due on the deliveries warrants it.

(2) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(c) When processing payment, GSA's Finance Office will automatically generate the 12 digit invoice number using the ACT number assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 1997). The ACT number appears on the contract award document.

(End of clause)

552.232–8 Discounts for Prompt Payment.

As prescribed in 532.206, insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (APR 1989) (DEVIATION FAR 52.232–8)

(a) Discounts for early payment (hereinafter referred to as ''discounts'' or ''the discount'') will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the ''Offers on Identical Products'' provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the ''value of funds'' rate established by the Department of the Treasury and published quarterly in the FEDERAL REGISTER. The ''value of funds'' rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101–26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of clause)

552.232–23 Assignment of Claims.

As prescribed in 532.806, insert the following clause:

ASSIGNMENT OF CLAIMS (SEP 1999)

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause (FAR 52.232–23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as ''the Act''), all amounts due or to become due under any order amounting to $1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

(End of clause)

552.232–25 Prompt Payment.

As prescribed in 532.908(a)(2), insert the following clause:

PROMPT PAYMENT (JUL 1998) (DEVIATION FAR 52.232–25)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments. (1) The due date for making invoice payments by the designated payment office is:

(i) For orders placed electronically by the General Services Administration (GSA) Federal Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(A) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(ii) For all other orders, the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date ofthe Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor.

(iii) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(2) The General Services Administration will issue payment on the due date in (a)(1)(i) above if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(i) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(ii) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) or submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

(iii) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(iv) The EDI transaction sets in (i) through (iii) above must adhere to implementation conventions provided by GSA.

(3) If any of the conditions in(a)(2) above do not occur, the 10 day payment due dates in (a)(1) become 30 day payment due dates.

(4) Certain food products and other payments.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182 (3)), and as further defined in Pub. L. 98–181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, an any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For daily products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressing, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(5) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. Notwithstanding paragraph (g) of the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required. A proper invoice must include the items listed in subdivisions (a)(5)(i) through (a)(5)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services preformed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, an extended prices of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills or lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(6) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(6)(i) through (a)(6)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(7) Computing penalty amount. The interest penalty shall be at the rate established

by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the ''Renegotiation Board Interest Rate,'' and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(5) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does, not however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(8) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(7) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(9) Additional interest penalty.

(i) If this contract was awarded on or October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(9)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of $1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(9)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt

by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(1) The additional penalty shall not exceed $5,000;

(2) The additional penalty shall never be less than $25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments. (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213–1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

552.232–70 Invoice Requirements.

As prescribed in 532.111(a), insert the following clause:

INVOICE REQUIREMENTS (SEP 1999)

(a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or order.

(b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the order.

ACT Number (Contracting Officer insert number)

(c) In addition to the requirements for a proper invoice specified in the Prompt Payment clause on this contract or order, the following information or documentation must be submitted with each invoice:

(Contracting Officer list additional requirements.)

(End of clause)

552.232–71 Adjusting Payments.

As prescribed in 532.111(b), insert the following clause:

ADJUSTING PAYMENTS (SEP 1999)

(a) Under the Inspection of Services clause of this contract, payments may be adjusted if any services do not conform with contract requirements. The Contracting Office or a designated representative will inform the Contractor, in writing, of the type and dollar amount of proposed deductions by the 10th workday of the month following the performance period for which the deductions are to be made.

(b) The Contractor may, within 10 working days of receipt of the notification of the proposed deductions, present to the Contracting Officer specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within the 10-day

period will be interpreted to mean that the Contractor accepts the deductions proposed.

(c) All or a portion of the final payment may be delayed or withheld until the Contracting Officer makes a final decision on the proposed deduction. If the Contracting Officer determines that any or all of the proposed deductions are warranted, the Contracting Officer shall so notify the Contractor, and adjust payments under the contract accordingly.

(End of clause)

552.232–72 Final Payment.

As prescribed in 532.111(c), insert the following clause:

FINAL PAYMENT (SEP 1999)

Before final payment is made, the Contractor shall furnish the Contracting Officer with a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under Assignment of Claims Act of 1940, as amended (31 U.S. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)

552.232–73 Availability of Funds.

As prescribed in 532.705–1, insert the following clause:

AVAILABILITY OF FUNDS (SEP 1999)

The authorization of performance of work under this contract during the initial contract period and any option or extension period(s) is contingent upon the appropriation of funds to procure this service. If the contract is awarded, extended, or option(s) exercised, the Government's obligation beyond the end of the fiscal year (September 30), in which the award or extension is made or option(s) exercised, is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Government for payment of any money beyond the end of the each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for this procurement and written notice of such availability is given to the Contractor.

(End of clause)

552.232–74 Invoice Payments.

As prescribed in 532.908 (a)(1), insert the following clause:

INVOICE PAYMENTS (SEP 1999)

(a) The due date for making invoice payments by the designated payment office is:

(1) For orders placed electronically by the General Services Administration (GSA) Federal Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(2) For all other orders, the later of the following two events:

(i) The 30th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and on disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor.

(3) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(b) The General Services Administration will issue payment on the due date in (a)(1) above if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(1) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(2) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) of submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

(3) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(4) The EDI transaction sets in (b)(1) through (b)(3) above must adhere to implementation conventions provided by GSA.

(c) If any of the conditions in (b) above do not occur, the 10-day payment due dates in (a)(1) become 30-day payment due dates.

(d) Notwithstanding paragraph (g) of the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required.

(e) All other provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment, apply.

(End of clause)

552.232–75 Prompt Payment

As prescribed in 532.908 (b)(1), insert the following clause:

PROMPT PAYMENT (SEP 1999)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date.*

(1) *Rental Payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Names and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7 day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.* (1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the ''Renegotiation Board Interest Rate,'' and it is published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest rates penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may

be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(End of clause)

Alternate I (SEP 1999). If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated (b).

552.232–76 Electronic Funds Transfer Payment.

As prescribed in 532.908(b)(2), insert the following clause:

ELECTRONIC FUNDS TRANSFER PAYMENT (MAR 2000)

(a) The Government will make payments under this lease by electronic funds transfer (EFT). The Lessor must, no later than 30 days before the first payment:

(1) Designate a financial institution for receipt of EFT payments.

(2) Submit this designation to the Contracting Officer or other Government official, as directed.

(b) The Lessor must provide the following information:

(1) The American Bankers Association 9-digit identifying number for Automated Clearing House (ACH) transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account (''C'' for checking, ''S'' for savings).

(4) If the Lessor is a new enrollee to the EFT system, the Lessor must complete and submit a ''Payment Information Form,'' SF 3881, before payment can be processed.

(c) If the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment, the appropriate Government official must receive notice of such change and the required information specified above no later than 30 days before the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the:

(1) Signature, title, and telephone number of the Lessor or the Lessor's authorized representative.

(2) Lessor's name.

(3) Lease number.

(e) Lessor's failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 11248, Mar. 2, 2000]

552.232–77 Payment By Governmentwide Commercial Purchase Card.

PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAR 2000)

(a) Definitions. ''Governmentwide commercial purchase card'' means a uniquely numbered credit card issued by a contractor under GSA's Governmentwide Contract for Fleet, Travel, and purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

''Oral order'' means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of _____*__ or less for oral or written orders may be made using the Governmentwide commercial purchase card.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(d) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

(End of clause)

**Enter amount not to exceed $100,000.*

Alternate I (MAR 2000). For FSS schedule solicitations and contracts, replace paragraph (b) of the basic clause and add paragraph (c) as follows. Redesignate paragraphs (c) and (d) of the basic clause as (d) and (e) respectively.

(b) The Contractor must accept the Governmentwide commercial purchase card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.

(c) The Contractor and the ordering agency may agree to use the Governmentwide commercial purchase card for dollar amounts over the micro-purchase threshold, and the

Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency's established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.

[65 FR 11248, Mar. 2, 2000]

552.232–78 Payment Information.

As prescribed in 532.908(c), insert the following information.

PAYMENT INFORMATION (JUN 2000)

The General Services Administration (GSA) makes information on contract payments available electronically at http://www.finance.gsa.gov. The Contractor may register at the site and review its record of payments. This site provides information only on payments made by GSA, not by other agencies.

(End of clause)

[65 FR 41379, July 5, 2000]

552.233–70 Protests Filed Directly With the General Services Administration.

As prescribed in 533.103–72, insert the following provisions:

PROTESTS FILED DIRECTLY WITH THE GENERAL SERVICES ADMINISTRATION (MAR 2000)

(a) The following definitions apply in this provision:

''Agency Protest Official for GSA'' means the official in the Office of Acquisition Policy designated to review ad decide procurement protests filed with GSA.

''Deciding official'' means the person chosen by the protester to decide the agency protest. The deciding official may be either the Contracting Officer or the Agency Protest Official.

(b) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests. GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Protests delivered after 4:30 p.m. will be considered received and filed the following business day.

(c) A protest filed directly with the General Services Administration (GSA) must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protester chooses to have the Contracting Officer or the Agency Protest Official for GSA decide the protest. If the protest is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protester prefers to make an oral presentation, a written presentation, or an oral presentation confirmed in writing, of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(d)(2):

(i) Name, address, fax number, and telephone number of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest (see paragraph (b) of this provision).

(d) An interested party filing a protest with GSA has the choice of requesting either that the Contracting Officer or the Agency Protest Official for GSA decide the protest.

(e) The decision by the Agency Protest Official for GSA is an alternative to a decision by the Contracting Officer. The Agency Protest Official for GSA will not consider appeals from the Contracting Officer's decision on an agency protest.

(f) The deciding Official must conduct a scheduling conference with the protester within three (3) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(g) Oral conferences may take place either by telephone or in person. Other parties (e.g., representatives of the program office) may attend at the discretion of the deciding official.

(h) The following procedures apply to information submitted in support of or in response to an agency protest:

(1) The protester and the agency have only one opportunity to support or explain the substance of the protest (either orally, in writing, or orally confirmed in writing).

(2) GSA procedures do not provide for any discovery.

(3) The deciding official has discretion to request additional information from either the agency or the protester. However, the deciding official will normally decide protests

on the basis of information provided by the protester and the agency.

(4) Except as provided in paragraph (5)(ii) below, the parties are encouraged, but not required, to exchange information submitted to the Agency Protest Official for GSA.

(5) If the agency makes a written response to the protest, the following filling requirements apply unless the deciding official approves other arrangements:

(i) The agency must file its response to the protest with the deciding official within five (5) days after the filing of the protest.

(ii) The agency must also provide the protester with a copy of the response on the same day it files the response with the deciding official. If the agency believes it needs to redact or withhold any information in the response from the protester, it must obtain the approval of the deciding official.

(i) The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(j) An interested party may represent itself or be represented by legal counsel. GSA will not reimburse the party for any legal fees related to the agency protest.

(k) GSA will stay award or suspend contract performance in accordance with FAR 33.103(f). The stay or suspension, unless overridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(l) The deciding official will make a best effort to issue a decision on the protest within twenty-eight (28) days after the filing date. The decision may be oral or written. If the decision is communicated orally to the protester, the deciding official will confirm in writing within three (3) days after the decision.

(m) GSA may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a protest forum outside of GSA.

(End of provision)

[64 FR 37229, July 9, 1999, as amended at 65 FR 11248, Mar. 2, 2000]

552.236–70 Definitions.

As prescribed in 536.570–1, insert the following clause:

DEFINITIONS (APR 1984)

The terms ''Administration'' and ''Service'' as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of clause)

552.236–71 Authorities and Limitations.

As prescribed in 536.570–2, insert the following clause:

AUTHORITIES AND LIMITATIONS (APR 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

(End of clause)

552.236–72 Specialist.

As prescribed in 536.570–3, insert the following clause:

SPECIALIST (APR 1984)

The term ''Specialist,'' as used in the contract specification, shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen

skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

(End of clause)

552.236–73 Basis of Award—Construction Contract.

As prescribed in 536.570–4, insert the following provision or the appropriate Alternate:

BASIS OF AWARD—CONSTRUCTION CONTRACT (APR 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled ''Contract Award—Sealed Bidding.''

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

Alternate I (APR 1985). if the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled ''Contract Award—Sealed Bidding.''

Alternate II (APR 1985). If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled ''Contract Award—Sealed Bidding.''

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternatives being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and four alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceed the amount offered by any other responsible bidder for thesame combination of alternates, the award cannot be made on that combination of alternates.

Alternate III (APR 1985). If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to

be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled ''Contract Award—Sealed Bidding.''

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection under paragraph (c). If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

552.236–74 Working Hours.

As prescribed in 536.570–5, insert the following clause:

WORKING HOURS (APR 1984)

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of clause)

552.236–75 Use of Premises.

As prescribed in 536.570–6, insert the following clause:

USE OF PREMISES (APR 1984)

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

(End of clause)

552.236–76 Measurements.

As prescribed in 536.570–7, insert the following clause:

MEASUREMENTS (APR 1984)

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

(End of clause)

552.236–77 Specifications and Drawings

As prescribed in 536.570–8, insert the following clause:

SPECIFICATIONS AND DRAWINGS (SEP 1999)

The requirements of the clause entitled ''Specifications and Drawings for Construction'' at FAR 52.236–21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in

outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(b) Where the word ''similar'' occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(c) Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

(d) In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and their drawings prepared specifically for this contract, the later shall govern.

(End of clause)

552.236–78 Shop Drawings, Coordination Drawings, and Schedules.

As prescribed in 536.570–9, insert the following clause:

SHOP DRAWINGS, COORDINATION DRAWINGS, AND SCHEDULES (SEP 1999)

The requirements, of the clause entitled ''Specifications and Drawings for Construction'' at FAR 52.236–21, are supplemented as follows:

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

(b) Show drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturers' scale drawings, wriring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(c) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

(d) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

(e) Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:

Number and title of drawing
Date of drawing or revision
Name of project building or facility
Name of Contractor and (if appropriate) name of subcontractor submitting drawing
Clear identify of contents and location on the work
Project title and contract number

(f) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

(g) Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

(End of clause)

552.236–79 Samples.

As prescribed in 536.570–10, insert the following clause:

SAMPLES (APR 1984)

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

(1) Name of project building or facility, project title and contract number.

(2) Name of Contractor and, if appropriate, name of subcontractor.

(3) Identification of material or equipment with specification requirement.

(4) Place of origin.

(5) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting

each shipment of samples and containing the information required in paragraph (b) of this clause. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

(End of clause)

552.236–80 Heat.

As prescribed in 536.570–11, insert the following clause:

HEAT (APR 1984)

Unless otherwise specified or unless already provided by the Government the Contractor shall;

(a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;

(b) Protect, cover and/or heat as may be necessary, to provide and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and

(c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing or interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

(End of clause)

552.236–81 Use of Equipment by the Government.

As prescribed in 536.570–12, insert the following clause:

USE OF EQUIPMENT BY THE GOVERNMENT (APR 1984)

(a) The Government may take over and operate, with Government employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.

(b) The Contracting Officer will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation will begin.

(c) Government operation of equipment will not relieve the Contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.

(d) The guarantee period, elsewhere provided for in this contact, for each piece of equipment shall be in accordance with the ''Guarantees'' clause of this contract.

(End of clause)

552.236–82 Subcontracts.

As prescribed in 536.570–13, insert the following clause:

SUBCONTRACTS (APR 1984)

(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 his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.

(c) The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.

(End of clause)

552.236–83 Requirement for a Project Labor Agreement.

As prescribed in 536.570–14, insert a clause substantially the same as the following:

REQUIREMENT FOR A PROJECT LABOR AGREEMENT (SEP 1999)

(a) Definition. ''Project Labor Agreement'' (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

(b) The Contractor shall, after contract award, enter into a PLA for performance of [*Insert project or contract name*]. The PLA binds the Contractor and subcontractors of whatever tier engaged in onsite construction work. The PLA shall include all the following terms:

(1) Guarantees against strikes, lockouts, and similar work disruptions.

(2) Effective, prompt and mutually binding procedures for resolving labor disputes arising during the project.

(3) Other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.

(4) The PLA shall fully conform to all applicable statutes, regulations, and Executive Orders.

(c) Any PLA reached under this clause shall not change the terms of this contract or provide for any pricing adjustment by the Government.

(d) The Government shall not participate in the negotiations of any PLA.

(e) Nothing in this clause precludes contractors or subcontractors from competing for contracts or subcontracts on this project without discrimination based on union or non-union status.

(End of clause)

552.237–70 Qualifications of Offerors.

As prescribed in 537.110(a), insert the following provision:

QUALIFICATIONS OF OFFERORS (MAY 1989)

(a) Offers will be considered only from responsible organizations or individuals now or recently engaged in the performance of building service contracts comparable to those described in this solicitation. In order to determine an Offeror's qualifications, the Offeror may be requested to furnish a narrative statement listing comparable contracts which it has performed; a general history of its operating organization; and its complete experience. An Offeror may also be required to furnish a statement of its financial resources; show that it has the ability to maintain a staff of regular employees adequate to ensure continuous performance of the work; and, demonstrate that its equipment and/or plant capacity for the work contemplated is sufficient, adequate, and suitable.

(b) Competency in performing comparable building service contracts, demonstration of acceptable financial resources, personnel staffing, plant, equipment, and supply sources will be considered in determining whether an Offeror is responsible.

(c) Prospective Offerors are advised that in evaluating these areas involving any small business concern(s), any negative determinations are subject to the Certificate of Competency procedures set forth in the Federal Acquisition Regulation.

(End of provision)

552.237–71 Qualifications of Employees.

As prescribed in 537.110(b), insert the following clause:

QUALIFICATIONS OF EMPLOYEES (MAY 1989)

(a) The contracting officer or a designated representative may require the Contractor to remove any employee(s) from GSA controlled buildings or other real property should it be determined that the individual(s) is either unsuitable for security reasons or otherwise unfit to work on GSA controlled property.

(b) The Contractor shall fill out and cause all of its employees performing work 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 and its employees shall be fingerprinted.

(c) 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 immigration status.

(End of clause)

552.237–72 Prohibition Regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(c), insert the following clause:

PROHIBITION REGARDING ''QUASI-MILITARY ARMED FORCES'' (SEP 1999)

The Contractor must not, during the term of this contract, offer for hire ''Quasi-Military Armed Forces'' within the meaning of the court decision in United States ex. rel. Weinberger v. Equifax, 557 F.2d 456 (5th Cir. 1977).

(End of clause)

552.237–73 Restriction on Disclosure of Information.

As prescribed in 537.270, insert the following clause:

RESTRICTION ON DISCLOSURE OF INFORMATION (SEP 1999)

(a) The Contractor shall, in the performance of this contract, keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor shall not publish or otherwise divulge such information in whole or in part, in any manner or form, nor authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to such information, while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a ''need to know'' basis. The Contractor shall immediately notify, in writing, the Contracting Officer in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor shall not disclose any information concerning the work under this contract to any person or individual unless the Contractor obtains prior written approval from the Contracting Officer.

(c) The Contractor shall insert the substance of this clause in any consultant agreement or subcontract under this contract.

(d) Any unauthorized disclosure of information may result in termination of this contract for cause.

(End of clause)

552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

As prescribed in 538.273(a)(1), insert the following clause:

IDENTIFICATION OF ELECTRONIC OFFICE EQUIPMENT PROVIDING ACCESSIBILITY FOR THE HANDICAPPED (SEP 1991)

(a) *Definitions.* ''Electronic office equipment accessiblity'' means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a manner that accommodates the functional limitations of individuals with disabilities (i.e., handicapped individuals) so as to promote productivity and provide access to work related and/or public information resources.

''Handicapped individuals'' mean qualified individuals with impairments as cited in 29 CFR 1613.702(f) who can benefit from electronic office equipment accessibility.

''Special peripheral'' means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for handicapped individuals. Identification should include the type of disability accommodated and how the users with that disability would be helped.

(End of clause)

552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists.

As prescribed in 538.273(a)(2), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FSS SCHEDULE PRICELISTS (SEP 1999)

(a) Definition. For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: ''the list of addressees provided to the Contractor by the Contracting Officer'' or ''the Contractor's listing of its Federal Government customers'']].

(b) The Contracting Officer will return one copy of the Authorize FSS Schedule Pricelist to the Contractor with the notification of contract award.

(c)(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium.

The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

(i) One paper copy of the Authorized FSS Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressee that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the on-line Multiple Award Schedule electronic data base.

(d) The Contractor shall make all of the distributions required in paragraph (c) at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(e) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of clause)

552.238–72 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes.

As prescribed in 538.273(a)(3), insert the following clause:

IDENTIFICATION OF ENERGY-EFFICIENT OFFICE EQUIPMENT AND SUPPLIES CONTAINING RECOVERED MATERIALS OR OTHER ENVIRONMENTAL ATTRIBUTES (SEP 1999)

(a) *Definitions.* ''Energy-efficient office equipment,'' as used in this clause, means office equipment that, in representative use, provides equivalent or better performance and value to users, but uses significantly less energy than most functionally equivalent models.

''Recovered materials,'' as used in this clause, means waste material and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused, within an original manufacturing process (42 U.S.C. 6903(19)). For paper, it also includes postconsumer materials, and manufacturing and certain other wastes. (42 U.S.C. 6962(h)).

''Remanufactured products,'' as used in this clause, means equipment or parts that have been factory remanufactured or rebuilt to meet new equipment or part performance specifications and have had no use subsequent to their remanufacture.

(b) The offeror shall identify in its offer and include in any commercial catalogs and pricelists and any resultant Government catalogs or pricelists submitted to the Contracting Officer, energy-efficient office equipment and supplies that contain recovered material, remanufactured products, or other environmental attributes. Examples of energy-efficient office equipment are microcomputers and associated equipment that meet the requirements of the Environmental Protection Agency's (EPA's) Energy Star Computers Program. Supplies that contain recovered materials and other environmental attributes include, but are not limited to, products identified in EPA procurement guidelines (40 CFR Subchapter I) and products that are either degradable, ozone safe, recyclable, contain low volatile organic content compounds, contribute to source reduction, or otherwise are designed or manufactured to achieve environmental improvement. For example, an offeror can identify products that are safe or safer alternatives for more toxic or hazardous products and products that can be substituted for ones manufactured with toxic or hazardous materials. Such supplies shall satisfy the guidance contained in 16 CFR Part 260, Guides for the Use of Environmental Marketing Claims.

(c) An offeror, in identifying an item with an environmental attribute, shall possess evidence or rely upon a reasonable basis to substantiate the claim (see 16 CFR 260.5). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program, e.g., EPA's Energy Star Computer program;

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study or other evidence to be ''competent and reliable,'' it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

552.238–73 Cancellation.

As prescribed in 538.273(a)(4), insert the following clause:

CANCELLATION (SEP 1999)

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

(End of clause)

552.238–74 Contractor's Report of Sales.

As prescribed in 538.273(b)(1), insert the following clause:

CONTRACTOR'S REPORT OF SALES (SEP 1999)

(a) The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of all sales under this contract by calendar quarter (i.e., January–March, April–June, July–September, and October–December). The dollar value of a sale is the price paid by the schedule user for products and services on a schedule contract task or delivery order, as recorded by the Contractor. The reported contract sales value must include the industrial funding fee (see Clause 552.238–76).

(b) The Contractor must report the quarterly dollar value of sales on electronic GSA Form 72A, Contractor's Report of Sales, to the FSS Vendor Support Center (VSC) Website at Internet, http://VSC.gsa.gov. The Contractor must report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or subitem. If no sales occur, the Contractor must show zero on the report for each separate NSN, SIN, or subitem.

(c) The Contractor must register with the VSC before using the automated reporting system. To register, the Contractor (or its authorized representative) must call the VSC at (703) 305–6235 and provide the necessary information regarding the company, contact name(s), and telephone number(s). The VSC will then issue a 72A specific password and provide other information needed to access the reporting system. Instructions for electronic reporting are available at the VSC Website or by calling the above phone number.

(d) The Contractor must convert the total value of sales made in foreign currency to U.S. dollars using the ''Treasury Reporting Rates of Exchange,'' issued by the U.S. Department of Treasury, Financial Management Service. The Contractor must use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from: Department of the Treasury, Financial Management Service, International Funds Branch, 3700 East-West Highway, PGCII, Room 5A19, Hyattsville, MD 20782, Telephone: (202) 874–7994, Internet: http://www.fms.treas.gov/intn.html.

(e) The report is due 30 days following the completion of the reporting period. The Contractor must also provide a close-out report within 120 days after the expiration of the contract. The contract expires upon physical completion of the last, outstanding task or delivery order of the contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then show zero sales in the close-out report.

(End of clause)

552.238–75 Price Reductions.

As prescribed in 538.273(b)(2), insert the following clause:

PRICE REDUCTIONS (SEP 1999)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained through out the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c)(1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the Government with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies; or

(3) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Government-wide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contractor will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

552.238–76 Industrial Funding Fee.

As prescribed in 538.273(b)(3), insert the following clause:

INDUSTRIAL FUNDING FEE (SEP 1999)

(a) The Contractor must pay the Federal Supply Service, GSA, an industrial funding fee (IFF). The Contractor must remit the IFF in U.S. dollars within 30 days after the end of each quarterly reporting period as established in clause 552.238–74, Contractor's Report of Sales. The IFF equals _____*_____ of total quarterly sales reported. The IFF reimburses the GSA Federal Supply Service for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities.

(b) The Contractor must remit any monies due as a result of the close-out report required by Clause 552.238–74 at the time the close-out report is submitted to GSA.

(c) The Contractor must pay the IFF amount due by check, or electronic funds transfer through the Automated Clearing House (ACH), to the ''General Services Administration.'' If the payment involves multiple special item numbers or contracts, the Contractor may consolidate the IFFs into one payment. To ensure that the payment is credited properly, the Contractor must identify the check or electronic transmission as an ''Industrial Funding Fee'' and include the following information: contract number(s); report amount(s); and report period(s). If the Contractor makes payment by check, provide this information on either the check, check stub, or other remittance material.

(1) If paying the IFF by check, the Contractor must forward the check to the following address: General Services Administration, Accounts Receivable Branch, P.O. Box 70500, Chicago, IL 60673–0500.

(2) If paying by electronic funds transfer through the ACH, the Contractor must call GSA, Financial Information Control Branch, Receivables, Collections and Sales Section (6BCDR) at [*Contracting Officer to insert phone number*] to make arrangements.

(d) If the full amount of the IFF is not paid within 30 calendar days after the end of the applicable reporting period, it constitutes a contract debt to the United States Government under the terms of FAR 32.6. The Government may exercise all rights under the Debt Collection Act of 1982, including withholding or setting off payments and interest on the debt (see FAR 52.232–17, Interest).

(e) If the Contractor fails to submit sales reports, falsifies sales report, or fails to pay the IFF In a timely manner, the Government may terminate or cancel this contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to pay the IFF timely constitutes sufficient cause for terminating the Contractor for cause under the termination provisions of this contract.

(End of clause)

**The Commissioner, Federal Supply Service or a designee determines and provides to contracting officers the percentage amount of the fee to insert in the above clause.*

552.242–70 Status Report of Orders and Shipments.

As prescribed in 542.1107, insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (APR 1992)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form. The information required by the GSA Form 1678 may also be submitted in an automated printout form if authorized by the ACO. Alternatively, the required information may be reported by electronic data interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [*Insert appropriate telephone number of FQC*] Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of clause)

552.243–70 Pricing of Adjustments.

As prescribed in 543.205(a)(1), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1989)

When costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract.

(End of clause)

552.243–71 Equitable Adjustments.

As prescribed in 543.205(a)(2), insert the following clause:

EQUITABLE ADJUSTMENTS (APR 1984)

(a) The provisions of the ''Changes'' clause prescribed by FAR 52.243–4 are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the ''Equitable Adjustments'' clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs

Material quantities by trades and unit costs

(Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site)

Labor breakdown by trades and unit costs

(Identified with specific item of material to be placed or operation to be performed)

Construction equipment exclusively necessary for the change

Costs of preparation and/or revision to shop drawings resulting from the change

Workers' Compensation and Public Liability Insurance

Employment taxes under FICA and FUTA

Bond Costs—when size of change warrants revision

Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following unless the Contractor demonstrates entitlement to a higher percentage:

	Overhead	Profit (percent)	Commission (percent)
To Contractor on work performed by other than his own forces	.....	.....	10
To first tier subcontractor on work performed by his subcontractors	.....	.....	10
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces.	To be Negotiated	10	.....

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or

agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the ''Differing Site Conditions'' clause prescribed by FAR 52.236–2 are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this ''Equitable Adjustments'' clause.

(End of clause)

552.243–72 Modifications (Multiple Award Schedule).

As prescribed in 543.205(b), insert the following clause:

MODIFICATIONS (MULTIPLE AWARD SCHEDULE (JUL 2000)

(a) *General.* The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.*

(1) *Additional items/additional SINs.* When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new item(s) or new SIN(s). Specifically, submit the information requested in *paragraphs 3 through 5* of the Commercial Sales Practice Format. This information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.212–70, Preparation of Offer (Multiple Award Schedule) is required.

(iv) Delivery time(s) for the new item(s) or the items under the new SIN(s) must be submitted in accordance with 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by 52.215–6, Place of Performance.

(vi) Hazardous material information (if applicable) must be submitted as required by 52.223–3 (ALT I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by 52.212–3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225–1, Buy American Act—Balance of Payments Programs—Supplies.

(2) *Deletions.* The Contractor shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price Reduction.* The Contractor shall indicate whether the price reduction falls under item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238–75. If the price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective Dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238–75.

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the contracting officer as set forth in the Price Reductions clause at 552.238–75.

(e) *Amendments to Paper Supply Schedule Price Lists.*

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the

Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February—April, and every 3 month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the contracting officer, and one copy to the FSS Schedule Information Center.

(End of clause)

Alternate I (Sep 1999). As prescribed in 543.205(b), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions and corrections without prior approval. However, the Contractor shall notify the contracting officer as set forth in the Price Reductions clause at 552.238–75.

[64 FR 37229, July 9, 1999, as amended at 65 FR 41379, July 5, 2000]

552.246–17 Warranty of Supplies of a Noncomplex Nature

As prescribed in 546.710(a), insert the following clause:

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (DEC 1990) (DEVIATION FAR 52.246–17)

(a) *Definitions.* ''Acceptance,'' as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

''Correction,'' as used in this clause, means the elimination of a defect.

''Supplies,'' as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include ''data.''

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such applies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and ''fitness for a particular purpose'' are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.*

(1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause with _____*_____. This notice shall contain information concerning the deficiencies found, the location of the nonconforming supplies, and the quantity involved.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the

applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided,* that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement. All costs incurred by the Government in returning the nonconforming supplies, including costs to the freight carrier resulting from the Contractor's refusal to accept their return, shall be for the Contractor's account.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price for all nonconforming supplies, including batch or lot materials which either have been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may return the supplies for screening and correction or replacement under subparagraph (c)(3)(ii)(D) above; store the nonconforming supplies for the Contractor's account; sell the nonconforming supplies to the highest bidder on the open market and apply the proceeds against the accumulated storage and other costs, including the cost of the sale; or otherwise dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) whom to notify if the supplies are found to be defective.

(End of clause)

**State the specific period of time after delivery or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.*

***Insert specific period of time; e.g., ''45 days from the last delivery under this contract,'' or ''45 days after discovery of the defect.'' The number of days specified shall be no less than 30.*

Alternate I (DEC 1990). As prescribed in 546.710(a)(1), substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition

of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____ all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

Alternate II (DEC 1990). As prescribed in 546.710(a)(2), substitute the following paragraph for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____ all supplies furnished—

(i) Conform to the specifications except that in the case of solvent systems, the viscosity may exceed the specified maximum by 10 Kreb Units, unless otherwise specified elsewhere in this contract; and

(ii) Are suitable for their intended purpose as stated in this contact.

Alternate III (DEC 1990). As prescribed in 546.710(a)(3), substitute the following for paragraph (b)(1) of the basic clause, redesignate paragraph (c) of the basic clause as paragraph (d), and add the following as paragraph (c) in the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____, beginning with the first day of the first full month following the month of manufacture marked on the container, all supplies furnished retain their original characteristics to the extent that the supplies remain suitable for the intended use as stated in this contract (i) under actual application conditions or (ii) when tested in accordance with requirements stated elsewhere in this contract.

(c) *Government surveillance and testing.*

(1) During this period, surveillance will be maintained on supplies warehoused in Government facilities; and the supplies will be tested periodically to determine their suitability for intended use. Sampling for surveillance testing will be in accordance with Military Standard No. 105, and such testing will be made after NORMAL MIXING, STIRRING, OR SHAKING, in accordance with directions either furnished with the supplies or as shown in the applicable specifications.

(2) Surveillance testing will be based on storage stability requirements set forth in the contract specification, or purchase description on the basis of salient characteristics (e.g., viscosity or sag flow, curing time, strip adhesion or tensile shear, etc.) established by GSA as appropriate to determine suitability for intended use. In the case of brand name items not covered by detailed purchase descriptions, surveillance testing may be based on salient characteristics included in the manufacturer's data sheets. If storage stability requirements showing allowable variations are not included in applicable specifications or elsewhere in the contract, material will be considered suitable for intended use if the salient characteristics vary not more than 20 percent from the originally specified values (i.e., those applicable to acceptance testing of the supplies) for noncritical end-use items, and not more then 10 percent for critical end-use items.

552.246–70 Source Inspection by Quality Approved Manufacturer.

As prescribed in 546.302–70, insert the following clause:

SOURCE INSPECTION BY QUALITY APPROVED MANUFACTURER (SEP 1999)

(a) *Inspection system and inspection facilities.*

(1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246–2) of this contract shall be maintained throughout the contract period and shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001 (ANSI/ASQC Q 91) (Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation and Servicing), or ISO Standard 9002 (ANSI/ASQC Q 92) (Quality Systems—Model for Quality Assurance in Production and Installation). The ISO 9000 family of standards is a set of worldwide standards used to document, implement and demonstrate quality assurance systems. When using the ISO option the Contractor's quality system must be registered by a third party registrar accredited by either the Registrar Accreditation Board (RAB) or an organization recognized as equivalent. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office of any changes made in the inspection system during the contract period. As used herein, the term ''inspection system'' means the Contractor's own facility or any other facility acceptable to the Government that

will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001 or ISO 9002 records shall include the date when inspection and testing were performed. These records shall be available for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) Within 10 calendar days after receipt of the written notice of award, the Contractor shall provide the Administrative Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) *Inspection and receiving reports.*

(1) For each shipment released, one of the officials named by the Contractor under paragraph (a)(4) above shall sign a Quality Approved Manufacturer Certificate certifying that supplies have been inspected and found to comply with contract requirements. The certification shall read as follows:

''I certify that all items in this shipment have been listed herein, and have been inspected and found to comply with all requirements of the contract.''

Signature of Certifying Official

(2) For shipments made to military facilities, the Contractor shall prepare and distribute the DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent of the form not later than the close of business the workday following shipment. The certification above shall be placed in block 16 on this form. The Contractor will be provided a supply of the DD Form 250 with complete instructions for preparation and distribution.

(3) For shipments made to civilian facilities *only*, the Contractor shall prepare and distribute not later than the close of business the workday following shipment a certification of inspection and conformance for the identified items, in accordance with instructions furnished at the time of award. The Contractor may furnish the requisite information on the DD Form 250 or computer formatted equivalent, company letterhead, or invoice document.

(c) *Inspection by Government personnel.*

(1) Although the Government will normally rely upon the Contractor's certification as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by the Government is completed and shipment is authorized by the Government.

(2) Government inspection responsibility will be assigned the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for verification inspection and testing. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damages in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) *Quality deficiencies.*

(1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of _____*_____ months after acceptance shall, at the Government's option, be replaced, repaired or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its expense, supplies rejected or required to be replaced, repaired or corrected. When the nature of the defect affects an entire batch or lot of supplies, and

the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies and reducing the contract price by an amount equitable under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) If supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements, or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the GSA quality assurance office, within 5 workdays, of corrective action taken or to be taken to permit on site verification by a Government representative. Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination. Delays due to the insurance of a QDN do not constitute excusable delay under the Default clause. Failure to complete corrective action in a timely manner may result in termination of this contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies which do not meet the requirements of the specification are being shipped, or there is failure to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____*_____ per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____*_____ per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____*_____ per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under paragraph (d) above, pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246–2, supplies may be—

(1) Stored for the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

(End of clause)

**Normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, you should use the shelf-life period, or in the instance where you reasonably expect a longer period to be available, you should use the longer period.*

***The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.*

552.246–71 Source Inspection by Government.

As prescribed in 546.302–71, insert the following clause:

SOUCE INSPECTION BY GOVERNMENT (SEP 1999)

(a) *Inspection by Government personnel.*

(1) Supplies to be furnished under this contract will be inspected at source by the Government before shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the

Contracting Officer before release of the supplies for shipment. Samples sent to a Government resting facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's subcontractor's plant or other designated point for inspection is located. The Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed and shipment is authorized by Government.

(b) *Inspection and receiving reports.* For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their reparation and distribution.

(c) *Inspection facilities.*

(1) The inspection system required to be maintained by the Contractor in accordance with FAR 52.246–2, Inspection of Supplies—Fixed Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. The facilities shall be utilized to perform all inspections and tests of materials and components before incorporation into end articles, and for the inspection of such end articles before shipment. The Government reserves the right to evaluate the acceptability and effectiveness of the Contractor's inspection system before award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(d) *Availability of records.*

(1) In addition to any other requirement of this contract, the Contractor shall maintain records showing the following information for each order received under the contract: (i) order number; (ii) date order received by the Contractor; (iii) quantity ordered; (iv) date scheduled into production; (v) batch or lot number, if applicable; (vi) date inspected and/or tested; (vii) date available for shipment; (viii) date shipped or date service completed; and (ix) National Stock Number (NSN), or if none is provided in the contract, the applicable item number or other contractual identification.

(2) These records should be maintained at the point of source inspection and shall be available to the Contracting Officer, or an authorized representative, for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost for inspecting/testing or reinspection/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____*_____ per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____*_____ per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____*_____ per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246–2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246–2, supplies may be—

(1) Stored for the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused

by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(End of clause)

** The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.*

552.246–72 Final Inspection and Tests.

As prescribed in 546.312, insert the following clause:

FINAL INSPECTION AND TESTS (SEP 1999)

The Contractor shall give written notice to the Contracting Officer at least 10 calendar days before the date the work will be completed and ready for final inspection and tests. Final inspection and tests will begin within 10 calendar days after the date specified in the Contractor's notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of clause)

552.246–73 Warranty—Multiple Award Schedule.

WARRANTY—MULTIPLE AWARD SCHEDULE (MAR 2000)

(a) *Applicable to domestic locations.* Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list applies to this contract.

(b) *Applicable to overseas destinations.* Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial price list applies to this contract, except as follows:

(1) The Contractor must provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the Government accepts the product.

(2) The Contractor must supply parts and labor required under the warranty provisions free of charge.

(3) The Contractor must bear the transportation costs of returning the products to and from the repair facility, or the costs involved with Contractor personnel traveling to The Government facility for the purpose of repairing the product onsite, during the 90-day warranty period.

(End of clause)

[65 FR 11248, Mar. 2, 2000]

552.246–74 [Reserved]

552.246–75 Guarantees.

As prescribed in 546.710(c), insert the following clause.

GUARANTEES (MAY 1989)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was placed in use by the Government, whichever occurs first.

(b)(1) If, within any guarantee period, the Contracting Officer finds that guaranteed work requires repair or change because of defective or inferior materials, equipment, or workmanship or is not in accordance with contract requirements, the Contracting Officer shall notify the Contractor in writing. The Contractor shall promptly, and without additional expense to the Government, correct:

(i) All guaranteed work;

(ii) All damage to equipment, the site, the building or its contents resulting from the unsatisfactory guaranteed work; and

(iii) Any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work, materials, and equipment that may have been guaranteed under another contract.

(2) If the Contractor fails to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

(c) Any special guarantees that may be required under the contract will be subject to paragraphs (a) and (b), insofar as they do not conflict with special guarantees.

(d) The Contractor shall furnish to the Government: (1) Each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of business; (2) All information required to make such guarantee or warranty legally binding and effective; and (3) The information and the guarantee or warranty in sufficient time to permit the Government to meet any time limit specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 11249, Mar. 2, 2000]

552.246–76 Warranty of Pesticides.

As prescribed in 546.710(d), insert the following clause:

WARRANTY OF PESTICIDES (MAY 1989)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for 1 year after the date of shipment, all pesticides furnished under this contract shall meet the requirements of Pub. L. 92–516, as amended, and shall be registered with the Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification will include: (1) contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government agencies and addresses to which it was delivered.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 11249, Mar. 2, 2000]

552.247–70 Placarding Railcar Shipments.

As prescribed in 547.305(a), insert the following clause:

PLACARDING RAILCAR SHIPMENTS (MAY 1989)

When a railcar is loaded in such a manner that it can be or should be unloaded from only one side, the Contractor shall place on the appropriate railcar door a placard reading ''UNLOAD FROM THIS SIDE'' and on the opposite door a placard reading ''UNLOAD FROM OTHER SIDE.''

(End of clause)

552.247–71 Diversion of Shipment Under F.O.B. Destination Contracts.

As prescribed in 547.305(b), insert the following clause:

DIVERSION OF SHIPMENT UNDER F.O.B. DESTINATION CONTRACTS (MAR 2000)

(a) Notwithstanding paragraph (c) of the clause in this contract titled 52.212–4, Contract Terms and Conditions—Commercial Items, the Government has the unilateral right to make changes at any time within the general scope of this contract in either the:

(1) Method of shipment or packing.

(2) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of this contract, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of a delivery order.

(c) The Government shall make no adjustment when supplies are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, adjustments for changes in transportation costs under this clause shall be determined as follows:

(1) If the contractor ships by contract or common carrier, price adjustments shall be determined by comparing the cost of shipments to the new destination(s), as evidenced by copy of paid freight bills supplied by the Contractor with the invoice, to one of the following:

(i) The cost of shipments to the standard contract destination, as evidenced by copy of appropriate paid freight bills supplied by the Contractor.

(ii) If no shipments have been made to the standard contract destination, the cost as evidenced by the applicable rates of a common or contract carrier. If carrier rates are not publicly filed with a regulatory body (e.g., interstate shipments moving by rail piggyback service), the Contractor shall provide a copy of the contract, letter agreement, or other written communication from the carrier(s) quoting the rates/charges that would have applied for shipments to the standard contract destination.

(2) If (i) shipments to the new destination are made by the Contractor's owned or leased trucks or (ii) shipments to the original destination were or would have been made by the Contractor's owned or leased trucks, the Government shall determine the adjustment by substituting a rate equal to 70 percent of the lowest applicable rate published in common carrier rates as of the date of shipment for the Contractor's actual rate or contemplated transportation costs.

(d) If the copies of paid freight bills for a diverted shipment do not show, or make readily available, each of the following items,the Contractor shall supply a written statement showing the item(s):

(1) Full name of each carrier in the routing.

(2) Number of containers.

(3) Gross shipping weight.

(4) Actual date of shipping.

(5) Freight description for the supplies as indicated in the ''National Motor Freight Classification'' or the ''Uniform Freight Classification'' (Rail).

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 11249, Mar. 2, 2000]

552.249–70 Termination for Convenience of the Government (Fixed Price) (Short Form).

As prescribed in 549.502(a) insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (MAY 1988) (DEVIATION FAR 52.249–1 AND 52.249–2)

(a) If the Government terminates this contract for convenience, the rights of the Government and the Contractor shall be determined under paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined under paragraph (c).

(b) The clause at [Contracting Officer inserts 52.249–1 or 52.249–2, as applicable] of the FAR shall apply to the supply portion of the contract and the clauses at 52.249–4 of the FAR shall apply to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the Contractor for such termination; except that, there shall be no termination liability for equipment installed after termination of this contract.

(End of clause)

552.249–71 Submission of Termination Liability Schedule.

As prescribed in 549.502(b), insert the following clause:

SUBMISSION OF TERMINATION LIABILITY SCHEDULE (MAY 1989)

(a) An offeror may submit, as part of its proposal, a termination liability schedule to be applied if any resultant contract is terminated by the Government for reasons other than default. The offeror shall provide and explain the amount and method of computation of the termination liability charge(s).

(b) If submitted, the termination liability schedule will be incorporated into Part I, Section B of the contract document. If a termination liability schedule is not submitted and the Government terminates any resultant contract for its convenience, the rights of the parties shall be determined under paragraph (b) of the GSAR Termination for Convenience of the Government clause at 552.249–70.

(c) Any termination liability charges existing at the end of the evaluated contract period will be considered in the evaluation of offers.

(End of clause)

552.252–5 Authorized Deviations in Provisions.

As prescribed in 552.107–70(a), insert the following provision:

AUTHORIZED DEVIATIONS IN PROVISIONS (DEVIATION FAR 52.252–5) (SEP 1999)

(a) *Deviations to FAR provisions.*

(1) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR chapter 1) provision by the addition of ''(DEVIATION)'' after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) provision that is published in the General Services Administration Acquisition Regulation by the addition of ''(DEVIATION (FAR provision no.))'' after the date of the provision.

(b) *Deviations to GSAR provisions.* This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation provision by the addition of ''(DEVIATION)'' after the date of the provision.

(c) *''Substantially the same as'' provisions.* Changes in wording of provisions prescribed for use on a ''substantially the same as'' basis are not considered deviations.

(End of provision)

552.252–6 Authorized Deviations in Clauses.

As prescribed in 552.107–70(b), insert the following clause:

AUTHORIZED DEVIATIONS IN CLAUSES (DEVIATION FAR 52.252–6) (SEP 1999)

(a) *Deviations to FAR clauses.*

(1) This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR chapter 1) clause by the addition of ''(DEVIATION)'' after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) clause that is published in the General Services Administration Acquisition

Regulation by the addition of ''(DEVIATION (FAR clause no.))'' after the date of the clause.

(b) *Deviations to GSAR clauses:* This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation clause by the addition of ''(DEVIATION)'' after the date of the clause.

(c) *''Substantially the same as'' clauses.* Changes in wording of clauses prescribed for use on a ''substantially the same as'' basis are not considered deviations.

(End of clause)

552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

As prescribed in 570.602, insert the following provision:

INSTRUCTIONS TO OFFERORS—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY (MAR 1998)

(a) Definitions. As used in this provision—

''Discussions'' are negotiations that occur after establishment of the competitive range that may, at the contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

''In Writing'' or ''Written'' means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

''Proposal modification'' is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

''Proposal revision'' is a change to a proposal made after the solicitation closing date, at the request of as allowed by a Contracting Officer as the result or of negotiations.

''Time,'' if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages. Offers must be:

(i) Submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and

(ii) Signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(2) Late proposals and revisions.

(i) The Government will not consider any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers unless it is received before the Government makes award and it meets at least one of the following conditions:

(A) It was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th).

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation.

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry of the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals.

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement.

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(2)(i)(A) through (c)(2)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the

envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service, ''Postmark'' has the same meaning as defined in paragraph (c)(2)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(2)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) An offeror may withdraw its proposal by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, an offeror may withdraw its proposal via facsimile received at any time before award, subject to the conditions specified in the provision entitled ''Facsimile Proposals.'' Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(3) Any information given to a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(4) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(5) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(6) The Government will construe an offer to be in full and complete with this solicitation unless the offer describes any deviation in the offer.

(7) Offerors may submit proposals that depart from stated requirements. Such a proposal shall clearly identify why the acceptance of the proposal would be advantageous to the Government. The proposal must clearly identify and explicitly define any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

(d) Restriction on disclosure and use of data. An offeror that includes in its proposal data that it does not want disclosed to the public for any purpose, or use by the Government except for evaluation purposes, must meet both of the following conditions:

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a lease is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets].

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(e) Lease award.

(1) The Government intends to award a lease resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a lease after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(6) The Government may determine that a proposal is unacceptable if the price proposed are materially unbalanced between line terms or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understand as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(7) The unconditional written acceptance of an offer establishes a valid contract.

(8) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall making of all offerors, when any making was developed by the agency during source selection; and

(iii) A summary of the rationale for award.

(End of provision)

Alternate I (MAR 1998). As prescribed in 570.602, substitute the following paragraph for paragraph (c)(2)(i) of the basic provision:

(i) Any offer received at the office designated in the solicitation after the exact time specified for receipt of final proposal revisions will not be considered unless it is received before award is made and it meets one of the following conditions—

Alternate II (MAR 1998). As prescribed in 570.602, substitute the following paragraph for paragraph (e)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a lease without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

552.270–2 Historic Preference.

As prescribed in 570.602, insert the following provision:

HISTORIC PREFERENCE (SEP 1999)

(a) The Government will give preference to offers of space in buildings on, or formally listed as eligible for inclusion in, the National Register of Historic Places and to historically significant buildings in historic districts listed in the National Register. This preference extends to historic buildings and will result in award if both of the following are met:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. The Contracting Officer has discretion to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building such as high ceilings, wooden floors, etc.

(2) The rental is no more than 10 percent higher on a total annual usable square foot cost to the Government than the lowest otherwise acceptable offer.

(b) If the Government receives more than one offer of an historic building and they meet the above criteria, the Government will award to the lowest priced historic property offered.

(End of provision)

552.270–3 Parties to Execute Lease.

As prescribed in 570.602, insert the following provision:

PARTIES TO EXECUTE LEASE (SEP 1999)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, shall accompany the lease.

(b) If the Lessor is a partnership, the lease shall be signed with the partnership name, followed by the name of the legally authorized partner signing the same, and, if requested by the Government, a copy of either the partnership agreement or current Certificate of Limited Partnership shall accompany the lease.

(c) If the Lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority to so act shall be furnished.

(End of provision)

552.270–4 Definitions.

As prescribed in 570.603, insert the following clause:

DEFINITIONS (SEP 1999)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

(a) ''Commencement Date'' means the first day of the term.

(b) ''Contract'' and ''Contractor'' means ''Lease'' and ''Lessor,'' respectively.

(c) ''Contracting Officer'' means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) ''Delivery Date'' means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.

(e) ''Delivery Time'' means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provision so this lease.''

(f) ''Excusable Delays'' means delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation:

(1) acts of God or of the public enemy,

(2) acts of the United States of America in either its sovereign or contractual capacity,

(3) acts of another contractor in the performance of a contract with the Government,

(4) fires,

(5) floods,

(6) epidemics,

(7) quarantine restrictions,

(8) strikes,

(9) freight embargoes,

(10) unusually severe weather, or

(11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

(g) ''Lessor'' means the sub-lessor if this lease is a sublease.

(h) ''Lessor shall provide'' means the Lessor shall furnish and install at Lessor's expense.

(i) ''Notice'' means written notice sent by certified or registered mail, Express Mail or Comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.

(j) ''Premises'' means the space described in this lease.

(k) ''Substantially complete'' and ''substantial completion'' means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use of enjoyment.

(l) ''Usable square feet'' means the ANSI/BOMA Z65.1–1996 definition for BOMA usable office area, which means ''The area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed.''

(m) ''Work'' means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

(End of clause)

5512.270–5 Subletting and Assignment.

As prescribed in 570.603, insert the following clause:

SUBLETTING AND ASSIGNMENT (SEP 1999)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

(End of clause)

552.270–6 Maintenance of Building and Premises—Right of Entry.

As prescribed in 570.603, insert the following clause:

MAINTENANCE OF BUILDING AND PREMISES—RIGHT OF ENTRY (SEP 1999)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building and all equipment, fixtures, and appurtenances furnished by the lessor under this lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

(End of clause)

552.270–7 Fire and Casualty Damage.

As prescribed in 570.603, insert the following clause:

FIRE AND CASUALTY DAMAGE (SEP 1999)

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of clause)

552.270–8 Compliance with Applicable Law.

As prescribed in 570.603, insert the following clause:

COMPLIANCE WITH APPLICABLE LAW (SEP 1999)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of clause)

552.270–9 Inspection—Right of Entry.

As prescribed in 570.603, insert the following clause:

INSPECTION—RIGHT OF ENTRY (SEP 1999)

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:

(1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;

(2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;

(3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and

(4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local law.

(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other lessees. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

(End of clause)

552.270–10 Failure in Performance.

As prescribed in 570.603, insert the following clause:

FAILURE IN PERFORMANCE (SEP 1999)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

(End of clause)

552.270–11 Successors Bound.

As prescribed in 570.603, insert the following clause:

SUCCESSORS BOUND (SEP 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(End of clause)

552.270–12 Alterations.

As prescribed in 570.603, insert the following clause:

ALTERATIONS (SEP 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

(End of clause)

552.270–13 Proposals for Adjustment.

As prescribed in 570.603, insert the following clause:

PROPOSALS FOR ADJUSTMENT (SEP 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $100,000. The proposal, including all subcontractor work, will contain at least the following details—

(1) Material quantities and unit costs;

(2) Labor costs (identified with specific item or material to be placed or operation to be performed);

(3) Equipment costs;

(4) Worker's compensation and public liability insurance;

(5) Overhead;

(6) Profit; and

(7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $500,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403–4); and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $500,000 must sign and return the ''Certificate of Current Cost or Pricing Data'' (48 CFR 15.406–2).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of clause)

552.270–14 Changes.

As prescribed in 570.603, insert the following clause:

CHANGES (SEP 1999)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs).

(2) Work or services.

(3) Facilities or space layout.

(4) Amount of space, provided the Lessor consents to the change.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date.

(2) An equitable adjustment in the rental rate.

(3) A lump sum equitable adjustment.

(4) An equitable adjustment of the annual operating costs per usable square foot specified in this lease.

(c) The Lessor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and must submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause excuses the lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government is not liable to Lessor under this clause.

(End of clause)

552.270–15 Liquidated Damages.

As prescribed in 570.603, insert the following clause:

LIQUIDATED DAMAGES (SEP 1999)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum $_____ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all the space ready for occupancy by the Government. this remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law.

(End of clause)

552.270–16 Adjustment for Vacant Premises.

As prescribed in 570.603, insert the following clause:

ADJUSTMENT FOR VACANT PREMISES (SEP 1999)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part before the lease term expires, the rental rate will be reduced.

(b) The rental rate will be reduced by that portion of the costs per usable square foot of operating expenses not required to maintain the space. The reduction takes effect 30 calendar days after the Government gives notice to the Lessor, and continues in effect until the Government occupies the premises or the lease expires or is terminated.

(End of clause)

552.270–17 Delivery and Condition.

As prescribed in 570.603, insert the following clause:

DELIVERY AND CONDITION (SEP 1999)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

(End of clause)

552.270–18 Default in Delivery—Time Extensions.

As prescribed in 570.603, insert the following clause:

DEFAULT IN DELIVERY—TIME EXTENSIONS (SEP 1999)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date, time is of the essence. If the Lessor fails to work diligently to ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease. Such termination is effective when received by Lessor. The Lessor and the Lessor's sureties, if any, are jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government is entitled to the following damages:

(1) The Government's aggregate rent, estimated real estate tax, and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term. If the Government procures replacement premises for a term (including all option terms) in excess of this lease term, the Lessor is not liable for excess Government rent or adjustments during such excess lease term.

(2) All administrative and other costs the Government incurs in procuring a replacement lease or leases.

(3) Other, additional relief provided for in this lease, at law, or in equity.

(b) Damages to which the Government is entitled under this clause are due and payable thirty (30) days following the date Lessor receives notice from the Contracting Officer specifying such damages.

(c) Delivery by Lessor of less than the minimum usable square footage required by this lease shall in no event be construed as substantial completion, except as the Contracting Officer permits.

(d) The Government shall not terminate this lease under this clause nor charge the Lessor with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays, and (2) the Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant, the Contracting Officer shall extend the delivery date, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

(End of clause)

552.270–19 Progressive Occupancy.

As prescribed in 570.603, insert the following clause:

PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a complete determined from all rent commencement dates.

(End of clause)

552.270–20 Payment.

As prescribed in 570.603, insert the following clause:

PAYMENT (SEP 1999)

(a) When space is offered and accepted, usable square footage delivered will be confirmed by either:

(1) The Government's measurement of plans submitted by the successful offeror as approved by the Government, and an inspection of the space to verify that the delivered space conforms with such plans.

(2) A mutual on-site measurement of the space if the Contracting Officer determines it necessary.

(b) The Government will not pay for space in excess of the amount of usable square footage stated in the lease.

(c) If the amount of usable square footage delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of usable space delivered and the annual rental will be adjusted as follows:

Usable square feet (USF) not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is:

USF X(1+CAF) X Rate per RSF=Reduction in Annual Rent.

(End of clause)

552.270–21 Effect of Acceptance and Occupancy.

As prescribed in 570.603, insert the following clause:

EFFECT OF ACCEPTANCE AND OCCUPANCY (SEP 1999)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

(End of clause)

552.270–22 Default by Lessor During the Term.

As prescribed in 570.603, insert the following clause:

DEFAULT BY LESSOR DURING THE TERM (SEP 1999)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

(End of clause)

552.270–23 Subordination, Nondisturbance and Attornment.

As prescribed in 570.603, insert the following clause:

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (SEP 1999)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between

Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

(End of clause)

552.270–24 Statement of Lease.

As prescribed in 570.603, insert the following clause:

STATEMENT OF LEASE (SEP 1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; and (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

(End of clause)

552.270–25 Substitution of Tenant Agency.

As prescribed in 570.603, insert the following clause:

SUBSTITUTION OF TENANT AGENCY (SEP 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

(End of clause)

552.270–26 No Waiver.

As prescribed in 570.603, insert the following clause:

NO WAIVER (SEP 1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

(End of clause)

552.270–27 Integrated Agreement.

As prescribed in 570.603, insert the following clause:

INTEGRATED AGREEMENT (SEP 1999)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

(End of clause)

552.270–28 Mutuality of Obligation.

As prescribed in 570.603, insert the following clause:

MUTUALITY OF OBLIGATION (SEP 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

(End of clause)

552.270–29 Acceptance of Space.

As prescribed in 570.603, insert the following clause:

ACCEPTANCE OF SPACE (SEP 1999)

(a) When the Lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the Lessor shall notify the Contracting Officer. The Contracting Officer or designated representative shall promptly inspect the space.

(b) The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required usable square footage as indicated in Paragraph 1.1, Amount and Type of Space, of this solicitation.

(End of clause)

PART 553 FORMS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37265, July 9, 1999, unless otherwise noted.

Subpart 553.2 Illustrations of Forms

553.300 Scope of subpart.

Standard and GSA forms prescribed or referenced in the text of this chapter are illustrated in and made a part of the General Services Administration Acquisition Manual. The forms are not illustrated in Title 48, Chapter 5, of the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (MVP), 1800 F Street, NW, Washington, DC 20405.

SUBCHAPTER I—SPECIAL CONTRACTING PROGRAMS

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37265, July 9, 1999, unless otherwise noted.

Subpart 570.1—General

570.101 Applicability.

(a) This part applies to acquisitions of leasehold interests in real property except:

(1) Leasehold interests acquired by the power of eminent domain or by donation.

(2) Acquisition of leasehold interests in bare or unimproved land.

(b) In addition, the GSAR rules in the following table apply. Other provisions of 48 CFR Chapter 5 (GSAR) do not apply to leases of real property unless specifically cross-referenced in this part 570.

GSAR RULES APPLICABLE TO ACQUISITIONS OF LEASEHOLD INTERESTS IN REAL PROPERTY

501	514.201–7(b)	517.207	533
502	514.407	519.7	536.271

GSAR RULES APPLICABLE TO ACQUISITIONS OF LEASEHOLD INTERESTS IN REAL PROPERTY—Continued

503	515.204–1	519.12	537.2
504.5	515.209–70	522.8	552
505	515.305	532.1	553
509.4	517.202	532.908	

570.102 Definitions.

Acquisition means the acquiring by lease of an interest in improved real property for use by the Federal Government, whether the space already exists or must be constructed.

Contract means lease.

Contractor means lessor.

Landlord or *lessor* means any individual, firm, partnership, trust, association, State or local government, or other legal entity that leases real property to the Government.

Lease or *leasehold interest in real property* means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include operational services provided by the landlord.

Lessee or *tenant* means the United States of America.

Operational services means services that support use of a leased property, such as heating, ventilation, air condition, utilities, and custodial services.

Rent and related services means that consideration paid for the use of leased property plus the costs of operational services whether furnished by the lessor, the Government, or both.

Simplified lease acquisition procedures mean the procedures for awarding leases at or below the simplified lease acquisition threshold.

Simplified lease acquisition threshold Means $100,000 average annual rent for the term of the lease, including option periods and excluding the cost of operational services.

Small business means a concern including affiliates, which is organized for profit, is independently-owned and operated, is not dominant in the field of leasing commercial real estate, and has annual average gross receipts of $15 million or less for the preceding three fiscal years.

Solicitation for Offers (SFO) means invitation for bids in sealed bidding or request for proposals in negotiations.

Space in buildings means the premises leased, or to be leased, including improvements. Its quantity is normally expressed in square feet. It does not include space acquired by the power of eminent domain, donation, or condemnation, nor acquisitions of bare or unimproved land.

Substantially as follows or *substantially the same as*, when used in prescribing a provision or clause, means that you may prepare and use a variation of that provision or clause to accommodate requirements peculiar to an individual acquisition. The variation must include the salient features of the FAR or GSAR provision or clause. It must also be consistent with the intent, principle, and substance of the FAR or GSAR provision or clause and related coverage on the subject matter.

570.103 Authority to lease.

(a) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)), as amended, and Section 1 of the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 Note) authorize the Administrator of General Services to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvement that bind the Government for periods not exceeding 20 years.

(b) You have exclusive authority to enter into and administer leases on the Government's behalf to the extent provided in your certificate of appointment as a contracting officer.

570.104 Competition.

Unless you use the simplified procedures in subpart 570.2, the competition requirements of FAR part 6 apply to acquisition of leasehold interests in real property.

570.105 Methods of contracting.

570.105–1 Contracting by negotiation.

Contracting by negotiation is usually appropriate for acquiring space in a building through a lease contract. You will usually need to conduct discussions with offerors about their proposals and consider factors other than price in making the award.

570.105–2 Two-phase design-build selection procedures.

Unless you use another acquisition procedure authorized by law, you must use the two-phase design-build selection procedures in section 303M of the Federal Property and Administrative Services Act of 1949, as amended, for lease construction projects. This includes lease construction projects with options to purchase the real property leased. Use the procedures in section 303M when you meet the conditions in paragraphs (a) and (b) of this section:

(a) You anticipate the lease will involve the design and construction of a public building, facility, or work for lease to the Government.

(b) You determine the procedures are appropriate for entering into a lease construction contract based on the following:

(1) You expect to receive three or more offers.

(2) Offerors will need to perform design work before developing a price.

(3) Offerors will incur a substantial amount of expense in preparing offers.

(4) You consider criteria such as the following:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection procedures.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the HCA.

570.105–3 Sealed bidding.

For sealed bidding, use the procedures in FAR part 14. In most cases you should not use sealed bidding to acquire space in buildings unless you meet all the following conditions:

(a) You have a preselected site.

(b) A building will be constructed on the site using Government furnished plans and specifications.

(c) The Government will lease the building.

570.106 Publicizing/Advertising.

(a) Subparts 505.101, 505.202, and 505.203 define requirements for publicizing lease actions.

(b) Instead of issuing separate advertisements for multiple, known leasing actions, you may include the actions in one consolidated advertisement.

570.107 Oral presentations.

You may use oral presentations for acquisitions of leasehold interests in real property. Follow the procedures in FAR 15.102.

570.108 Responsibility determination.

(a) Determine that the prospective awardee is responsible with respect to the lease under consideration. The standards in FAR 9.104 apply. As part of the determination that a prospective contractor is otherwise qualified and eligible for award, review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(b) Your signature on the contract is deemed an affirmative determination.

(c) If you find an offeror nonresponsible, sign and place in the contract file a determination of nonresponsibility. State the basis for the determination.

(d) If you find a small business concern nonresponsible, the procedures at FAR 19.6 apply. Place all documents and reports supporting a determination of responsibility or nonresponsibility in the lease file.

570.109 Certifications.

Before awarding a lease, review applicable certifications for compliance with statute and regulations.

570.110 Cost or pricing data and information other than cost or pricing data.

(a) The policies and procedures of FAR 15.403 apply to lease contract actions.

(b) FAR 15.403–1 defines exceptions to and waivers for submitting cost or pricing data. Most leasing actions will have adequate price competition. For price analysis, you may use a market survey or an appraisal conducted using accepted real property appraisal procedures to establish a market price for comparison.

(c) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived under FAR 15.403–1(c)(4).

(d) If cost or pricing data are required, follow the procedures in FAR 15.403–4 and 15.406–2.

570.111 Inspection and acceptance.

Before you accept space, obtain an inspection to ensure that the space complies with the Government's requirements and specifications. Document the inspection and acceptance in the contract file.

570.112 Awards to Federal employees.

If you receive an offer from an officer or employee of the Government, follow the procedures in FAR 3.6.

570.113 Disclosure of mistakes after award.

If you discover a mistake in a lessor's offer after award, follow the procedures in FAR 14.407–4 and subpart 514.407–4.

570.114 Protests.

FAR 33.1 and 533.1 apply to protests of lease acquisitions.

Subpart 570.2—Simplified Lease Acquisition Procedures

570.201 Purpose.

This subpart prescribes simplified procedures for small leases. These procedures reduce administrative costs, while improving efficiency and economy, when acquiring small leasehold interests in real property.

570.202 Policy.

Use simplified lease acquisition procedures to the maximum extent practicable for actions at or below the simplified lease acquisition threshold.

570.203 Procedures.

570.203–1 Market survey.

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations that will meet the Government's requirements.

570.203–2 Competition.

(a) Solicit at least three sources to promote competition to the maximum extent practicable. If you have repeated requirements for space in the same market, and if practicable, invite two sources not included in the most recent solicitation to submit offers.

(b) If you solicit only one source, document the file to explain the lack of competition.

570.203–3 Soliciting offers.

(a) Solicit offers by providing each prospective offeror a proposed short form lease or SFO. The short form lease or SFO must provide all the following information:

(1) A description of the Government's requirements.

(2) All award factors, including price or cost, and any significant subfactors you will consider in awarding the lease.

(3) A statement of the relative importance of the evaluation factors and subfactors.

(4) A statement of whether all evaluation factors other than cost or price, when combined, are either:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(5) Either in full text or by reference, applicable FAR provisions and contract clauses required by 570.6.

(b) As necessary, review with prospective offerors the Government's requirements, pricing matters, evaluation procedures and submissions of offers.

570.203–4 Negotiations, evaluation, and award.

(a) If you need to conduct negotiations, use the procedures in 570.307.

(b) Evaluate offers in accordance with the solicitation. Evaluate prices and document the lease file to demonstrate whether the proposed contract prices are fair and reasonable.

(c) If the total price, including options, exceeds $500,000, consider whether you need cost and pricing data to determine that the price is fair and reasonable. In most cases the exceptions at FAR 15.403–1 will apply.

(d) If the total contract value of the lease, including options, will exceed $500,000, the proposed awardee must provide an acceptable small business subcontracting plan. This requirement does not apply if the proposed awardee is a small business concern.

(e) Make award to the responsible offeror whose proposal is most advantageous to the Government considering price and other factors included in the solicitation.

Subpart 570.3—Contracting Procedures for Leasehold Interests in Real Property

570.301 Market survey.

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations capable of meeting the Government's requirements.

570.302 Description of requirements.

(a) The description of requirements depends on the nature of the space the agency needs and the market available to satisfy that need.

(b) The description of requirements must include all the following:

(1) A statement of the purpose of the lease.

(2) Functional, performance, or physical requirements.

(3) Any special requirements.

(4) The delivery schedule.

(c) The description must promote full and open competition. Include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs or as authorized by law.

570.303 Solicitation for offers.

570.303–1 Preparing the SFO.

The SFO forms the basis for the lease negotiation process and becomes part of the lease. Document each SFO in writing or electronically. Include the information necessary to enable prospective offerors to prepare proposals. Each SFO, at a minimum, must provide all the following:

(a) Describe the Government's requirements.

(b) State the method the Government will use to measure space.

(c) Explain how to structure offers.

(d) Specify a date, time, and place for submission of offers.

(e) Explain how the Government will evaluate offers.

(f) Describe the source selection procedures the Government will use.

(g) Include a statement outlining the information the Government may disclose in debriefings.

(h) Include appropriate forms prescribed in 570.7.

570.303–2 Issuing the SFO.

Release the SFO to all prospective offerors at the same time.

570.303–3 Late offers, modifications of offers, and withdrawals of offers.

Follow the procedures in FAR 15.208.

570.303–4 Changes to SFOs.

(a) If the Government's requirements change, either before or after receipt of proposals, issue an amendment. Document the amendment using the same method as for the SFO, written or electronic.

(b) If time is critical, you may provide information on SFO amendments orally.

(1) Make a record of the information provided.

(2) Provide, or attempt to provide, the notice to all offerors or prospective offerors on the same day.

(3) Promptly confirm the information provided orally in a written amendment.

(c) Distribute an amendment as follows:

(1) If before the proposal due date, send the amendment to all prospective offerors who were sent a copy of the SFO.

(2) If after proposal receipt, send the amendment to each offeror who submitted a proposal.

(d) If an amendment is so substantial that it requires a complete revision of the SFO, cancel the SFO and issue a new one.

570.304 General source selection procedures.

(a) These procedures apply to acquisitions of leasehold interests except if you use either:

(1) Simplified lease acquisition procedures authorized by 570.2.

(2) Two-phase design-build selection procedures authorized by 570.105–2.

(b) The contracting officer is designated as the source selection official unless the HCA appoints another individual for a particular leasing action or group of leasing actions.

(c) You must include price or cost to the Government and past performance as evaluation factors in every case.

(d) The SFO must comply with FAR 15.304 and either:

(1) FAR 15.101–1 if you will use the tradeoff process.

(2) FAR 15.101–2 if you will use the lowest price technically acceptable source selection process.

570.305 Two-phase design-build selection procedures.

(a) These procedures apply to acquisitions of leasehold interests if you use the two-phase design-build selection procedures authorized by 570.105–2.

(b) The SFO must include all the following information:

(1) The scope of work.

(2) The evaluation factors and subfactors to be used in evaluating phase-one proposals and their relative importance.

(3) The maximum number of offerors to be selected to submit competitive proposals in phase-two.

(4) The evaluation factors, including cost or price, and subfactors to be used in evaluating phase-two proposals and selecting the successful offeror, and their relative importance.

(c) The following procedures apply to phase-one evaluation factors:

(1) Phase one factors include:

(i) Specialized experience and technical competence.

(ii) Capability to perform.

(iii) Past performance of the offeror's team (including architect-engineer and construction members of the team).

(iv) Other appropriate factors, such as site or location.

(2) Do not require offerors to submit detailed design information or cost or price information in phase one. Do not use cost related or price related evaluation factors.

(d) Set the maximum number of offerors to be selected for phase-two to not exceed five (5) unless you determine that a number greater than five is both:

(1) In the government's interest.

(2) Consistent with the purpose and objectives of the two-phase selection process.

(e) In phase-two, require detailed technical and price proposals. Evaluate the proposals using the procedures in 570.306.

570.306 Evaluating offers.

(a) You must evaluate offers solely in accordance with the factors and subfactors stated in the SFO.

(b) Evaluate prices and document the lease file to demonstrate that the proposed contract price is fair and reasonable.

(c) Evaluate past performance in accordance with FAR 15.305(a)(2).

(d) Document the evaluation of award factors other than price listed in the solicitation. The file must include the basis for evaluation, an analysis of each offer, and a summary of findings.

570.307 Negotiations.

(a) Follow the procedures in FAR 15.306 and 15.307 for exchanges (including clarifications, communications, negotiations, discussions, and revisions).

(b) Place a written record of all exchanges in the lease file.

(c) Provide prompt written notice to any offeror excluded from the competitive range or otherwise eliminated from the competition in accordance with FAR 15.503(a).

570.308 Award.

(a) Make award to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the SFO.

(b) Make award in writing and in the timeframe specified in the SFO.

(1) If you cannot make an award in that time, request in writing from each offeror an extension of the acceptance period through a specific date.

(2) If time is critical, you may request the extensions orally. You must make a record of the requested and confirm it promptly in writing.

(c) Notify unsuccessful offerors in writing or electronically in accordance with FAR 15.501 and 15.503(b).

(d) The source selection authority may reject all proposals received in response to an SFO, if doing so is in the best interest of the Government.

570.309 Debriefings.

The procedures of FAR 15.505 and 15.506 apply to leasing actions.

Subpart 570.4—Special Aspects of Contracting for Continued Space Requirements

570.401 Renewal options.

(a) *Exercise of options.* Before exercising an option to renew, follow the procedures in 517.202 and 517.207. The contract must first provide the right to renew the lease.

(b) *Market survey.* Before exercising an option to renew a lease, review current market information to ensure the rental rate in the option is fair and reasonable.

570.402 Succeeding leases.

570.402–1 General.

(a) If a succeeding lease for the continued occupancy of space in a building does not exceed the simplified lease acquisition threshold, you may use the simplified procedures in 570.2. Explain the absence of competition in the contract file.

(b) If a succeeding lease will exceed the simplified lease acquisition threshold, you may enter into the lease under either of the following conditions:

(1) You do not identify any potential acceptable locations.

(2) You identify potential acceptable locations, but a cost-benefit analysis indicates that award to an offeror other than the present lessor will result in substantial relocation costs or duplication of costs to the Government, and the Government cannot expect to recover such costs through competition.

570.402–2 Publicizing/Advertising.

Publish a notice if required by 505.101(c). The notice should:

(a) Indicate the Government's lease is expiring.

(b) Describe the requirement in terms of type and quantity of space.

(c) Indicate the Government is interested in considering alternative space if economically advantageous.

(d) Advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate.

(e) Provide a contact person for those interested in providing space to the Government.

570.402–3 Market survey.

Conduct a market survey following 570.301.

570.402–4 No potential acceptable locations.

If you do not identify any potential acceptable locations through the advertisement or the market survey, you may prepare a justification to negotiate directly with the present lessor. Fully document the efforts to locate alternative sources. Prepare the justification and obtain approval following FAR 6.3 and 506.3.

570.402–5 Potential acceptable locations.

If you identify potential acceptable locations through the advertisement or market survey, conduct a cost-benefit analysis following the procedures in 570.402–6. Based on the results of the cost-benefit analysis, take appropriate action as follows:

(a) If the cost-benefit analysis indicates that the Government will recover relocation costs and duplication of costs through competition, develop an SFO and negotiate with all interested parties following 570.3.

(b) If the cost-benefit analysis indicates that the Government cannot expect to recover relocation costs and duplication of costs through competition, prepare a justification for approval in accordance with FAR 6.3 and 506.3. Explain both:

(1) How you performed the cost-benefit analysis.

(2) That the cost-benefit analysis indicates that award to any other offeror will likely result in substantial costs to the Government that the Government cannot expect to recover through competition.

570.402–6 Cost-benefit analysis.

(a) The cost-benefit analysis must consider all the following:

(1) The prices of other potentially available properties.

(2) Relocation costs, including estimated costs for moving, telecommunications, and alterations, amortized over the firm term of the lease.

(3) Duplication of costs to the Government.

(4) Other appropriate considerations.

(b) Establish the prices for other potentially available properties by requesting each prospective offeror to provide an informational quotation for standard space for comparison purposes.

(1) Adjust the prices quoted for standard space for any special requirements.

(2) You do not need a formal SFO to obtain the informational quotation. However, you must provide a general description of the Government's needs.

(3) If you obtain oral quotations, document the following information, as a minimum:

(i) Name and address of the firm solicited.

(ii) Name of the firm's representative providing the quote.

(iii) Price(s) quoted.

(iv) Description of the space and services for which the quote is provided.

(v) Name of the Government employee soliciting the quotation.

(vi) Date of the conversation.

(4) Compare the informational quotations to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease.

570.403 Expansion requests.

(a) If the expansion space is in the general scope of the lease, you may acquire the space through a modification without further justification under FAR 6.3.

(b) If the expansion space needed is outside the general scope of the lease, determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement by competitive means.

(1) Conduct a market survey to determine the availability of suitable alternative locations.

(2) If you identify alternate locations that can satisfy the total requirement, perform a cost-benefit analysis to determine whether it is in the Government's best interest to relocate. Consider, as appropriate.

(i) The cost of the alternate space compared to the cost of expanding at the existing location.

(ii) The cost of moving.

(iii) The cost of duplicating existing improvements.

(iv) The cost of the unexpired portion of the firm lease term. If a termination is possible, use the actual cost of such an action.

(v) the cost of disruption to the agency's operation.

(c) If you determine not to use competitive procedures and the expansion space is outside the general scope of the lease:

(1) If the estimated value of the acquisition does not exceed the simplified lease acquisition threshold, document the file as required by 570.203–2(b).

(2) If the estimated value of the acquisition exceeds the simplified lease acquisition threshold, prepare a justification for approval under FAR 6.3 and 506.3.

570.404 Superseding leases.

(a) Consider executing a superseding lease to replace an existing lease when the Government need numerous or detailed modifications to the space that would cause complications or substantially change the present lease.

(b) If the value of the superseding lease exceeds the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply. If the cost does not exceed the simplified lease acquisition threshold, you may use the simplified procedures in 570.2 and explain the absence of competition in the file.

570.405 Lease extensions.

(a) This section applies to extension of the term of a lease to provide for continued occupancy on a short-term basis.

(b) If the value of a lease extension will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply. For extensions that will

not exceed the simplified lease acquisition threshold, you may use the simplified procedures in 570.2 and explain the absence of competition in the file.

(c) FAR 6.302–1 permits contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may apply to lease extensions in situations such as the following:

(1) The agency occupying the leased space is scheduled to move into other Federally controlled space, but encounters unexpected delays in preparing the new space for occupancy.

(2) The Government encounters unexpected delays outside of its control in acquiring replacement space.

(3) The Government is consolidating various agencies occupying the leased space and you need to extend the terms of some leases to establish a common expiration date.

Subpart 570.5—Special Aspects of Contracting for Lease Alterations

570.501 General.

(a) Acquire alterations through a modification to an existing lease if you meet all the following conditions:

(1) The alterations fall in the general scope of the lease. Consider whether the work can be regarded as fairly and reasonably an inseparable part of the lease requirement originally contracted for.

(2) The lessor is willing to perform the proposed alterations at a fair and reasonable price.

(3) It is in the Government's interest to acquire the alterations from the lessor.

(b) If proposed alterations are outside the general scope of the existing lease, decide whether to acquire the alterations through either:

(1) A supplemental lease agreement, justified and approved under 570.502–1.

(2) Government performance or a separate contract. The lease must first provide the Government the right to perform alterations to the leased space.

570.502 Alterations by the lessor.

These procedures apply to alterations you acquire directly from a lessor by modification or supplement lease agreement.

570.502–1 Justification and approval requirements.

If the proposed alterations are outside the general scope of the lease and you plan to acquire them from the lessor without competition, the following justification and approval requirements apply:

(a) If the alteration project will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply.

(b) If the alteration project will exceed $2,500, but not the simplified lease acquisition threshold, you may use simplified acquisition procedures and explain the absence of competition in the file.

(c) If the alternation project will not exceed $2,500, no justification and approval is required.

570.502–2 Procedures.

(a) *Scope of work.* Prepare a scope of work for each alteration project.

(b) *Independent Government estimate.* Obtain an independent Government estimate for each alteration project, including changes to existing alteration agreements with the lessor.

(c) *Request for proposal.* (1) Provide the scope of work to the lessor, including any plans and specifications, and request a proposal. Indicate in the request for proposal if the Government will make progress payments and provide for retainage, when appropriate.

(2) Request sufficient cost or price information to permit a price analysis.

(d) *Audits.* If you require cost or pricing data and the alteration project will exceed $500,000, request an audit.

(e) *Proposal evaluation.* (1) Determine if the proposal meets the Government's requirements.

(2) Analyze price or cost. At a minimum, compare the proposed cost to the independent estimate and, if applicable, any audit received.

(3) Analyze profit following FAR 15.404–4.

(4) Document your analysis under this paragraph and the resulting negotiation objectives.

(f) *Price negotiations.* (1) Exercise sound judgment. You may make reasonable compromises as necessary.

(2) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(3) Document negotiations in the contract file.

(g) *Award.* Use GSA Form 276, Supplemental Lease Agreement. If the modification does not exceed the simplified acquisition threshold, you may use GSA Form 300, Order for Supplies or Services. Reference the lease on the form.

(h) *Inspection and payment.* Do not make final payment for alterations until the work is:

(1) Inspected by a qualified Government employee or independent Government contractor.

(2) Confirmed as completed in a satisfactory manner.

[64 FR 37265, July 9, 1999; 64 FR 49844, Sept. 14, 1999]

570.503 Alterations by the Government or through a separate contract.

(a) If the Government chooses to exercise its right to make the alterations rather than contracting directly with the lessor, the Government may either:

(1) Have Federal employees perform the work.

(2) Contract out the work using standard contracting procedures that apply to a construction contract performed on Federal property.

(b) If the Government decides to contract for the work, invite the lessor, as well as all other prospective contractors, to submit an offer for the project.

Subpart 570.6—Solicitation Provisions and Contract Clauses

570.601 FAR provisions and clauses.

Include provisions or clauses substantially the same as the following FAR provisions and clauses.

If . . .	Then include . . .
(a) the estimated value of the acquisition exceeds $2,500.	52.204–3 Taxpayer Identification. 52.219–1 Small Business Program Representations. 52.222–36 Affirmative Action for Workers with Disabilities. 52.232–23 Assignment of Claims. 52.233–1 Disputes.
(b) the estimated value of the acquisition exceeds $10,000.	52.222–21 Prohibition of Segregated Facilities. 52.222–22 Previous Contracts and Compliance Reports. 52.222–25 Affirmative Action Compliance. 52.222–26 Equal Opportunity. 52.222–35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era. 52.222–37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
(c) the estimated value of the acquisition exceeds $25,000.	52.209–6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(d) the estimated value of the acquisition exceeds $100,000.	52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(e) the estimated value of the acquisition exceeds the simplified lease acquisition threshold.	52.203–2 Certificate of Independent Price Determination. 52.203–7 Anti-Kickback Procedures. 52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. 52.215–2 Audit and Records—Negotiation. 52.219–8 Utilization of Small Business Concerns. 52.223–6 Drug-Free Workplace. 52.233–2 Service of Protest.
(f) the estimated value of the acquisition exceeds $500,000.	52.219–9 Small Business Subcontracting Plan. 52.219–16 Liquidated Damages—Subcontracting Plan.
(g) the estimated value of the acquisition exceeds $500,000 and the acquisition includes an evaluation factor that considers the extent of participation of small disadvantaged business concerns in accordance with FAR 19.12.	52.219–24 Small Disadvantaged Business Participation Program—Targets. 52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
(h) the estimated value of the acquisition exceeds $10 million.	52.222–24 Preaward On-Site Equal Opportunity Compliance Review.

If . . .	Then include . . .
(i) you require cost or pricing data for work or services exceeding $500,000.	52.215–10 Price Reduction for Defective Cost or Pricing Data. 52.215–12 Subcontractor Cost or Pricing Data.
(j) you authorize submission of facsimile proposals.	52.215–5 Facsimile Proposals.
(k) a negotiated acquisition provides monetary incentives based on actual achievement of small disadvantaged business subcontracting targets under FAR 19.1203 and 519.1203.	52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

570.602 GSAR solicitation provisions.

Each SFO must include provisions substantially the same as the following, unless you determine that the provision is not appropriate:

552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property. Use Alternate I if you decide that it is advantageous to the Government to allow offers to be submitted up to the exact time specified for award. Use Alternate II if the Government intends to award without discussions. These two alternates are not exclusive.
552.270–2 Historic Preference.
552.270–3 Parties to Execute Lease.

570.603 GSAR contract clauses.

Insert clauses substantially the same as the following in solicitations and contracts for leasehold interests in real property that exceed the simplified lease acquisition threshold, unless you determine that a clause is not appropriate. You do not require a deviation under 570.604 to determine that a clause in this section is not appropriate. Use the clauses at your discretion in actions at or below the simplified lease acquisition threshold.

552.270–4 Definitions. You must use this clause if you use 570.270–28.
552.270–5 Subletting and Assignment.
552.270–6 Maintenance of Building and Premises—Right of Entry.
552.270–7 Fire and Casualty Damage.
552.270–8 Compliance with Applicable Law.
552.270–9 Inspection—right of Entry.
552.270–10 Failure in Performance.
552.270–11 Successors Bound.
552.270–12 Alterations.
552.270–13 Proposals for Adjustment.
552.270–14 Changes.
552.270–15 Liquidated Damages. Insert this clause in solicitations and contracts if you have a critical requirement to meet the delivery date and you cannot establish an actual cost for the loss to the Government resulting from late delivery.
552.270–16 Adjustment for Vacant Premises.
552.270–17 Delivery and Condition.
552.270–18 Default in Delivery—Time Extensions.
552.270–19 Progressive Occupancy.
552.270–20 Payment.
552.270–21 Effect of Acceptance and Occupancy.
552.270–22 Default by Lessor During the Term.
552.270–23 Subordination, Nondisturbance and Attornment
552.270–24 Statement of Lease.
552.270–25 Substitution of Tenant Agency.
552.270–26 No Waiver.
552.270–27 Integrated Agreement.
552.270–28 Mutuality of Obligation.
552.270–29 Acceptance of Space.

570.604 Deviations to provisions and clauses.

(a) You need a deviation approved under 501.4 to omit any required provision or clause.

(b) You also need an approved deviation to modify the language of a provision or clause mandated by statute (e.g., GSAR 552.203–5, Covenant Against Contingent Fees, FAR 52.215–2, Audit and Records—Negotiation). The authorizing statue must allow for a waiver.

(c) Certain clauses required by non-GSA regulations require approval of the issuing agency before you can delete or modify them. For example, 52.222–26, Equal Opportunity; 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; and 52.222–36, Affirmative Action for Workers with Disabilities, require the approval of the Department of Labor's Office of Federal Contract Compliance Programs before they can be deleted from or modified in the SFO or lease.

Subpart 570.7—Forms

570.701 Standard forms.

Use Standard Form 2, U.S. Government Lease for Real Property, to award leases unless you use GSA Form 3626 (see 570.702). Delete the reference to the Standard Form 2–A in paragraph 7.

570.702 GSA forms.

(a) You may use GSA Form 3626, U.S. Government Lease for Real Property (Short Form), to award leases if you use the simplified leasing procedures in 570.2 or if you determine it advantageous to use.

(b) You may use GSA Form 276, Supplemental Lease Agreement, for actions requiring the agreement of both parties. This includes actions such as amending an existing lease to acquire additional space, obtaining partial release of space, revising the terms of a lease, settling restoration claims, and acquiring alterations.

(c) You may use GSA Form 1364, Proposal To Lease Space, to obtain offers from prospective offerors.

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(Parts 600 to 699)

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SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26159, July 11, 1988, unless otherwise noted.

601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and deviation procedures.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66750, Dec. 28, 1994]

Subpart 601.1—Purpose, Authority, Issuance

601.101 Purpose.

The DOSAR is issued to provide Department guidance in accordance with the policy cited in FAR 1.301(a)(2). The portions of this regulation that affects the relationship between a Department of State organization and a contractor or potential contractor are published in this chapter 6 of title 48 of the Code of Federal Regulations, in accordance with FAR 1.301(b).

[59 FR 66750, Dec. 28, 1994]

601.105 Issuance.

601.105–3 Copies.

The DOSAR is available on CD–ROM disks through the Department's INFOEXPRESS program, or through the Internet from A/OPE's Acquisition Website. The Internet address is: http://www.statebuy.gov/home.htm

[64 FR 43620, Aug. 11, 1999]

601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget before collecting information from ten (10) or more members of the public. Individuals are not required to respond to information collection unless the OMB number and burden estimate information is provided. Accordingly, the information and recordkeeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405–0050. The burden estimate is 225,302 hours.

[64 FR 43620, Aug. 11, 1999]

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201–1 The two councils.

The Office of the Procurement Executive (A/OPE) represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint a representative for this purpose. A/OPE is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66750, Dec. 28, 1994]

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.

(a) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 1.301 (see Delegation of Authority No. 120 (34 FR 18095, October 30, 1969), as amended by Delegation of Authority No. 120–4 (59 FR 38022, July 26, 1994)). Under Delegation of Authority No. 120–5 (59 FR 62771, December 6, 1994), the Assistant Secretary of State for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c).

(c) The DOSAR implements and supplements the FAR.

[59 FR 66751, Dec. 28, 1994, as amended at 64 FR 43620, Aug. 11, 1999]

601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to section 208 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308), or the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*).

(b) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in those areas which have been exempted by the cognizant administrative office.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994; 64 FR 43620, Aug. 11, 1999]

601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, sections, subsections, and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101–70.

(b) The DOSAR and its revisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c) The DOSAR shall be referenced in the same manner as described at FAR 1.105–2(c).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994; 64 FR 43620, Aug. 11, 1999]

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

Subpart 601.5—Agency and Public Participation

601.570 Rulemaking.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with FAR part 1.

(b) The Procurement Executive shall issue all DOS acquisition regulations.

[59 FR 66751, Dec. 28, 1994]

Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.602 Contracting officers.

601.602–1 Authority.

(a) DOS contracts are awarded pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including FAR-covered interagency acquisition agreements, for the expenditure of funds involved in the acquisition of real and personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603–70.

(c) The contracting officer shall not award, modify, or terminate a contract unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have been obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

[53 FR 26159, July 11, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66751, Dec. 28, 1994]

601.603 Selection, appointment, and termination of appointment.

601.603–3 Appointment.

(a) *General.* There is no contracting officer authority conferred upon any DOS employee by virtue of position. The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603–3, with the one exception as noted in paragraph (b) of this section. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive. Only qualified employees shall be appointed as contracting officers. A/OPE is responsible for providing guidance and oversight in managing such appointments.

(b) *Temporary warrants.* The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than $100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

(c) *Non-Federal employees.* Only United States Government direct-hire employees who are U.S. citizens shall be appointed as contracting officers. Personal services contractors, Foreign Service Nationals, and Third Country Nationals are not eligible for appointment as DOS contracting officers.

(d) *Personal services agreements.* Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) An individual, or class of individuals, granted authority by the Director, PER/OE; or

(2) Individuals with contracting officer certificates of appointment.

[59 FR 66752, Dec. 28, 1994, as amended at 64 FR 43620, Aug. 11, 1999]

601.603–70 Delegations of authority.

(a) *Delegations.* As stated in 601.603–3(a), there is no contracting officer authority conferred by virtue of position. Pursuant to 601.602–1(b), the Procurement Executive has designated the following as contracting activities as defined in FAR 2.101. These authorities are not redelegable. In addition, specific individuals are designated as heads of contracting activities (HCAs) (see FAR 2.101):

(1) *Overseas posts.* Each overseas post shall be regarded as a contracting activity to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services. The Principal Officer, the Administrative Officer, or the Supervisory General Services Officer are designated as HCAs; provided, that he/she has a contracting officer's warrant issued by the Procurement Executive. The Procurement Executive (or authorized A/OPE staff) may delegate to a contracting officer, on a case-by-case basis, the authority to award a contract or modification which exceeds the contracting officer's warrant level.

(i) No authority is delegated to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts.

(ii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named in paragraph (a)(1) introductory text of this section may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is required to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*), is delegated to the Deputy Assistant Secretary of State for Foreign Buildings.

(3) *Office of Logistics Management; Office of Acquisition Management (A/LM/AQM).* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies and nonpersonal services is delegated to the Director or designee as the HCA.

(4) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 *et seq.*), is delegated to the Director of the Foreign

Service Institute, the Executive Director, the Deputy Executive Director, and the Supervisory Contracting Officer as the HCA.

(5) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 *et seq.*), is delegated to the Director, Office of Foreign Missions, and the Administrative Officer as the HCA.

(6) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), is delegated to the Counselor for Administration as the HCA.

(7) *Moscow Embassy Building Control Office.* The authority to enter into and administer contracts for the planning, design, construction and supplies for the embassy office building in Moscow is delegated to the Director, Moscow Embassy Building Control Office as the HCA.

(8) *Diplomatic Telecommunication Service—Program Office.* The authority to enter into and administer contracts for the leasing or purchase of telecommunications services, circuits, subsystems, supplies and associated professional services is delegated to the Chief, Acquisition Branch as the HCA.

(9) *Regional Procurement Support Offices.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(i) RPSO Germany in conjunction with Embassy Bonn and Consulate General Frankfurt;

(ii) RPSO Tokyo in conjunction with Embassy Tokyo;

(iii) RPSO Singapore in conjunction with Embassy Singapore; and,

(iv) RPSO Florida in conjunction with the Florida Regional Center.

(b) *Other delegations.* Several DOS offices have been delegated limited procurement authority, although they have not been designated as HCAs. Matters requiring HCA resolution are referred to the A/LM/AQM. These delegations are provided only to warranted contracting officers in the respective offices. They are as follows:

(1) *Office of Language Services.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation for interpreting, translating, conference reporting, and related language support and escort services.

(2) *Office of Overseas Schools.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended.

(3) *Library.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended, and for the acquisition of newspapers, books, maps, and periodicals.

(4) *Office of International Conferences.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended.

(5) *Bureau of Population, Refugees, and Migration.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to the Migration and Refugee Assistance Act of 1962, as amended, and Executive Order 11077, dated January 22, 1963.

(6) *Bureau of International Narcotics and Law Enforcement Affairs.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13, orders against existing contracts up to the maximum ordering threshold or limitation and personal services contracts pursuant to

the Foreign Assistance Act of 1961, as amended; and, 48 CFR Chapter 7, Agency for International Development Acquisition Regulation, including any amendments thereto.

(7) *Office of Small and Disadvantaged Business Utilization.* The authority to enter into and administer 8(a) purchase orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

[59 FR 66752, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43620, Aug. 11, 1999]

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

Sec.
602.101 Definitions.
602.101–70 DOSAR definitions.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26162, July 11, 1988, unless otherwise noted.

Subpart 602.1—Definitions

602.101 Definitions.

602.101–70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

Consolidated Receiving Point or *CRP*; means the contractor under contract to a Despatch Agency to receive and prepare items for shipment to a post. The CRP receives, records, consolidates, and packs items for shipment overseas under the direction of the Despatch Agency.

Department or *DOS* means the Department of State, including all of its activities wherever located.

Despatch Agency means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply and Transportation. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and, Seattle, Washington.

Government means the Government of the United States of America unless specifically stated otherwise.

Major system has the same definition as described in FAR 2.101; however, the Department of State's dollar threshold as defined in paragraph (b) is $30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (c).

Overseas post means a ''post'' located outside the United States of America.

Post means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66753, Dec. 28, 1994; 60 FR 39662, Aug. 3, 1995; 64 FR 43620, Aug. 11, 1999]

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.1—Safeguards

Sec.
603.104 Procurement integrity.
603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
603.104–10 Violations or possible violations.

Subpart 603.2—Contractor Gratuities to Government Personnel

603.204 Treatment of violations.

Subpart 603.4—Contingent Fees

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.601 Policy.
603.602 Exceptions.

Subpart 603.7—Voiding and Rescinding Contracts

603.704 Policy.
603.705 Procedures.

Subpart 603.9—Whistleblower Protections for Contractor Employees

603.905 Procedures for investigating complaints.
603.906 Remedies.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 603.1—Safeguards

SOURCE: 64 FR 43620, Aug. 11, 1999, unless otherwise noted.

603.104 Procurement integrity.

603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized to receive contractor bid or proposal information or source selection information by the contracting officer or head of the contracting activity, who is the agency head's designee, when such access is necessary to the conduct of an acquisition:

(1) Individuals involved in the selection process, such as the Contracting Officer's Representative, technical evaluators, advisors, consultants, and the Source Selection Official;

(2) Clerical personnel directly involved in the acquisition;

(3) Supervisors in the contracting officer's chain of command;

(4) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification;

(5) Individuals from offices who may be required to perform pre-award audits, such as DCAA; and,

(6) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of the Legal Adviser, Office of Legislative Affairs, Office of the Inspector General, Office of the Procurement Executive, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

(c) All information which is considered proprietary or source selection information shall be marked to prevent its unauthorized disclosure before award. This may be performed by marking each page of proprietary or source selection material with the statement ''Source Selection Information—See FAR 3.104'' or ''Proprietary Information—See FAR 3.104'', as applicable. Alternatively, this requirement may be met by attaching Forms DS–1926, Proprietary Information (Cover Page), and DS–1927, Source Selection Information (Cover Page), to any proprietary and source selection information. Individuals responsible for preparing derivative documents which reference, cite, or paraphrase proprietary or source selection information, are responsible for marking such documents as indicated in this paragraph. The required marking or cover page shall be included when technical proposals are submitted for evaluation and when an audit is requested. After award, the procedures governing the Freedom of Information Act and related laws/regulations shall be followed regarding release of proprietary or source selection information.

603.104–10 Violations or possible violations.

(a)(1) The contracting officer shall report any violation or possible violation to the head of the contracting activity after he or she has reviewed the documentation and has concluded that there is no impact on the acquisition.

(d)(2)(ii)(B) The Procurement Executive is the agency head's designee for the purposes of FAR 3.104–10(d)(2)(ii)(B).

Subpart 603.2—Contractor Gratuities to Government Personnel

603.204 Treatment of violations.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 3.204.

(b) *Procedures.* Upon a decision to proceed with an investigation of an alleged violation of the Gratuities clause, the Assistant Inspector General for Investigations shall provide to the contractor a written notice by certified mail, return receipt requested. The notice shall present the findings of the decision and shall establish a schedule, including location, for an investigative hearing for the purposes prescribed in FAR 3.204(b). As determined necessary by the Assistant Inspector General for Investigations, follow-up hearings may be scheduled. Upon completion of the investigation, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a

report and recommendation, together with all pertinent documentation.

(c) In addition to the requirements of FAR 3.204(c), when the Procurement Executive determines that a violation has occurred, the Procurement Executive shall so notify the Assistant Inspector General for Investigations. The Assistant Inspector General for Investigations shall then notify the individual who made the report, the Office of the Legal Adviser, and, if appropriate, the Department of Justice.

Subpart 603.4—Contingent Fees

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient to determine whether an actual violation has occurred. The contracting officer may also obtain the advice of the Office of the Legal Adviser as to the legality and general propriety of any information disclosed.

[64 FR 43621, Aug. 11, 1999]

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.601 Policy.

(a) It is Department policy not to award contracts to Federal employees, or businesses substantially owned or controlled by Federal employees.

[59 FR 66754, Dec. 28, 1994]

603.602 Exceptions.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.602.

Subpart 603.7—Voiding and Rescinding Contracts

603.704 Policy.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.704.

[59 FR 66754, Dec. 28, 1994]

603.705 Procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.705.

[59 FR 66754, Dec. 28, 1994]

Subpart 603.9—Whistleblower Protections for Contractor Employees

SOURCE: 64 FR 43621, Aug. 11, 1999, unless otherwise noted.

603.905 Procedures for investigating complaints.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.905.

603.906 Remedies.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.906.

PART 604—ADMINISTRATIVE MATTERS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 4.502.

[64 FR 43621, Aug. 11, 1999]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

Sec.
605.202 Exceptions.
605.202–70 Foreign acquisitions.
605.207–70 Acquisitions available from only one responsible source.

Subpart 605.3—Synopses of Contract Awards

605.303 Announcement of contract awards.

Subpart 605.4—Release of Information

605.403 Requests from members of Congress.
605.404 Release of long-range acquisition estimates.
605.404–1 Release procedures.

Subpart 605.5—Paid Advertisements

605.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26164, July 11, 1988, unless otherwise noted.

Subpart 605.2—Synopsis of Proposed Contract Actions

605.202 Exceptions.

605.202–70 Foreign acquisitions.

(a) *Policy*. In accordance with a Determination and Findings issued by the Assistant Secretary of State for Administration, the requirement for advance CBD notices for the Department's foreign acquisitions awarded by overseas contracting activities is waived. CBD notices may be published for any acquisition where the contracting officer decides that publication would be in the Department's best interests. This waiver shall remain in effect until May 19, 2001.

(b) *Procedures*. Contracting officers at overseas contracting activities are not required to prepare an individual determination and findings to document their decision to waive the CBD notice requirements.

(c) *Competition requirements*. Nothing in this section waives the requirement to obtain competition as required by FAR part 6 and DOSAR (48 CFR) part 606. Competition, including the use of written solicitation, shall be obtained in all cases to the extent feasible. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition.

(d) *Policy exclusion*. CBD waiver authority does not apply to local guard service contracts that exceed $250,000. Local guard service contracts that exceed $250,000 shall be synopsized in the CBD. Option year prices shall be included when computing the applicability of this threshold.

[60 FR 39662, Aug. 3, 1995, as amended at 64 FR 43621, Aug. 11, 1999]

605.207–70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the work and the information a potential source must submit.

Subpart 605.3—Synopses of Contract Awards

605.303 Announcement of contract awards.

(a) Contracting officers shall make information available on awards over $10 million to the Office of Legislative Affairs, upon request, in sufficient time for an announcement by 5:00 p.m. Washington, DC time on the day of the award. This requirement applies only to awards made by domestic contracting activities where performance

will take place within the United States or its possessions.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999]

Subpart 605.4—Release of Information

605.403 Requests from members of Congress.

(a) The Procurement Executive is the agency head for the purposes of FAR 5.403(a).

[59 FR 66755, Dec. 28, 1994]

605.404 Release of long-range acquisition estimates.

605.404–1 Release procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 5.404–1(a) and the agency head for the purposes of FAR 5.404–1(b).

[55 FR 5774, Feb. 16, 1990]

Subpart 605.5—Paid Advertisements

605.502 Authority.

(a) For paid advertisements in newspapers within the United States, the head of the contracting activity is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in newspapers outside the United States, the head of the contracting activity is the agency's head's designee for the purposes of FAR 5.502(a). When the head of the contracting activity is the contracting officer for the acquisition, no further approvals are necessary.

[59 FR 66755, Dec. 28, 1994]

PART 606—COMPETITION REQUIREMENTS

Subpart 606.2—Full and Open Competition After Exclusion of Sources

Sec.

606.202 Establishing or maintaining alternate sources.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.
606.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
606.302–4 International agreement.
606.302–6 National security.
606.302–7 Public interest.
606.303–1 Requirements.
606.304 Approval of the justification.
606.304–70 Acquisitions by overseas posts.
606.370 Department of State standardization program.

Subpart 606.5—Competition Advocates

606.501 Requirement.
606.501–70 Overseas posts.
606.570 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

The Procurement Executive is the agency head for the purposes of FAR 6.202.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(b)(4) The Procurement Executive is the agency head for the purposes of FAR 6.302–1(b)(4).

[59 FR 66755, Dec. 28, 1994]

606.302–4 International agreement.

(b)(2) In accordance with FAR 6.302–4, guard services shall be acquired from the host government only when it is the sole available source.

[59 FR 66755, Dec. 28, 1994]

606.302–6 National security.

(b) This subsection applies to all acquisitions involving national security information, regardless of dollar amount. In no case shall information be classified in order to restrict competition. Information may be classified only when its authorized disclosure could be expected to cause damage to national security.

(c) (1) The Chief, Controls Division, Office of Intelligence Liaison, Directorate for Coordination, Bureau of Intelligence and Research, is responsible for reviewing and certifying on any proposed acquisitions derived from or funded or administered by intelligence community agencies that involve sensitive compartmented information and ensuring that the provisions of Executive Order 12958 and FAR 6.302–6 have been met. The Chief, Information Security Programs Division, Office of Information Security Technology, Bureau of Diplomatic Security, is responsible for reviewing and certifying on all other proposed acquisitions funded by the Department of State that involve national security information and ensuring that the provisions of Executive Order 12958 and FAR 6.302–6 have been met. When disclosure of the Department's needs through full and open competition would compromise national security, the Justification for Other than Full and Open Competition shall include the following specific information:

(i) How national security would be compromised if the Department of State's (or other agencies') needs were disclosed in the Commerce Business Daily;

(ii) Why the CBD synopsis cannot be worded in such a manner that national security would not be compromised;

(iii) Necessity for access to classified information to prepare technical and/or cost proposal and level of security clearance required;

(iv) Necessity for access to classified information to perform the proposed contract and level of security clearance required;

(v) Number and value of contracts that the justification covers; and

(vi) A statement as follows: ''I hereby certify that the national security concerns of the referenced acquisition(s) meet the criteria set forth in Executive Order 12958 and FAR 6.302–6''.

(2) Any acquisition involving national security information shall be publicized in the Commerce Business Daily unless disclosure of the agency's needs would compromise national security.

(3) The contracting officer is responsible for soliciting offers from as many potential sources as is practicable under the circumstances. However, given the sensitivity required for acquisitions involving national security information, it is expected that requirements offices will work closely with the contracting officer in maximizing competition.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999]

606.302–7 Public interest.

The authority to approve the determination prescribed in FAR 6.302–7(c) is reserved to the Secretary of State.

606.303–1 Requirements.

Justifications for contract actions prescribed in FAR 6.303–1(d) shall be forwarded by the contracting officer to A/OPE for transmittal to the Office of the United States Trade Representative.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66755, Dec. 28, 1994]

606.304 Approval of the justification.

(a) (2) The approval authority for a proposed contract over $500,000 but not exceeding $10,000,000 for domestic contracting activities that do not have a competition advocate is the Department Competition Advocate.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999]

606.304–70 Acquisitions by overseas posts.

The Departmental Competition Advocate is the approval authority for the purposes of FAR 6.304(a)(3). This authority is not redelegable. Any such justification must be transmitted

through the Principal Officer at the overseas post.

[59 FR 66756, Dec. 28, 1994]

606.370 Department of State standardization program.

(a) It is the Department's policy to promote full and open competition in all procurement actions. The authority at 41 U.S.C. 253(c)(1) shall be used with respect to standardization when only specified makes and models of equipment will satisfy the Department's needs and only one source is available. This policy applies to all acquisitions involving standardization, regardless of dollar amount.

(b) Contracts awarded under the authority at 41 U.S.C. 253(c)(1) shall be supported by the written justification described in FAR 6.303. The contracting officer, requirements office, procuring activity competition advocate, and the Procurement Executive shall approve all Justifications for Other than Full and Open Competition that cite standardization of technical equipment as justification to restrict competition. The Administrative Officer at each post is the procuring activity competition advocate for that post and the requirements office at post is the embassy functional office responsible for identifying the need to contract.

(c) Procurement of specified makes and models of technical equipment and systems, for which there is only one source of supply, is considered other than full and open competition. Such procurements shall be supported by an approved Justification for Other than Full and Open Competition. The justification shall include the content requirements of FAR 6.303–2. The justification shall also address potential cost savings in areas such as inventory, operations, training, maintenance, repairs, and administrative and management support. Areas of consideration for potential cost savings shall be supported by detailed estimates as attachments to the justification. Justifications shall specify an effective period, which shall bear a reasonable relationship to the life of the technical equipment. The effective period shall not exceed six years with a review at the end of the first three years. Periodic reviews shall be made during the standardization period to determine whether the standardization should be continued, revised or canceled.

[59 FR 66756, Dec. 28, 1994]

Subpart 606.5—Competition Advocates

606.501 Requirement.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Department Competition Advocate.

(b) A contracting activity competition advocate has been designated for A/LM/AQM. The Department Competition Advocate is the activity competition advocate for all other domestic contracting activities.

[59 FR 66756, Dec. 28, 1994, as amended at 64 FR 43622, Aug. 11, 1999]

606.501–70 Overseas posts.

The Administrative Officer at each overseas post is the competition advocate for that post.

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206–70, Competition Advocate/Ombudsman, in all solicitations exceeding the simplified acquisition threshold.

[64 FR 43622, Aug. 11, 1999]

PART 607—ACQUISITION PLANNING

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR subpart 1.3.

Subpart 607.1—Acquisition Plans

607.103 Agency-head responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 7.103.

[55 FR 5774, Feb. 16, 1990]

PART 609—CONTRACTOR QUALIFICATIONS

Subpart 609.2—Qualifications Requirements

Sec.
609.202 Policy.
609.206 Acquisitions subject to qualification requirements.
609.206–1 General.

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.
609.403–70 DOSAR definitions.
609.404 List of parties excluded from Federal procurement and nonprocurement programs.
609.405 Effect of listing.
609.405–1 Continuation of current contracts.
609.405–2 Restrictions on subcontracting.
609.405–70 Termination action decision.
609.406 Debarment.
609.406–1 General.
609.406–3 Procedures.
609.407 Suspension.
609.407–1 General.
609.407–3 Procedures.

Subpart 609.5—Organizational and Consultant Conflicts of Interests

609.503 Waiver.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

Subpart 609.2—Qualifications Requirements

609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

609.206 Acquisitions subject to qualification requirements.

609.206–1 General.

(b) The authority prescribed in FAR 9.206–1(b) is delegated, without power of redelegation, to the head of the contracting activity.

[64 FR 43622, Aug. 11, 1999]

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

Debarring official means the Procurement Executive.

Suspending official means the Procurement Executive.

609.403–70 DOSAR definitions.

Fact-finding official means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

Notice means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406–3 and FAR 9.407–3.

609.404 List of parties excluded from Federal procurement and nonprocurement programs.

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66756, Dec. 28, 1994]

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d) In accordance with a FAR class deviation granted by the Procurement Executive, the following actions apply to actions awarded by DOS contracting activities:

(1)(i) Contracting officers at overseas contracting activities may rely on the debarment certification submitted by

bidders/offerors (FAR 52.209–5) as proof of eligibility for award when access to the current ''Lists of Parties Excluded from Procurement Programs'' is not reasonably available. For contracts which require A/OPE review and approval, the contracting officer should request that A/OPE perform the required review if the list is not available.

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition threshold, contracting officers need not consult the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', either in hard copy or electronic form, prior to awarding a procurement action exceeding the simplified acquisition threshold.

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43622, Aug. 11, 1999]

609.405–1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405–70.

609.405–2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–2.

609.405–70 Termination action decision.

(a) Prior to making a decision to terminate, based on the consideration listed below, the contracting officer shall have the proposed action reviewed and approved by:

(1) The Office of the Legal Adviser;

(2) An individual one level above the contracting officer; and

(3) For overseas posts, A/OPE.

(b) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(c) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

(1) Seriousness of the cause for debarment or suspension;

(2) Extent of contract performance;

(3) Potential costs to the Government;

(4) Urgency of the requirement and the impact of the delay; and/or

(5) Availability of other safeguards to protect the Government's interests.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

609.406 Debarment.

609.406–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406–1(c).

609.406–3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office. The Office of the Inspector General shall provide to the Procurement Executive a copy of its investigation report. The contracting officer shall provide to the

Procurement Executive a copy of his or her intended actions in response to the Office of the Inspector General report.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406–2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406–3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406–3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406–3(b) The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official within 30 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406–3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational elements affected by the determination.

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406–3(d) and FAR 9.406–3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 64 FR 43622, Aug. 11, 1999]

609.407 Suspension.

609.407–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407–1(d).

609.407–3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406–3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407–2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407–3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407–3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406–3(a), except that the suspending official shall process the notice in accordance with FAR 9.407–3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407–3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

Subpart 609.5—Organizational and Consultant Conflicts of Interests

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

PART 611—DESCRIBING AGENCY NEEDS

Sec.

611.002 Policy.
611.002–70 Metric system implementation.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

Subpart 611.5—Liquidated Damages

611.502 Policy.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43622, Aug. 11, 1999, unless otherwise noted.

611.002 Policy.

611.002–70 Metric system implementation.

(a) *Policy.* The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), requires Federal agencies to establish implementing guidelines pursuant to metric policy to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This section establishes the Department of State's metric conversion guidelines.

(b) *Applicability.* This section applies to all DOS acquisitions, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(c) *Definitions.*

Dual system means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid system means the use of both traditional and hard metric values in specifications, standards, supplies and services.

Measurement sensitive means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations, etc.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures.

Metrication means any act that increases metric system use, including metric training and initiation or conversion of measurement sensitive processes and systems to the metric system.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the ''inch-pound system.'' The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) *Procedures.* (1) DOS contracting activities shall implement the metric system in a manner consistent with 15 U.S.C. 205a, *et seq.*

(2) All DOS contracting activities shall use the metric system in acquisition consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system by acquiring commercially available metric products and services that meet the Department's needs whenever practical. Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms. The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available from the National Technical Information Service; and

(ii) For contracts expected to exceed $500,000 contracting officers shall return to the requirements office all specifications and statements of work that are not expressed in some form of metric terms unless the requirements office has prepared a justification, for the approval of the contracting officer, for the use of non-metric specifications or statements of work. The justification shall be in a format as prescribed by the head of the contracting activity. Option year prices shall be considered when computing the $500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules.

(5) Valid justifications for non-metric specifications or statements of work include, but are not limited to:

(i) Existing specifications or standards are in inch-pound units, unless conversion of the existing specifications or standards is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components should be avoided if the total cost of the retrofit, including redesign costs, exceeds $50,000;

(ii) Metric is not the accepted industry system with respect to a business-related activity; however, soft, hybrid, or dual systems may be used during the transition to hard metric;

(iii) The use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prior to the release of the solicitation. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation for the disapproval.

(7) The in-house operating metric costs shall be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric specifications. All contracting activities and requirements offices shall

maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

(a) The head of the contracting activity is the agency head for the purpose of FAR 11.103(a).

Subpart 611.5—Liquidated Damages

611.502 Policy.

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.502(d).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 613.3—Simplified Acquisition Methods

Sec.
613.303 Blanket purchase agreements (BPAs).
613.303–5 Purchases under BPAs.
613.305 Imprest funds and third party drafts.
613.305–3 Conditions for use.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).

613.303–5 Purchases under BPAs.

(c) In accordance with FAR 13.303–5(c), BPAs shall be awarded to small businesses to the maximum extent practicable.

613.305 Imprest funds and third party drafts.

613.305–3 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.305–3(a).

PART 614—SEALED BIDDING

Subpart 614.2—Solicitation of Bids

Sec.
614.201 Preparation of Invitation for Bids (IFB).
614.201–70 Use of English language.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.
614.402–1 Unclassified bids.
614.402–70 Waiver of public opening of bids.
614.404 Rejection of bids.
614.404–1 Cancellation of invitations after opening.
614.407 Mistakes in bids.
614.407–3 Other mistakes disclosed before award.
614.407–4 Mistakes after award.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26168, July 11, 1988, unless otherwise noted.

Subpart 614.2—Solicitation of Bids

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

614.201 Preparation of Invitation for Bids (IFB).

614.201–70 Use of English language.

Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402–1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402–1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

614.402–70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

614.404 Rejection of bids.

614.404–1 Cancellation of invitations after opening.

The authority to make the determination prescribed in FAR 14.404–1(c) is delegated, without power of redelegation, to the head of the contracting activity. The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

(f) The head of the contracting activity is the agency head for the purpose of FAR 14.404–1(f). This authority is not redelegable.

[53 FR 26168, July 11, 1988, as amended at 59 FR 66758, Dec. 28, 1994; 64 FR 43623, Aug. 11, 1999]

614.407 Mistakes in bids.

614.407–3 Other mistakes disclosed before award.

The authority to make the determinations prescribed in FAR 14.407 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.407–3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

[53 FR 26168, July 11, 1988. Redesignated and amended at 64 FR 43623, Aug. 11, 1999]

614.407–4 Mistakes after award.

The authority to make all determinations prescribed in FAR 14.407–4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.407–4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before making any determinations pursuant to this subsection.

[53 FR 26168, July 11, 1988. Redesignated and amended at 64 FR 43623, Aug. 11, 1999]

PART 615—CONTRACTING BY NEGOTIATION

Subpart 615.2—Solicitation and Receipt of Proposals and Information

Sec.
615.204 Contract format.
615.205 Issuing solicitations.
615.205–70 Use of English language.

Subpart 615.3—Source Selection

615.303 Responsibilities.

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 15.204(e).

615.205 Issuing solicitations.

(a) Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205–5(a). However, the list of those firms which actually submit proposals is not releasable. Requests for information other than solicitation mailing lists shall be handled under the Freedom of Information Act.

615.205–70 Use of English language.

The requirements of DOSAR 614.201–70 also apply when contracting by negotiation.

Subpart 615.3—Source Selection

615.303 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 15.303(a).

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

(a)(4) The contact points for unsolicited proposals are the heads of the contracting activities.

PART 616—TYPES OF CONTRACTS

Sec.
616.000 Scope of part.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.
616.203–4 Contract clauses.
616.207 Firm-fixed-price, level-of-effort term contracts.
616.207–3 Limitations.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Ordering.
616.506 Solicitation provisions and contract clauses.
616.506–70 DOSAR contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

616.000 Scope of part.

The contracting officer may use any of the contract types described in FAR part 16 for acquisitions made under simplified acquisition procedures. The contracting officer shall document his/her decision to use a contract type in accordance with the requirements of FAR part 16.

[60 FR 39963, Aug. 3, 1995]

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203–4 Contract clauses.

Contracting officers at domestic contracting activities may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203–4(d) and after obtaining the approval of the head of the contracting activity. Overseas posts may use the clause at 652.216–71, Price Adjustment, when procuring continuing services (*e.g.*, guard, janitorial, building maintenance, and gardening). Posts shall obtain A/OPE approval for any price adjustment clause that differs from the clause at 652.216–71.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207–3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207–3.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Ordering.

(b)(4) The Departmental Competition Advocate is designated the task and delivery order contract ombudsman.

[64 FR 43624, Aug. 11, 1999]

616.506 Solicitation provisions and contract clauses.

616.506–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216–70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216–20, Definite Quantity, or the clause at FAR 52.216–21, Requirements, or the clause at FAR 52.216–22, Indefinite Quantity, is used.

[53 FR 26169, July 11, 1988. Redesignated at 64 FR 43624, Aug. 11, 1999]

PART 617—SPECIAL CONTRACTING METHODS

Subpart 617.1—Multiyear Contracting

Sec.
617.104 General.
617.105 Policy.
617.105–1 Uses.
617.108 Congressional notification.

Subpart 617.2—Options

617.201 Definitions.
617.201–70 DOSAR Definitions.
617.204 Contracts.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.503 Determination and findings requirements.
617.504–70 Ordering procedures.

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

Subpart 617.1—Multiyear Contracting

SOURCE: 64 FR 43624, Aug. 11, 1999, unless otherwise noted.

617.104 General.

(b) The Procurement Executive is the agency head for the purpose of FAR 17.104(b).

617.105 Policy.

617.105–1 Uses.

(d) Every multiyear contract shall comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant financial management office/comptroller.

617.108 Congressional notification.

(a) The Procurement Executive is the agency head for the purposes of FAR 17.108(a).

Subpart 617.2—Options

617.201 Definitions.

617.201–70 DOSAR Definitions.

Evaluated option means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

Price option means an option where the amount for the option is specified in or is reasonably determinable from the terms of the basic contract, as described in FAR 17.207(f) (1) through (5).

Unevaluated option means an option that is not included in the evaluation for award purposes.

Unpriced option means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

617.204 Contracts.

(e) The Procurement Executive shall approve any solicitations or contracts which exceed the five (5) year maximum length for supplies or services.

[59 FR 66759, Dec. 28, 1994]

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.503 Determination and findings requirements.

The authority to make the determination prescribed in FAR 17.503 is delegated to the head of the contracting activity.

[64 FR 43624, Aug. 11, 1999]

617.504–70 Ordering procedures.

(a) Department deputy assistant secretaries or their equivalents are authorized to execute Economy Act IAAs. Department contracting officers also are authorized to execute Economy Act IAAs, as prescribed in FAR 17.504(a).

(b) Department of State form DS–1921, Award/Modification of Interagency Acquisition Agreement (illustrated in part 653), shall be used for all Economy Act IAAs where the Department is the requesting agency. It shall also be used for Economy Act IAAs where the Department is the servicing agency if the requesting agency does not have a similar form that provides the same information.

[59 FR 66759, Dec. 28, 1994, as amended at 64 FR 43624, Aug. 11, 1999]

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS PROGRAMS

Subpart 619.2—Policies

Sec.
619.201 General policy.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.
619.402–70 DOS designee.

Subpart 619.5—Set-Asides for Small Business

619.501 General.
619.505 Rejecting Small Business Administration recommendations.
619.506 Withdrawing or modifying set asides.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.
619.602–1 Referral.

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.
619.705–1 General support of the program.
619.705–3 Preparing the solicitation.
619.705–4 Reviewing the subcontracting plan.
619.705–6 Postaward responsibilities of the contracting officer.
619.705–6–70 Reporting responsibilities.
619.708–70 Solicitation provisions and contract clauses.

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

619.800 General.
619.801 Definitions.
619.803 Selecting acquisitions for the 8(a) program.
619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).
619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.
619.804 Evaluation, offering, and acceptance.
619.804–2 Agency offering.
619.804–3 SBA acceptance.
619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.
619.805 Competitive 8(a).
619.805–2 Procedures.
619.806 Pricing the 8(a) contract.
619.808 Contract negotiation.
619.808–1 Sole source.
619.810 SBA appeals.
619.811 Preparing the contracts.
619.811–1 Sole source.
619.811–2 Competitive.
619.811–3 Contract clauses.
619.812 Contract administration.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26170, July 11, 1988, unless otherwise noted.

Subpart 619.2—Policies

619.201 General policy.

(a) The Operations Director, Office of Small and Disadvantaged Business Utilization (A/SDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603–70), or designee, is responsible for establishing in coordination with the A/SDBU Operations Director annual goals for the DOS small and disadvantaged business program.

(c) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations,

procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of the simplified aquisition threshold, including commercial items using the simplified procedures of FAR subpart 13.5, to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides. This includes proposed contract modifications for new or additional requirements which do not fall within the original scope of the contract and which exceed the simplified acquisition threshold. This does not include the exercising of contract options;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small and small disadvantaged business matters as authorized by the A/SDBU Operations Director.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995; 64 FR 43624, Aug. 11, 1999]

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402–70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the A/SDBU Operations Director shall perform the action so required.

Subpart 619.5—Set-Asides for Small Business

619.501 General.

(c) Contracting officers shall use Department of State Form DS–1910, Small Business Review—Actions Above the Simplified Acquisition Threshold, to document set-aside decisions.

[59 FR 66759, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995; 64 FR 43624, Aug. 11, 1999]

619.505 Rejecting Small Business Administration recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

619.506 Withdrawing or modifying set asides.

(b) The Procurement Executive shall resolve disagreements between the A/SDBU Operations Director and the contracting officer.

[59 FR 66759, Dec. 28, 1994]

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602–1 Referral.

The contracting officer shall transmit to the A/SDBU Operations Director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602–1(a).

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

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

619.705–1 General support of the program.

It is the Department's policy to incorporate its current fiscal year goals as negotiated with the SBA into all pertinent Department solicitations, in addition to the standard subcontract clauses. Incorporation of the goals does not require that large business prime contractors must subcontract, but does require that to the extent they plan to subcontract, specific goals be established for doing business with small, small disadvantaged, and women-owned firms. Where funds are available, an incentive clause such as that found in FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, is encouraged.

[59 FR 66760, Dec. 28, 1994]

619.705–3 Preparing the solicitation.

To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

[64 FR 43624, Aug. 11, 1999]

619.705–4 Reviewing the subcontracting plan.

A/SDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. A/SDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

619.705–6 Postaward responsibilities of the contracting officer.

619.705–6–70 Reporting responsibilities.

(a) The contracting officer shall forward to the A/SDBU Operations Director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected annually and semiannually, using Standard Form 295, Summary Subcontracting Report, for the annual submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semiannual submissions. The head of the contracting activity shall forward these reports to the A/SDBU Operations Director, not later than the 30th day of the month following the close of the reporting period.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66760, Dec. 28, 1994]

619.708–70 Solicitation provisions and contract clauses.

The contracting officer shall insert a provision substantially the same as the provision at 652.219–70, Department of State Subcontracting Goals, in solicitations whenever the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, is used.

[59 FR 66760, Dec. 28, 1994]

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

SOURCE: 64 FR 43624, Aug. 11, 1999, unless otherwise noted.

619.800 General.

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal contracting activities. The Department of State has signed an MOU with SBA, effective May 6, 1998. Under the MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

619.803 Selecting acquisitions for the 8(a) program.

619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.

Contracting activities may use the simplified acquisition procedures of FAR part 13 and DOSAR part 613 to issue purchase orders or contracts, not exceeding $100,000, to 8(a) participants. The $100,000 limitation for use of FAR part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (http://www.sba.gov) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the agency contracting officer shall establish the price with the selected 8(a) contractor.

(d) The contracting officer shall issue the purchase order or contract directly to the 8(a) firm in accordance with the provisions of FAR part 13 and DOSAR part 613. The contracting officer shall insert FAR clause 52.219–14, Limitations on Subcontracting, and DOSAR clause 652.219–71, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection. The contracting officer's title shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose, shall sign the purchase order or contract as a third party.

(e) The contracting officer shall forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

619.804 Evaluation, offering, and acceptance.

619.804–2 Agency offering.

(a) When applicable, this notification shall identify that the offering is in accordance with the MOU identified in 619.800.

619.804–3 SBA acceptance.

619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting agency.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the contracting agency may assume that the requirement has been accepted and proceed with the acquisition.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

619.805 Competitive 8(a).

619.805–2 Procedures.

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see FAR part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding $100,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

619.806 Pricing the 8(a) contract.

(a) When required by FAR subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 619.800.

619.808 Contract negotiation.

619.808–1 Sole source.

(a) If the acquisition is conducted under an MOU cited in 619.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 619.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a)

participant, the SBA may participate in the negotiations.

619.810 SBA appeals.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

619.811 Preparing the contracts.

619.811–1 Sole source.

(d) If the award is to be made under an MOU cited in 619.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall insert FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding $100,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, i.e., an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the ''Awarded to'' or ''Contractor name'' block on the appropriate form.

619.811–2 Competitive.

(a) If the award is made under the delegation of 8(a) contracting authority, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole source contracts. See 619.811–1.

(b) If the acquisition is conducted under the MOU cited in 619.800, the process for obtaining signatures shall be as specified in 619.811–1(d)(4).

619.811–3 Contract clauses.

(d)(3) The contracting officer shall insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), in competitive solicitations and contracts exceeding $100,000 when the acquisition is processed under the MOU cited in 619.800.

(f) The contracting officer shall insert the clause at FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards, in all solicitations and contracts that are processed under the MOU cited at 619.800. The clauses at FAR 52.219–11, Special 8(a) Contract Conditions; 52.219–12, Special 8(a) Subcontract Conditions; and, 52.219–17, Section 8(a) Award, shall not be used.

619.812 Contract administration.

(d) The head of the contracting activity is the agency head for the purposes of FAR 19.812(d). Awards under the MOU cited in 619.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at DOSAR 652.219–71, Section 8(a) Direct Awards, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 622.3—Contract Work Hours and Safety Standards Act

Sec.

622.302 Liquidated damages and overtime pay.

Subpart 622.4—Labor Standards for Contracts Involving Construction

622.404 Davis-Bacon Act wage determinations.
622.404–3 Procedures for requesting wage determinations.

622.404–6 Modifications of wage determinations.
622.404–7 Correction of wage determinations containing clerical errors.
622.404–11 Wage determination appeals.
622.406 Administration and enforcement.
622.406–1 Policy.
622.406–8 Investigations.
622.406–9 Withholding from or suspension of contract payments.
622.406–10 Disposition of disputes concerning construction contract labor standards enforcement.
622.406–11 Contract terminations.
622.406–12 Cooperation with the Department of Labor.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions.
622.604–2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

622.803 Responsibilities.
622.807 Exemptions.

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

622.1303 Waivers.
622.1308 Contract clauses.

Subpart 622.14—Employment of Workers with Disabilities

622.1403 Waivers.
622.1408 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 622.3—Contract Work Hours and Safety Standards Act

622.302 Liquidated damages and overtime pay.

The authority to make the determination prescribed in FAR 22.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5774, Feb. 16, 1990]

Subpart 622.4—Labor Standards for Contracts Involving Construction

SOURCE: 55 FR 5774, Feb. 16, 1990, unless otherwise noted.

622.404 Davis-Bacon Act wage determinations.

622.404–3 Procedures for requesting wage determinations.

The cognizant contracting activity (see 601.603–70) is the contracting agency for the purposes of FAR 22.404–3(b) and (e)

622.404–6 Modifications of wage determinations.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404–6.

(b)(6) The head of the contracting activity is the agency head's designee for the purposes of FAR 22.404–6(b)(6).

[55 FR 5774, Feb. 16, 1990, as amended at 59 FR 66760, Dec. 28, 1994]

622.404–7 Correction of wage determinations containing clerical errors.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404–7.

622.404–11 Wage determination appeals.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404–11.

622.406 Administration and enforcement.

622.406–1 Policy.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406–1(a).

622.406–8 Investigations.

(a) The chief of the contracting activity is responsible for conducting labor standards investigations as prescribed in FAR 22.406–8(a).

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 22.406–8(d).

622.406–9 Withholding from or suspension of contract payments.

The authority to suspend contract payments pursuant to FAR 22.406–9(b) is delegated, without power of redelegation, to the head of the contracting activity.

622.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406–10(b).

622.406–11 Contract terminations.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406–11.

622.406–12 Cooperation with the Department of Labor.

Any information furnished to the Department of Labor pursuant to FAR 22.406–12(a) shall be submitted through the head of the contracting activity.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions

622.604–2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604–2(c)(1).

Subpart 622.8—Equal Employment Opportunity

622.803 Responsibilities.

(c) The Procurement Executive is the agency head for the purpose of FAR 22.803(c).

[64 FR 43626, Aug. 11, 1999]

622.807 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

622.1303 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1303.

622.1308 Contract clauses.

The Procurement Executive is the agency head for the purposes of FAR 22.1308 (a)(2) and (c).

[55 FR 5775, Feb. 16, 1990]

Subpart 622.14—Employment of Workers with Disabilities

622.1403 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

622.1408 Contract clause.

The Procurement Executive is the agency head for the purposes of FAR 22.1408.

[55 FR 5775, Feb. 16, 1990]

PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

Subpart 623.1—Pollution Control and Clean Air and Water

Sec.
623.104 Exemptions.
623.107 Compliance responsibilities.

Subpart 623.3—Hazardous Material Identification andMaterial Safety Data

623.302–70 Policy.

Subpart 623.4—Use of Recovered Materials

623.400 Scope of subpart.
623.404 Procedures.

Subpart 623.5—Drug–Free Workplace

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

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

623.107 Compliance responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 23.107.

Subpart 623.3—Hazardous Material Identification and Material Safety Data

623.302–70 Policy.

Any work which affects the safety and/or health of post personnel, including the handling of hazardous materials, shall comply with the applicable requirements of the Department of State Safety/Health and Environmental Management Resource Guide (6 FAM 606.7). Requirements offices shall ensure that any contractor operations and activities, whether sponsored by the post or other Department organization, are closely coordinated with the Post Occupational Safety and Health Officer during both planning and implementation phases.

[59 FR 66760, Dec. 28, 1994]

Subpart 623.4—Use of Recovered Materials

SOURCE: 64 FR 43626, Aug. 11, 1999, unless otherwise noted.

623.400 Scope of subpart.

The affirmative procurement program is applicable to all domestic acquisitions of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.404 Procedures.

(b)(2) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase EPA designated items containing other than recovered materials only if one of the exemptions listed in FAR 23.404(b)(3) applies. If the requirements office determines to acquire EPA designated items that do not contain recovered materials, a written justification must be submitted to the head of the contracting activity.

(i) Contracts for the purchase of, or requiring the supply of, any EPA designated item shall require that the item conform to the EPA guidelines, unless an exception has been approved by the head of the contracting activity in accordance with FAR 23.404(b)(3) and DOSAR 623.404(b)(3).

(ii) Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-bid and pre-proposal conferences, when appropriate. Other means of promotion may include a specific notice on a solicitation's cover letter, calling attention to the requirement for recovered materials.

(iii) Contracting officers shall include FAR clause 52.223–9 to ensure that contractors estimate, certify, and verify the amount of recovered material used in the performance of the contract.

(iv) The effectiveness of the program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered materials is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices, or an unacceptable level of performance.

(3) The head of the contracting activity is the agency head for the purpose of FAR 23.404(b)(3).

Subpart 623.5—Drug-Free Workplace

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

The authority to approve the determination prescribed in FAR 23.506(e) is reserved to the Secretary of State.

[55 FR 5775, Feb. 16, 1990]

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 624.2—Freedom of Information Act

624.202 Policy.

DOS regulations implementing the Freedom of Information Act (5 U.S.C.

552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171, Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

[53 FR 26172, July 11, 1988]

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American Act—Supplies

Sec.
625.102 Policy.
625.105 Evaluating offers.
625.108 Excepted articles, materials, and supplies.

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.
625.203 Evaluating offers.
625.204 Violations.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.
625.300–70 Overseas acquisitions.
625.302 Policy.
625.304 Excess and near-excess foreign currencies.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

Subpart 625.70—Arab League Boycott and Related Provisions

625.7001 Policy.
625.7002 Solicitation provision and contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 625.1—Buy American Act—Supplies

625.102 Policy.

(a)(3) The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity.

(b)(2) The authority to make the determination prescribed in FAR 25.102(b)(2) is delegated, without power of redelegation, to the head of the contracting activity.

[59 FR 66762, Dec. 28, 1994]

625.105 Evaluating offers.

The authority to make the determinations prescribed in FAR 25.105 is delegated, without power of redelegation, to the head of the contracting activity.

625.108 Excepted articles, materials, and supplies.

A/OPE is the DOS central agency control point for furnishing to the appropriate FAR Council the documentation prescribed in FAR 15.108(b) and (c).

[53 FR 26172, July 11, 1988, as amended at 59 FR 66762, Dec. 28, 1994]

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.

(a)(2) The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity.

(b) The authority to make the determination prescribed in FAR 25.202(b) is delegated, without power of redelegation, to the head of the contracting activity.

[59 FR 66762, Dec. 28, 1994]

625.203 Evaluating offers.

The head of the contracting activity is the agency head for the purposes of FAR 25.203 (a) and (b).

[59 FR 66762, Dec. 28, 1994]

625.204 Violations.

The Procurement Executive is the agency head for the purposes of FAR 25.204.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.

625.300–70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

625.302 Policy.

The authority to make the determination prescribed in FAR 25.302(b)(3) is delegated, without power of redelegation, to the head of the contracting activity. The authority prescribed in FAR 25.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

625.304 Excess and near-excess foreign currencies.

The authority to make the determination prescribed in FAR 25.304(c) is delegated to the head of the contracting activity without power of redelegation.

[53 FR 26172, July 11, 1988, as amended at 59 FR 66762, Dec. 28, 1994]

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

The authority to approve exceptions for other contracts in excess of the simplified acquisition threshold is delegated, without power of redelegation, o the head of the contracting activity.

[60 FR 39663, Aug. 3, 1995]

Subpart 625.70—Arab League Boycott and Related Provisions

SOURCE: 64 FR 43626, Aug. 11, 1999, unless otherwise noted.

625.7001 Policy.

(a) Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Public Law 103–236) prohibits the Department of State from entering into any contract that expends funds appropriated to the Department of State:

(1) With a foreign person that complies with the Arab League Boycott of Israel; or,

(2) With any foreign or United States person that discriminates in the award of subcontracts on the basis of religion.

(b) This authority has continuing effect. Section 565 requires specific language to be included in all Invitations for Bids and Requests for Proposals with respect to a contract subject to Section 565's prohibitions.

(c) Section 565 may be waived on a country-by-country basis if such a waiver is in the national interest and necessary to carry on diplomatic functions and is approved by the Secretary of State or his/her designee.

625.7002 Solicitation provision and contract clause.

Contracting officers shall include the following provision and clause in all solicitations and contracts exceeding the simplified acquisition threshold, unless a waiver has been granted in accordance with DOSAR 625.7001(c):

(a) 652.225–70, Arab League Boycott of Israel; and.

(b) 652.225–71, Section 8(a) of the Export Administration Act, as amended.

PART 626—OTHER SOCIOECONOMIC PROGRAMS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43627, Aug. 11, 1999, unless otherwise noted.

Subpart 626.2—Minority Business Enterprise

626.200–70 Solicitation provision.

The contracting officer shall insert the provision at 652.226–70, Certification of Status as a Minority Business Enterprise, in all solicitations issued by domestic contracting activities. If the solicitation is being issued using electronic commerce, the contracting officer shall use the provision with its Alternate I.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 627—PATENTS, DATA, AND COPYRIGHTS

Subpart 627.2—Patents

Sec.
627.203 Patent indemnification of Government by contractor.
627.203–6 Clause for Government waiver of indemnity.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.
627.304 Procedures.
627.304–1 General.
627.304–5 Appeals.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

Subpart 627.2—Patents

627.203 Patent indemnification of Government by contractor.

627.203–6 Clause for Government waiver of indemnity.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.203–6.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.303. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304 Procedures.

627.304–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304–1. Questions regarding fact-finding procedures as specified in FAR 27.304–1(a)(4) shall be referred to A/OPE. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304–5 Appeals.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304–5. Questions regarding the appeals procedure as specified in FAR 27.304–5(b) shall be referred to A/OPE.

PART 628—BONDS AND INSURANCE

Subpart 628.1—Bonds

Sec.
628.101 Bid guarantees.
628.101–1 Policy on use.
628.106–6 Furnishing information.

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.
628.203–7 Exclusion of individual sureties.

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.
628.306 Insurance under fixed-price contracts.
628.307 Insurance under cost-reimbursement contracts.

Subpart 628–70—Indemnification

628.7001 DOSAR contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 628.1—Bonds

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

628.101 Bid guarantees.

628.101–1 Policy on use.

(c) The Procurement Executive is the agency head's designee for the purposes of FAR 28.101–1(c).

628.106–6 Furnishing information.

(c) The head of the contracting activity is the agency head's designee for the purposes of FAR 28.106–6(c).

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the Office of the Inspector General.

[59 FR 66763, Dec. 28, 1994]

628.203–7 Exclusion of individual sureties.

The Procurement Executive is the agency head's designee for the purposes of FAR 28.203–7.

[59 FR 66763, Dec. 28, 1994]

Subpart 628.3—Insurance

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

628.305 Overseas workers' compensation and war-hazard insurance.

(a) It is the Department's policy that acquisitions for services, including construction but excluding personal services contracts, which require contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651–1654, as amended). For the purpose of this section only, ''contractor personnel'' includes individuals who are either:

(1) United States citizens or residents, or

(2) Hired in the United States or its possessions.

(b) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance, at a fixed rate for services and construction, to cover DOS contracts which will require performance overseas by United States citizens, residents, or those employed in the United States. In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries have been waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert the clause at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

(c) Upon award of a contract which requires Defense Base Act insurance, the contracting officer shall notify the successful offeror of the name of the insurance broker from which the contractor should acquire insurance.

(d) The authority to request a waiver from the Secretary of Labor of a particular country, as set forth in FAR 28.305(d), is reserved to the Secretary of State. The Department has obtained blanket waivers from the Secretary of Labor for all contracts for services, including construction, awarded and/or performed overseas. The waivers apply to all individuals who are not employees hired in the United States, or who are not United States citizens or residents.

[59 FR 66763, Dec. 28, 1994, as amended at 64 FR 43627, Aug. 11, 1999]

628.306 Insurance under fixed-price contracts.

The contracting officer shall insert the provision at 652.228–74, Defense Base Act Insurance Rates—Limitation—Fixed-Price, in solicitations for fixed-price or construction contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

[64 FR 43627, Aug. 11, 1999]

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials, in solicitations for cost-reimbursement, labor-hour, or time-and-materials type contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

[64 FR 43627, Aug. 11, 1999]

Subpart 628–70—Indemnification

628.7001 DOSAR contract clause.

(a) Contractors should not ordinarily be required to assume risks which a

private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228–70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

PART 629—TAXES

Subpart 629.1—General

Sec.
629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.
629.202–70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.
629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.
629.401–70 DOSAR contract clause.
629.402 Foreign contracts.
629.402–1 Foreign fixed-price contracts.
629.402–1–70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 629.1—General

629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202–70 Exemptions from other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

629.303 Application of State and local taxes to Government contractors and subcontractors.

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

629.402 Foreign contracts.

629.402–1 Foreign fixed-price contracts.

629.402–1–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Personal Property Disposition at Posts Abroad, in all solicitations and contracts performed overseas.

[64 FR 43627, Aug. 11, 1999]

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 631.1—Applicability

Sec.
631.101 Objectives.

Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.
631.205–6 Compensation for personal services.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66764, Dec. 28, 1994, unless otherwise noted.

Subpart 631.1—Applicability

631.101 Objectives.

The Procurement Executive is the agency head's designee for the purposes of FAR 31.101.

Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.

631.205–6 Compensation for personal services.

(g)(3) The head of the contracting activity is the agency head's designee for the purpose of FAR 31.205–6(g)(3).

[64 FR 43627, Aug. 11, 1999]

PART 632—CONTRACT FINANCING

Sec.
632.006 Reduction or suspension of contract payments upon finding of fraud.
632.006–1 General.
632.006–2 Definitions.
632.006–4 Procedures.

Subpart 632.1—Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

Subpart 632.4—Advance Payments

632.402 General.
632.404 Exclusions.
632.407 Interest.

Subpart 632.7—Contract Funding

632.702 Policy.
632.702–70 DOS policy.
632.703 Contract funding requirements.
632.703–3 Contracts crossing fiscal years.
632.705 Contract clauses.
632.705–70 DOSAR contract clause.

Subpart 632.8—Assignment of Claims

632.803 Policies.

Subpart 632.9—Prompt Payment

632.903 Policy.
632.908 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

632.006 Reduction or suspension of contract payments upon finding of fraud.

632.006–1 General.

The Procurement Executive is the agency head for the purpose of FAR 32.006–1.

[64 FR 43627, Aug. 11, 1999]

632.006–2 Definitions.

Remedy coordination official means the Assistant Inspector General for Investigations.

[64 FR 43627, Aug. 11, 1999]

632.006–4 Procedures.

The Procurement Executive is the agency head for the purposes of FAR 32.006–4.

[64 FR 43627, Aug. 11, 1999]

Subpart 632.1—Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

The Procurement Executive is the agency head for the purpose of FAR 32.114.

[64 FR 43627, Aug. 11, 1999]

Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

[64 FR 43627, Aug. 11, 1999]

Subpart 632.4—Advance Payments

632.402 General.

(b) Advance payments shall be authorized sparingly. Contracting officers should consider the use of partial payments, fast payments, or more frequent payments as alternatives to advance payments.

(c)(1)(iii) The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

632.404 Exclusions.

(a) Total advance payments may be authorized for the items listed in FAR 32.404(a), notwithstanding their designation as a commercial item and acquisition under FAR part 12 procedures.

[64 FR 43627, Aug. 11, 1999]

632.407 Interest.

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 32.407(d).

[59 FR 66764, Dec. 28, 1994]

Subpart 632.7—Contract Funding

SOURCE: 64 FR 43628, Aug. 11, 1999, unless otherwise noted.

632.702 Policy.

632.702–70 DOS policy.

The Department's policy is to provide full funding for all contracts, to the maximum extent practicable. FAR 32.704 and 32.705–2 provide for incremental funding of cost-reimbursement contracts. Fixed-price, labor-hour, and time-and-materials contracts for severable services may also be incrementally funded if full funding is not available at the time of contract award and the contracting officer executes a determination and findings, approved by the requirements office, justifying the need for incremental funding due to the unavailability of funds.

632.703 Contract funding requirements.

632.703–3 Contracts crossing fiscal years.

(b) The head of the contracting activity is the agency head for the purpose of FAR 32.703–3(b).

632.705 Contract clauses.

632.705–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.232–72, Limitation of Funds, in incrementally funded fixed-price, labor-hour, and time-and-materials solicitations and contracts for severable services.

Subpart 632.8—Assignment of Claims

632.803 Policies.

(b) The assignment of claims shall be prohibited for all personal services contracts. The assignment of claims shall also be prohibited for all contracts awarded and performed overseas, unless approval is received from the Procurement Executive. The Directors, Regional Procurement Support Offices may approve the assignment of claims

for contracts under their administration after obtaining legal consultation.

[59 FR 66764, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

Subpart 632.9—Prompt Payment

632.903 Policy.

The authority to make the determination prescribed in FAR 32.903 is delegated, without power of redelegation, to the head of the contracting activity. Before making a determination concerning early invoice and contract financing payments, the head of the contracting activity shall consult with the Office of Fiscal Operations director, or designee.

[55 FR 5775, Feb. 16, 1990]

632.908 Contract clauses.

(a) The contracting officer may insert a clause substantially the same as the clause at 652.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in fixed-price type solicitations and contracts.

(b) The contracting officer may insert a clause substantially the same as the clause at 652.232–71, Voucher Submission (cost-Reimbursement), in cost-reimbursement type solicitations and contracts.

[59 FR 66764, Dec. 28, 1994]

PART 633—PROTESTS, DISPUTES, AND APPEALS

Subpart 633.1—Protests

Sec.
633.102 General.
633.103 Protests to the agency.
633.104 Protests to GAO.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.
633.214–70 Alternative dispute resolution.
633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.
633.270–1 Scope of section.
633.270–2 Designation.
633.270–3 DOS support.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) shall be coordinated with the Office of the Legal Adviser.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

633.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

[64 FR 43628, Aug. 11, 1999]

633.104 Protests to GAO.

(a) General procedures. The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

[64 FR 43628, Aug. 11, 1999]

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.214–70 Alternative dispute resolution.

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

(b) *When to use ADR.* (1) *Factors favoring ADR.* Contracting officers should consider using ADR in those cases where:

(i) Only facts are in dispute;

(ii) The facts are clearly not favorable to the Government;

(iii) The anticipated costs (in time and money) are less than the anticipated costs of litigation;

(iv) Settlement attempts have reached an impasse;

(v) ADR techniques have been used successfully in similar situations;

(vi) There is a need for independent expert analysis; or,

(vii) The claim has merit but its value is overstated.

(2) *Factors disfavoring ADR.* The following circumstances do not favor use of ADR:

(i) Cases involving disputes controlled by clear legal precedent, making compromise difficult;

(ii) The resolution will have a significant impact on other pending cases or on the future conduct of Department business;

(iii) The dispute is primarily over issues of law;

(iv) A decision of precedential value is needed;

(v) A significant policy question is involved;

(vi) A full public record of the proceeding is important;

(vii) The outcome could significantly involve persons who are not parties to the contract;

(viii) The costs of pursuing an ADR procedure (in time and money) exceed the cost of litigation;

(ix) The nature of the case may cause ADR to be used merely for delay or discovery; or,

(x) The case involves criminal violations.

(3) *Initial action.* Immediately upon receipt of a claim, the contracting officer shall send a letter acknowledging receipt of the claim and soliciting the contractor's views on submitting this claim for ADR. In every dispute, the first step toward resolution shall be unassisted negotiations, in which the parties try to work out the disagreement among themselves. If this fails, before issuing a final decision, the contracting officer shall consult first with the head of the contracting activity, and contact the Office of the Legal Adviser and A/OPE to determine whether the disagreement appears susceptible to resolution by ADR. Consideration shall be given to pursuing additional fact-finding or designating a neutral expert in the disputed issue to provide an advisory opinion.

(c) *Methods of ADR.* If the initial action to resolve the dispute fails, and the contracting officer issues a final decision which is appealed, ADR may still be feasible. The GSBCA issues a notice regarding ADR to all contractors who file appeals under the Contract Disputes Act. This notice describes the following ADR techniques, which contracting officers are urged to discuss with contractors at any time:

(1) *Settlement judge.* A settlement judge is either an administrative judge or hearing examiner who is appointed by the parties in dispute for the purpose of facilitating settlement. The agenda is flexible and based on the specifics of the individual dispute. By holding a frank, in-depth discussion of the strengths and weaknesses of each party's position, the settlement judge may be able to foster a settlement of the dispute. The settlement judge may meet with the parties jointly or individually, and the settlement judge's recommendations are not binding. Typically, the settlement judge's opinions, based on his or her experience in handling prior disputes, will help the parties realize whether their arguments have merit or not.

(2) *Minitrial.* A minitrial is not an actual trial but rather a flexible, expedited, but structured procedure in which each party presents an abbreviated version of its position both to a neutral advisor (who may be appointed by the GSBCA) and to principals of the parties who have full contractual authority to conclude a settlement. The parties mutually decide on the form of presentation without regard to traditional judicial proceedings or rules of evidence. An advance agreement by the parties specifies the procedure to be followed in making presentations, as well as the role of the neutral advisor. Upon conclusion of the presentations, settlement negotiations are conducted. The neutral advisor may assist the parties in negotiating settlement, including making non-binding recommendations.

(3) *Summary trial with binding decision.* A summary trial with binding decision is a procedure in which the scheduling

of an appeal is expedited and the parties try their appeal informally before an administrative judge or panel of judges. The length of the trial and the time for presentation and decision are tailored to the needs of the particular case. Trial procedures and rules applicable to appeals are modified or eliminated to expedite resolution of the appeal. The parties must agree, however, that all decisions, rulings, and orders by the judge(s) are final, conclusive, and not appealable, and may not be set aside, except for fraud. A summary ''bench'' decision is issued at the conclusion of the trial or a summary written decision will be issued within ten (10) days of either the trial's conclusion or receipt of a trial transcript.

(4) *Mediation.* Mediation is a process in which a neutral and impartial third party assists the Government and the contractor in conflict to negotiate an acceptable settlement of contested issues. The mediator is jointly selected and is asked by the disputing parties to assist them to reach a voluntary agreement. The mediator has no decision-making authority and cannot impose a decision. Mediation assistance involves working with the parties to improve their communications, clarify or interpret data, identify key issues to be discussed, design an effective negotiation process, generate settlement options, or help to identify or formulate areas of agreement. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: *http://www.adrr.com*

(5) *Arbitration.* Non-binding arbitration is a process in which a dispute is jointly submitted by the Government and a contractor to an impartial and neutral person or panel who provides a written, non-binding opinion used as a guide for negotiations toward a settlement. Although the Administrative Dispute Resolution Act of 1990 (Pub. L. 101–552) allows agencies to use binding arbitration, the law provides that the agency head may vacate any arbitration award within 30 days after it is served on all parties. For this reason, non-binding arbitration is preferable. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: *http://www.adrr.com*

(6) *Partnering.* Partnering involves an agreement in principle to share the risks involved in completing a project, and to establish and promote a partnership environment. Partnering itself is not a contractual agreement and it does not create any legally enforceable rights, but instead partnering seeks to create a new cooperative attitude in completing Government contracts. The three basic steps in partnering are:

(i) Establish the new relationship through personal contact among the principals for the Government and the contractor before the work begins;

(ii) Prepare a joint statement of goals establishing common objectives in specific detail for reaching the goals; and,

(iii) Identify specific dispute prevention processes designed to head off problems, evaluate performance, and promote cooperation. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: *http://www.adrr.com*

(d) *ADR procedures.* The ADR method shall be selected voluntarily by both the Government and the contractor. Both parties shall agree on the procedures to be followed, including the agenda and amount of time allowed for each party to present its case. The parties may choose not to have a written transcript or hearing on the record, as this might inhibit settlement. Also, the decision rendered, if any, should not be considered to establish any precedent for future litigation unless the parties agree otherwise. In cases where the parties agree to pay jointly for a third-party neutral advisor, it is recommended that the parties and the advisor agree on a fair and reasonable price. The Government would then issue a simplified acquisition (if the dollar amount does not exceed the simplified acquisition limitation) for 50% of the agreed price, and the advisor would submit separate invoices (each for 50% of the price) to the Government and the contractor.

[59 FR 66764, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270–1 Scope of section.

This section concerns disputes relating to DOS contracts and the transfer of certain appellate and review functions from the Department of State to the General Services Board of Contract Appeals.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

633.270–2 Designation.

The General Services Board of Contract Appeals (GSBCA) is the authorized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes relating to DOS contracts subject to the Contract Disputes Act of 1978. The GSBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues relating to DOS contracts subject to the Contract Disputes Act of 1978.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

633.270–3 DOS support.

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the GSBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

Sec.
634.003 Responsibilities.
634.005 General requirements.
634.005–6 Full production.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 34.003(a).

(b) The Under Secretary for Management is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A–109.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 64 FR 43628, Aug. 11, 1999]

634.005 General requirements.

634.005–6 Full production.

The Deputy Secretary is the agency head for the purposes of FAR 34.005–6 with power of redelegation to the Under Secretary for Management.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.1—General

Sec.
636.101 Applicability.
636.101–70 Exception.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.
636.602–1 Selection criteria.
636.602–4 Selection authority.
636.602–5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

Subpart 636.1—General

636.101 Applicability.

636.101–70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, may be excepted from the provisions of the FAR (48 CFR Ch. 1) under the authority of the Foreign Service Buildings Act, 1926, as amended, 22 U.S.C. 292 *et seq.*, as further codified at section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code. The Deputy Assistant Secretary for Foreign Buildings Operations is authorized to waive the provisions of the FAR.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 64 FR 43628, Aug. 11, 1999]

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

(a) In accordance with a class deviation approved by the Procurement Executive, contracting officers at overseas contracting activities shall insert DOSAR 652.236–70, Accident Prevention, in lieu of FAR clause 52.236–13 when awarding construction contracts.

[64 FR 43628, Aug. 11, 1999]

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

636.602–1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602–1(b).

[64 FR 43628, Aug. 11, 1999]

636.602–4 Selection authority.

(a) The final selection decision shall be made as designated by the Deputy Assistant Secretary for Foreign Buildings Operations for acquisitions issued by that office; the Director, Moscow Embassy Buildings Control Office, for Moscow chancery building(s) only; and, the appropriate head of the contracting activity for all other actions.

[59 FR 66766, Dec. 28, 1994]

636.602–5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

The short selection process described in FAR 36.602–5 is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[59 FR 66766, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

Sec.

637.103 Contracting officer responsibility.
637.104 Personal services contracts.
637.104–70 Personal services contracts.
637.110 Solicitation provisions and contract clauses.

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104–70 Personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau of Population, Refugees, and Migration, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics and Law Enforcement Affairs, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Office of Foreign Buildings and the Moscow Embassy Control Office, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e);

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts; and

(i) For the Bureau of Diplomatic Security, section 206 of Public Law 99–399,

as amended by the Emergency Supplemental Appropriations Act of 1998.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995; 64 FR 43629, Aug. 11, 1999]

637.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 652.237–70, Compensatory Time Off, in personal services contracts awarded in support of International Narcotics Control programs overseas, if the contracting officer determines its use appropriate.

(b) The contracting officer shall insert the clause at 652.237–71, Identification/Building Pass, in all solicitations and contracts where contractor personnel require frequent and continuing access to Department of State facilities.

(c) The contracting officer shall insert a clause substantially the same as the clause at 652.237–72, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any Department of State facility. Overseas contracting activities may add local holidays to the list included in paragraph (a) of the clause.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43629, Aug. 11, 1999]

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

The head of the contracting activity is the agency head for the purposes of FAR 37.204.

[64 FR 43629, Aug. 11, 1999]

PART 641—ACQUISITION OF UTILITY SERVICES

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43629, Aug. 11, 1999, unless otherwise noted.

Subpart 641.2—Acquiring Utility Services

641.201 Policy.

(d) The Procurement Executive is the agency head for the purposes of FAR 41.201(d)(2)(i) and FAR 41.201(d)(3).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 642.2—Contract Administration Services

Sec.

642.270 Contracting Officer's Representative (COR).
642.271 DOSAR contract clauses.

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

Subpart 642.7—Indirect Cost Rates

642.703 General.
642.703–2 Certificate of indirect costs.

Subpart 642.14—Traffic and Transportation Management

642.1406–2 Contract clause.
642.1406–2–70 DOSAR contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 642.2—Contract Administration Services

642.270 Contracting Officer's Representative (COR).

(a) *Scope.* Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. This section is mandatory for domestic contracting activities and recommended for overseas contracting activities.

(b) *Policy.* It is Department policy that only Department of State employees who have completed adequate training and have the necessary experience and judgment shall be appointed as CORs. This policy shall be reinforced by contracting officers and administered jointly by A/OPE and FSI. Required training shall be funded by the COR's office.

[59 FR 66766, Dec. 28, 1994]

642.271 DOSAR contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 652.242–70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

(b) The contracting officer shall insert a clause substantially the same as the clause at 652.242–73, Authorization and Performance, in all solicitations and contracts to be awarded and/or performed overseas. For overseas local guard contracts, the contracting officer shall use the clause with its Alternate I.

[64 FR 43629, Aug. 11, 1999]

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703–2 Certificate of indirect costs.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 42.703–2(b).

[64 FR 43629, Aug. 11, 1999]

Subpart 642.14—Traffic and Transportation Management

642.1406–2 Contract clause.

642.1406–2–70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.242–71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242–72, Shipping Instructions, in solicitations and contracts with a source in the United

States and overseas shipment of supplies is required.

PART 643—CONTRACT MODIFICATIONS

Subpart 643.1—General

Sec.
643.102 Policy.
643.102–70 Contract compliance and review.
643.104 Notification of contract changes.
643.104–70 DOSAR contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 643.1—General

643.102 Policy.

643.102–70 Contract compliance and review.

When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66767, Dec. 28, 1994; 64 FR 43629, Aug. 11, 1999]

643.104 Notification of contract changes.

643.104–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.243–70, Notices, in all solicitations and contracts exceeding the micro-purchase threshold which are awarded and/or performed overseas.

[64 FR 43629, Aug. 11, 1999]

PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43629, Aug. 11, 1999, unless otherwise noted.

Subpart 644.3—Contractor's Purchasing System Reviews

644.302 Requirements.

(a) The Procurement Executive is the head of the agency for the purpose of FAR 44.302(a).

PART 645—GOVERNMENT PROPERTY

Subpart 645.3—Providing Government Property to Contractors

Sec.
645.302 Providing facilities.
645.302–1 Policy.

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.
645.608–6 Waiver of screening requirements.
645.610 Sale of surplus contractor inventory.
645.610–2 Exemptions from sale by GSA.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.

645.302–1 Policy.

The authority to make the determination prescribed in FAR 45.302–1(a)(4) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70).

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

(a) The head of the contracting activity is the agency head's designee for the purpose of FAR 45.403(a).

[64 FR 43629, Aug. 11, 1999]

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608–6 Waiver of screening requirements.

The Procurement Executive is the agency head's designee for the purposes of FAR 45.608–6.

645.610 Sale of surplus contractor inventory.

645.610–2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610–2(a).

PART 647—TRANSPORTATION

Sec.
647.000 Scope of part.

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.
647.207–7 Liability and insurance.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66767, Dec. 28, 1994, unless otherwise noted.

647.000 Scope of part.

The FAR and DOSAR do not apply to the acquisition of transportation services via Government bill of lading (GBL) or other similar forms.

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207–7 Liability and insurance.

(e) The Procurement Executive has approved a class deviation for paragraph (c) of FAR clause 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods. The contracting officer shall indicate that the contractor shall indemnify the owner of the goods at a rate of $5.00 per pound (or metric equivalent in local currency) based on the total net weight. The rate conforms with liability calculations found in International Through Government Bills of Lading (ITGBL).

[64 FR 43629, Aug. 11, 1999]

PART 648—VALUE ENGINEERING

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 648.1—Policies and Procedures

648.102 Policies.

(a) The authority to grant exemptions prescribed in FAR 48.102(a), or to extend future contract savings or sharing pursuant to FAR 48.102(g), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70).

[55 FR 5775, Feb. 16, 1990]

Subpart 648.2—Contract Clauses

648.201 Clauses for supply or service contracts.

The authority to determine exemptions prescribed in FAR 48.201(a)(6) is delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5775, Feb. 16, 1990]

PART 649—TERMINATION OF CONTRACTS

AUTHORITY: 40 U.S.C. 485(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66767, Dec. 28, 1994, unless otherwise noted.

Subpart 649.1—General Principles.

649.106 Fraud or other criminal conduct.

If the Termination Contracting Officer (TCO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts to the Office of the Inspector General.

PART 651—USE OF GOVERNMENT SOURCES BY CONTRACTORS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 651.70—Contractor Use of Travel Advances, Official Travel Orders, and Government Travel Requisitions

651.701 Policy.

(a) It is the Department's policy that contractors shall not:

(1) Receive travel advances from the Department for contract-related travel;

(2) Travel under official travel orders; or,

(3) Receive Government Travel Requisitions (GTRs) for transportation.

(b) All contract-related travel shall be performed on the contractor's account with reimbursement provided after submission of a proper voucher.

(c) This policy does not apply to personal services contractor; *provided,* that such contractors are paid through the Department's payroll system and they are subject to the standard payroll deductions of Federal Withholding Tax and FICA. It also does not apply to contracts awarded by the Office of Language Services (A/OPR/LS).

[59 FR 66767, Dec. 28, 1994]

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.
652.100–70 Policy.
652.102 Incorporating provisions and clauses.
652.102–1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.
652.206–70 Competition Advocate/Ombudsman.
652.216–70 Ordering—Indefinite-Delivery Contract.
652.216–71 Price Adjustment.
652.219–70 Department of State Subcontracting Goals.
652.219–71 Section 8(a) Direct Awards.
652.225–70 Arab League Boycott of Israel.
652.225–71 Section 8(a) of the Export Administration Act of 1979, as Amended.
652.226–70 Certification of Status as a Minority Business Enterprise.
652.228–70 Indemnification.
652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services.
652.228–72—652.228–73 [Reserved]
652.228–74 Defense Base Act insurance rates—Limitation—Fixed-price.
652.228–75 [Reserved]
652.228–76 Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials.
652.229–70 Excise Tax Exemption Statement for Contractors Within the United States.
652.229–71 Personal Property Disposition at Posts Abroad.
652.232–70 Payment Schedule and Invoice Submission (Fixed-Price).
652.232–71 Voucher Submission (Cost-Reimbursement).
652.232–72 Limitation of Funds.
652.236–70 Accident Prevention.
652.237–70 Compensatory time off.
652.237–71 Identification/Building Pass.
652.237–72 Observance of Legal Holidays and Administrative Leave.
652.242–70 Contracting Officer's Representative (COR).
652.242–71 Notice of Shipments.
652.242–72 Shipping Instructions.
652.242–73 Authorization and Performance.
652.243–70 Notices.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

652.000 Scope of part.

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

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100–70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

652.102 Incorporating provisions and clauses.

652.102–1 Incorporation by reference.

The Procurement Executive is the agency head for the purposes of FAR 52.102–1(a)(2)(ii).

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

652.206–70 Competition Advocate/Ombudsman.

As prescribed in 606.570, insert the following provision:

COMPETITION ADVOCATE/OMBUDSMAN (AUG 1999)

(a) The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition and use of commercial items. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and commercial practices, potential offerors are encouraged to first contact the contracting officer for the respective solicitation. If concerns remain unresolved, contact the Department of State Competition Advocate on (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Competition Advocate, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(b) The Department of State's Acquisition Ombudsman has been appointed to hear concerns from potential offerors and contractors during the preaward and postaward phases of this acquisition. The role of the ombudsman is not to diminish the authority of the contracting officer, the Technical Evaluation Panel or Source Evaluation Board, or the selection official. The purpose of the ombudsman is to facilitate the communication of concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel, and work to resolve them. When requested and appropriate, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to contact the contracting activity ombudsman, [insert name], at [insert telephone and fax numbers]. For an American Embassy or overseas post, refer to the numbers below for the Department Acquisition Ombudsman. Concerns, issues, disagreements, and recommendations which cannot be resolved at a contracting activity level may be referred to the Department of State Acquisition Ombudsman at (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Acquisition Ombudsman, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(End of provision)

[64 FR 43629, Aug. 11, 1999]

652.216–70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.506–70, insert the following clause:

ORDERING—INDEFINITE-DELIVERY CONTRACTS (DEC 1994)

The Government shall use one of the following forms to issue orders under this contract:

(a) The Optional Form 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation; or,

(b) The Optional Form 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66768, Dec. 28, 1994; 64 FR 43630, Aug. 11, 1999]

652.216–71 Price Adjustment.

As prescribed in 616.203–4, insert a clause substantially the same as follows:

PRICE ADJUSTMENT (AUG 1999)

(a) The contract price may be increased or decreased in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the [insert name of country] Government. Direct service labor costs include only the costs of wages and direct benefits (such as social security, health insurance, unemployment compensation insurance) paid to or incurred for the direct benefit of personnel performing services under one of the categories listed in Section [identify section number] of this contract. Price adjustments will include only changes in direct service labor costs incurred in order to comply with the requirements of the law. No adjustment will be made under this clause with respect to labor costs of personnel not performing direct service labor under the categories of Section [identify section], nor for overhead, profit, general and administrative (G&A) costs, taxes or any other costs whatsoever.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred during the term of this contract and subsequent to the award date of this contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the contractor's costs under this contract.

(c) The contractor shall present data that clearly supports any request for adjustment. This data shall be submitted no later than 30 calendar days after the changes in the law

have been made public. This data shall include, but not be limited to, the following:

(1) The calculation of the amount of adjustment requested; and,

(2) Documentation which identifies and provides the appropriate portions of the text of the particular law from which the request is derived.

(d) In order to establish the change between the requested adjusted rate and the original rate, the contractor shall support the appropriate data and composition of the original rate and the requested adjusted rate. This shall include details regarding specific hourly rates paid to individual employees. For contracts paid in U.S. dollars, the contractor's request for price adjustment shall present data reflecting:

(1) The exchange rate in effect on the date of the contractor's proposal that was accepted for the basic contract; and

(2) The current exchange rate and its effect on payment of workers in local currency. The allowable adjustment shall be limited to the extent to which increases in direct service labor costs due to host country law changes are not offset by exchange rate gains.

(e) Only direct cost changes mandated by enacted laws shall be considered for adjustment under this contract. Changes for purposes of maintaining parity of pay between employees at the minimum mandated levels and employees already paid at levels above the newly mandated minimums shall not be considered. Therefore, if the contractor elects to increase payments to employees who are already being paid at or above the mandated amounts, such increased costs shall be borne solely by the contractor and shall not be justification for an increase in the hourly and monthly rates under this contract.

(f) Any request for adjustment shall be presented by signature of an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(g) No adjustment shall be made to the contract price that relates to any indirect, overhead, or fixed costs, profit or fee. Only the changes in direct service labor wages (and any benefits based directly on wages) shall be considered by the U.S. Government as basis for contract price changes.

(h) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment has been made under this contract.

(i) This clause shall only apply to laws enacted by the [insert name of country] Government meeting the criterion set forth above in paragraph (b). No adjustments shall be made due to currency fluctuations in exchange rates.

(End of clause)

[64 FR 43630, Aug. 11, 1999]

652.219–70 Department of State Subcontracting Goals.

As prescribed in 619.708–70, insert a provision substantially the same as follows:

DEPARTMENT OF STATE SUBCONTRACTING GOALS (DEC 1994)

(a) The offeror shall provide a Small, Small Disadvantaged and Woman-Owned Enterprise Subcontracting Plan that details its approach to selecting and using Small, Small Disadvantaged, and Woman-Owned Business Enterprises as requested by the contracting officer.

(b) For the fiscal year [*insert appropriate fiscal year*], the Department's subcontracting goals are as follows:

(1) Goal for subcontracting to SB: _____

(2) Goal for subcontracting to SDB: _____

(3) Goal for subcontracting to SWB: _____

(4) Omnibus goals (if applicable):
(i) 10% to minority business
(ii) 10% to small business

(End of provision)

[59 FR 66768, Dec. 28, 1994]

652.219–71 Section 8(a) Direct Awards.

As prescribed in 619.811–3(f), insert the following clause:

SECTION 8(A) DIRECT AWARDS (AUG 1999)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of State (DOS). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The DOS contracting officer is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the DOS contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The DOS contracting officer

shall also coordinate with SBA prior to processing any novation agreement. The DOS contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the DOS contracting officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and,

(2) to adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of clause)

[64 FR 43630, Aug. 11, 1999]

652.225–70 Arab League Boycott of Israel.

As prescribed in 625.7002(a), insert the following provision:

ARAB LEAGUE BOYCOTT OF ISRAEL (AUG 1999)

(a) Definitions. As used in this provision:

Foreign person means any person other than a United States person as defined below.

United States person means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as provided under the Export Administration Act of 1979, as amended.

(b) Certification. By submitting this offer, the offeror certifies that it is not:

(1) Taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which Section 8(a) of the Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)) prohibits a United States person from taking; or,

(2) Discriminating in the award of subcontracts on the basis of religion.

(End of provision)

[64 FR 43631, Aug. 11, 1999]

652.225–71 Section 8(a) of the Export Administration Act of 1979, as Amended.

As prescribed in 625.7002(b), insert the following clause:

SECTION 8(A) OF THE EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED (AUG 1999)

(a) Section 8(a) of the U.S. Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)), prohibits compliance by U.S. persons with any boycott fostered by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. The Boycott of Israel by Arab League countries is such a boycott, and therefore, the following actions, if taken with intent to comply with, further, or support the Arab League Boycott of Israel, are prohibited activities under the Export Administration Act:

(1) Refusing, or requiring any U.S. person to refuse to do business with or in Israel, with any Israeli business concern, or with any national or resident of Israel, or with any other person, pursuant to an agreement of, or a request from or on behalf of a boycotting country;

(2) Refusing, or requiring any U.S. person to refuse to employ or otherwise discriminating against any person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person;

(3) Furnishing information with respect to the race, religion, or national origin of any U.S. person or of any owner, officer, director, or employee of such U.S. person;

(4) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the State of Israel, with any business concern organized under the laws of the State of Israel, with any Israeli national or resident, or with any person which is known or believed to be restricted from having any business relationship with or in Israel;

(5) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the State of Israel; and,

(6) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement against doing business with the State of Israel.

(b) Under Section 8(a), the following types of activities are not forbidden ''compliance

with the boycott,'' and are therefore exempted from Section 8(a)'s prohibitions listed in paragraphs (a)(1)–(6) above:

(1) Complying or agreeing to comply with requirements:

(i) Prohibiting the import of goods or services from Israel or goods produced or services provided by any business concern organized under the laws of Israel or by nationals or residents of Israel; or,

(ii) Prohibiting the shipment of goods to Israel on a carrier of Israel, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(2) Complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipments as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(3) Complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurance, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(4) Complying or agreeing to comply with the export requirements of the boycotting country relating to shipments or transshipments of exports to Israel, to any business concern of or organized under the laws of Israel, or to any national or resident of Israel;

(5) Compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and,

(6) Compliance by a U.S. person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his or her activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his or her own use, including the performance of contractual services within that country, as may be defined by such regulations.

(End of clause)

[64 FR 43631, Aug. 11, 1999]

652.226–70 Certification of Status as a Minority Business Enterprise.

As prescribed in 626.200–70, insert the following provision:

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE (AUG 1999)

The Bidder/Offeror/Supplier certifies that it [ ] is [ ] is not [check one] a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are:

[Check the applicable block]

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian-Pacific Americans
[ ] Other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

Alternate I (AUG 1999).

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE (ALTERNATE I) (AUG 1999)

(a) If you are a minority-owned business, please indicate in the comments section of your quote/response the applicable minority designation from those listed below. If no comments are received, it shall be assumed that you are not a minority-owned business. This request for information is to assist the Department collect statistics on awards to minority-owned businesses and will not influence the award decision.

(b) A minority business enterprise is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are: Black Americans; Hispanic Americans; Native Americans; Asian-Pacific Americans; and, other groups whose members are U.S. citizens and are found to

be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

[64 FR 43631, Aug. 11, 1999]

652.228–70 Indemnification.

As prescribed in 628.7001(b), insert the following clause:

INDEMNIFICATION (JUL 1988)

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged negligence of the Government, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43632, Aug. 11, 1999]

652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services.

As prescribed in 628.305(b), insert the following clause:

WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)—SERVICES (AUG 1999)

(a) This clause supplements FAR 52.228–3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(c) Since the Department of State has obtained a waiver of DBA coverage for contractor employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(End of clause)

Alternate I (AUG 1999). If the contract is for construction, as prescribed in 628.305 (b), substitute the last sentence of paragraph (b) to read as follows:

The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction.

[64 FR 43632, Aug. 11, 1999]

652.228–72—652.228–73 [Reserved]

652.228–74 Defense Base Act insurance rates—Limitation—Fixed-price.

As prescribed in 628.306, insert the following provision:

DEFENSE BASE ACT INSURANCE RATES—LIMITATION—FIXED-PRICE (AUG 1999)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ [contracting officer insert current rate] of compensation; or

Construction @ [contracting officer insert current rate] of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: ____

(2) Defense Base Act Insurance Costs: _____

(3) Total Cost: _____

(c) Bidders/offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

[64 FR 43632, Aug. 11, 1999]

652.228–75 [Reserved]

652.228–76 Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials.

As prescribed in 628.307, insert the following provision:

DEFENSE BASE ACT INSURANCE RATES—LIMITATION—COST-REIMBURSEMENT, LABOR-HOUR, AND TIME-AND-MATERIALS (AUG 1999)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation (direct salary plus differential, but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); or

Construction @ [contracting officer insert current rate] of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

[64 FR 43632, Aug. 11, 1999]

652.229–70 Excise Tax Exemption Statement for Contractors Within the United States.

As prescribed in 629.401–70, insert the following clause:

EXCISE TAX EMEMPTION STATEMENT FOR CONTRACTORS WITHIN THE UNITED STATES (JUL 1988)

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43632, Aug. 11, 1999]

652.229–71 Personal Property Disposition at Posts Abroad.

As prescribed in 629.402–1–70, insert the following clause:

PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD (AUG 1999)

Regulations at 22 CFR Part 136 require that U.S. Government employees and their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. Should the contractor experience importation or tax privileges in a foreign country because of its contractual relationship to the United States Government, the contractor shall observe the requirements of 22 CFR part 136 and all policies, rules, and procedures issued by the chief of mission in that foreign country.

(End of clause)

[64 FR 43633, Aug. 11, 1999]

652.232–70 Payment Schedule and Invoice Submission (Fixed-Price).

As prescribed in 632.908(a), the contracting officer may insert a clause substantially the same as follows:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (AUG 1999)

(a) *General.* The Government shall pay the contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Section B of this contract.

[Use paragraph (b) only if partial payments apply. Otherwise, paragraph (a) above assumes the contractor will be paid in full amount upon completion of all contractural requirements].

(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment No.	Specific deliverable	Delivery date	Payment amount
1			
2			
3			

[Continue as necessary]

(c) Invoice Submission. Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449. To constitute a proper invoice, the invoice must include all items per FAR 52.232–25, ''Prompt Payment''.

(d) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

_____

_____

_____

_____

(End of clause)

[59 FR 66771, Dec. 28, 1994, as amended at 64 FR 43633, Aug. 11, 1999]

652.232–71 Voucher Submission (Cost-Reimbursement).

As prescribed in 632.908(b), the contracting officer may insert a clause substantially the same as follows:

VOUCHER SUBMISSION (COST-REIMBURSEMENT) (AUG 1999)

(a) *General.* The contractor shall submit, on a monthly basis *[contracting officer may substitute a different time frame, if appropriate]*, an original and *[contracting officer insert appropriate number]* copies of each voucher. In addition to the items necessary per FAR 52.232–25, ''Prompt Payment'', the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449.

(b) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

_____

_____

_____

_____

(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43633, Aug. 11, 1999]

652.232–72 Limitation of Funds.

As prescribed in 632.705–70, insert the following clause:

LIMITATION OF FUNDS (AUG 1999)

(a) Of the total price in Section B (or the ''Prices'' section), only the amount stated on the contract award document or subsequent modifications is now available for payment and obligated under this contract. It is anticipated that from time to time, additional funds will be obligated under the contract until the total price of the contract is obligated.

(b) The Government is not obligated to pay or reimburse the contractor more than the amount obligated pursuant to this clause. The contractor agrees to perform the contract up to the point at which the total amount paid and payable by the Government (including amounts payable for subcontracts and settlement costs if this contract is terminated for convenience) approximates but does not exceed the total amount obligated.

(c)(1) It is contemplated that funds now obligated under this contract will cover the work to be performed until [contracting officer insert date].

(2) If the contractor considers the funds obligated under this contract to be insufficient to cover the work to be performed until that date, or another date agreed to by the parties, the contractor shall notify the contracting officer in writing and indicate the date on which it expects expended funds to approximate 75 percent of the total amount obligated. The notice shall state the estimated amount of additional funds required to continue performance through the date specified in paragraph (c)(1) of this clause or another date agreed to by the parties.

(3) If, after notification is provided pursuant to paragraph (c)(2) of this clause, additional funds are not obligated, or an earlier date than the date in paragraph (c)(1) of this clause is not agreed to, the contractor shall not be obligated to continue performance under this contract (including actions under the termination clause of this contract) beyond the funds obligated for contract performance.

(d) When additional funds are obligated from time to time for continued performance of this contract, the contract shall be modified to increase the funds obligated and to indicate the period of performance for which funds are applicable. The contractor may notify the contracting officer as provided in paragraph (c)(2) of this clause regarding any additional funds obligated.

(e) If the contractor incurs additional costs or is delayed in the performance of work under this contract, solely by reason of the Government's failure to obligate additional funds in amounts sufficient for the timely performance of this contract, an equitable adjustment may be made to the price, or time of delivery, or both.

(f) This clause shall become inoperative upon obligation of funds sufficient to cover the full price stated in the contract, except for rights and obligations then existing under this clause.

(g) Nothing in this clause shall affect the Government's right to terminate the contract for convenience or default.

(End of clause)

[64 FR 43633, Aug. 11, 1999]

652.236–70 Accident Prevention.

As prescribed in 636.513, insert the following clause:

ACCIDENT PREVENTION (AUG 1999)

(a) General. The contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and, control costs in the performance of this contract. For these purposes, the contractor shall:

(1) Provide appropriate safety barricades, signs and signal lights;

(2) Comply with the standards issued by any local government authority having jurisdiction over occupational health and safety issues; and,

(3) Ensure that any additional measures the contracting officer determines to be reasonably necessary for this purpose are taken.

(4) [The contracting officer shall specify additional requirements regarding safety if the work involves scaffolding or other work at heights above 2 meters, trenches or other excavation greater than 1 meter, earth moving equipment, electrical hazards, work in confined spaces (limited exits, potential for oxygen less than 19.5%, toxic or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.), or hazardous materials (especially those used indoors, e.g., paints, solvents, etc.).]

(b) Records. The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(c) Subcontracts. The contractor shall be responsible for its subcontractors' compliance with this clause.

(d) Written program. Before commencing work, the contractor shall:

(1) Submit a written plan for implementing this clause; and,

(2) Meet with the contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) Notification. The contracting officer shall notify the contractor of any non-compliance with these requirements and the corrective actions required. This notice, when delivered to the contractor or the contractor's representative on site, shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer may issue an order suspending all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any suspension of work order issued under this clause.

(End of clause)

[64 FR 43633, Aug. 11, 1999]

652.237–70 Compensatory time off.

As prescribed in 637.110(a), insert the following clause:

COMPENSATORY TIME OFF (DEC 1994)

(a) Compensatory time off means time from work during the personal service contract employee's basic work week in exchange for performing an equal amount of irregular of occasional overtime work which is officially ordered or approved.

(b) At the discretion of the Contracting Officer's Representative (COR), the contractor may earn compensatory time off in accordance with 3 FAM Section 232.6—Compensatory Time Off. Compensation time off remaining to the credit of a personal services contract employee at the end of a 16-week period and/or at the end of the contract period shall be forfeited.

(c) Compensatory time may not be converted to overtime.

(End of clause)

[59 FR 66772, Dec. 28, 1994]

652.237–71 Identification/Building Pass.

As prescribed in 637.110(b), insert the following clause.

IDENTIFICATION/BUILDING PASS (AUG 1999)

(a) The contractor shall obtain a Department of State building pass for all employees performing under this contract who require frequent and continuing access to Department of State facilities. Passes shall be issued only to contractor employees who are United States citizens. Passes will be issued by the Bureau of Diplomatic Security, Office of Procedural Security, Domestic Facilities Division. They shall be used for the purpose of contractor performance only, and shall not be used for any other purpose.

(b) The contractor shall submit an application in the form prescribed by the COR. The contractor shall also provide a letter on company letterhead to accompany the application containing the following information:

(1) The purpose for which the pass is being requested;

(2) The type of access the applicant requires;

(3) Whether or not the applicant has a valid security clearance; and,

(4) The contract number and period of performance of the contract.

(c) The complete package, including the COR's approval memorandum, shall be delivered to the Building Pass Application Unit, Room B266, Department of State, 2201 C Street, NW, Washington, DC; or, the post security officer, if the contract is performed at a U.S. owned or leased building overseas. The employee(s) for whom the pass(es) is/are being requested may be required to personally submit the application and to provide evidence of identity and United States citizenship.

(d) All contractor employees shall wear the passes in plain sight at all times while in Department of State buildings. All contractor employees shall show their passes when entering these buildings and upon request.

(e) All passes shall be returned to the COR upon separation of the employee, or expiration or termination of the contract. Final payment under this contract shall not be made until all passes are returned to the COR.

(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43634, Aug. 11, 1999]

652.237–72 Observance of Legal Holidays and Administrative Leave.

As prescribed in 637.110(c), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND ADMINISTRATIVE LEAVE (AUG 1999)

(a) The Department of State observes the following days as holidays:

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(b) When any such day falls on a Saturday, the preceding Friday is observed; when any such day falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(c) When the Department of State grants administrative leave to its Government employees, assigned contractor personnel in Government facilities shall also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the contracting officer or his/her duly authorized representative.

(d) For fixed-price contracts, if services are not required or provided because the building is closed due to inclement weather, unanticipated holidays declared by the President, failure of Congress to appropriate funds, or similar reasons, deductions will be computed as follows:

(1) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(2) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided. If services are provided for portions of days, appropriate adjustment will be made by the contracting officer to ensure that the contractor is compensated for services provided.

(e) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any ''Excusable Delays'' clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43634, Aug. 11, 1999]

652.242–70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert a clause substantially the same as follows:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (AUG 1999)

(a) The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer and this authority is delegated in the designation.

(b) The COR is [insert job title of COR].

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66772, Dec. 28, 1994; 64 FR 43634, Aug. 11, 1999]

652.242–71 Notice of Shipments.

As prescribed in 642.1406–2–70(a), insert the following clause:

NOTICE OF SHIPMENTS (JUL 1988)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43634, Aug. 11, 1999]

652.242–72 Shipping Instructions.

As prescribed in 642.1406–2–70(b), insert the following clause:

SHIPPING INSTRUCTIONS (DEC 1994)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than ⅓ of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 45 kg	19.05 × 57.15mm
46 to 113 kg	22.23 × 73.03mm
114 to 181 kg	22.23 × 98.43mm
182 to 272 kg	22.23 × 123.83mm or 25.4 × 98.43 mm

(b) Each box shall be lined with waterproof paper and shall be bound with 19.05mm″ steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 453.5kg and more must be equipped with skids. Each skid shall consist of two end sections of 50.8 × 152.4mm lumber placed flat and a center section of 50.8 × 101.6mm lumber placed flat and then arranged in line to provide 254mm forklift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in packing case number one, which shall be marked

as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in kilograms shall be stenciled on the same side. However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

[53 FR 26177, July 11, 1988; 53 FR 36462, Sept. 20, 1988, as amended at 59 FR 66772, Dec. 28, 1994; 64 FR 43634, Aug. 11, 1999]

652.242–73 Authorization and Performance.

As prescribed in 642.271(b), insert a clause substantially the same as follows:

AUTHORIZATION AND PERFORMANCE (AUG 1999)

(a) The contractor warrants the following:

(1) That is has obtained authorization to operate and do business in the country or countries in which this contract will be performed;

(2) That is has obtained all necessary licenses and permits required to perform this contract; and,

(3) That it shall comply fully with all laws, decrees, labor standards, and regulations of said country or countries during the performance of this contract.

(b) If the party actually performing the work will be a subcontractor or joint venture partner, then such subcontractor or joint venture partner agrees to the requirements of paragraph (a) of this clause.

(End of clause)

Alternate I (AUG 1999). If the contract is for overseas local guard services, as prescribed in 642.271(b), substitute the following paragraphs (a)(1) and (a)(2) for paragraphs (a)(1) and (a)(2) of the basic clause:

(a)(1) That it has obtained authorization to operate and do business in the country or countries in which this contract will be performed, or will obtain such authorization before performance of this contract begins;

(a)(2) That it has obtained all necessary licenses and permits required to perform this contract, or will obtain such licenses and permits before performance of this contract begins;

[64 FR 43634, Aug. 11, 1999]

652.243–70 Notices.

As prescribed in 643.104–70, insert the following clause:

NOTICES (AUG 1999)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the contracting officer.

(End of clause)

[64 FR 43634, Aug. 11, 1999]

PART 653—FORMS

Sec.

653.000 Scope of part.

Subpart 653.1—General

653.101 Requirements for use of forms.
653.101–70 Policy.
653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.
653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
653.217 Special contracting methods.
653.217–70 DOS form DS–1921, Award/Modification of Interagency Acquisition Agreement.
653.219 Small business programs.
653.219–70 DOS form DS–1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.
653.303 Agency forms.
653.302.127 Optional Form 127, Receiving and Inspection Report.
653.302.206 Optional Form 206, Purchase Order, Receiving Report and Voucher.
653.302.206A Optional Form 206A, Purchase Order, Receiving Report and Voucher—Continuation Sheet.

653.303–DS–1771 Department of State Form (DS) 1771, Contractor Evaluation Statement.
653.303–DST–1089 Department of State Form 1089, Order—Supplies or Services.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26180, July 11, 1988, unless otherwise noted.

653.000 Scope of part.

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

Subpart 653.1—General

653.101 Requirements for use of forms.

653.101–70 Policy.

The forms in FAR subpart 53.2 or in subpart 653.2 shall be used as precribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR subpart 1.4 and 601.470.

653.110 Continuation sheets.

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.217 Special contracting methods.

653.217–70 DOS form DS–1921, Award/Modification of Interagency Acquisition Agreement.

As prescribed in 617.504–70(b)(5)(i), DS–1921 is prescribed for use when awarding or modifying Economy Act Interagency Acquisition Agreements where the Department is the requesting agency.

[59 FR 66773, Dec. 28, 1994]

653.219 Small business programs.

653.219–70 DOS form DS–1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

As prescribed in 619.501(c), DS–1910 is prescribed for use in documenting set-aside decisions.

[64 FR 43634, Aug. 11, 1999]

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3.

653.303 Agency forms.

This section illustrates the DOS forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DOS form numbers.

653.302.127 OPTIONAL FORM 127, RECEIVING AND INSPECTION REPORT

RECEIVING AND INSPECTION REPORT	METHOD OF ACQUISITION	DOCUMENT NUMBERS
	☐ PURCHASED ☐ RENTED	REPORT NO.
	☐ CONSTRUCTED ☐ LOANED	P.O. NO.
RECEIVED FROM	☐ DONATED ☐ INVENTORY OVERAGE	REQUISITION NO.
NAME AND ADDRESS	☐ (OTHER)	TRANSFER AUTHORITY NO.
	APPROPRIATION	CONTRACT NO.
	ALLOTMENT	JOB NO.
POINT OF SHIPMENT / GBL NO.	OBJECTIVE CLASS	

ITEM NO.	DESCRIPTION (Include Terms of Acceptance on Loans, Donations, Etc.)	QUANTITY	UNIT	UNIT PRICE	AMOUNT

CERTIFICATE OF RECEIPT		INSPECTOR'S CERTIFICATE		
I HEREBY CERTIFY THAT ALL ITEMS LISTED ABOVE WERE RECEIVED, INSPECTED AND ACCEPTED.		☐ COMPLETE	☐ PARTIAL	☐ FINAL
NAME (Type or Print)	OFFICE SYMBOL	☐ OVER	☐ SHORT	☐ DEFECTIVE MATERIAL
SIGNATURE	DATE	(USE REVERSE FOR COMMENTS)		

50127-102 NSN 7540-00-138-9185

OPTIONAL FORM 127
REV. JANUARY 1982
STATE - AID - USICA

653.302.206 OPTIONAL FORM 206, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Form approved by Comptroller General, U.S. March 19, 1953

PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

(For use in foreign countries only)

D.O. Vou. No.

Bu. Vou. No.

Purchase Order No.

Department or Establishment: U. S.

Prepared at (place) (date)

PAID BY

Purchaser: THE UNITED STATES GOVERNMENT, DR.

Seller (Payee)

Address of seller

Contract No. (dated)

Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:

To at

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE Cost	UNIT PRICE Per	AMOUNT
	Use continuation sheet(s) if necessary -				

Ordering Officer (Signature)	Approp.	Funds Available:		
	Allot.			
Name:	Obl. No.	Name:	TOTAL	
Title:	Amt.	Title:		

I certify that the ordered items listed were received on _____ (date) except as follows:

Signature

Name:

Title:

PAYMENT:

☐ Complete

☐ Partial

☐ Final

Amount billed, as per attached bill(s)	
Differences	
Amount verified correct for	
Prepayment Audit (Signature or initials)	

Approved for $

Exchange rate to $

Pursuant to authority vested in me, I certify this voucher correct and proper for payment.

Signature of Authorized Certifying Officer

Name:

Title:

ACCOUNTING CLASSIFICATION

Fund	Allotment	Oblig. No.	Paying Office	Date Paid	Object	Amount

PAID BY

Check No. dated , 19 , for $ on Treasurer of United States.

Check No. dated , 19 , for on

Cash on 19

Payee

Title of Payee:

OPTIONAL FORM 206 (FORMERLY FS-455) MARCH 1973 DEPT OF STATE

50206-101

IMPORTANT NOTICE TO SELLER

1. The entering office is exempt from taxes.

2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."

3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.

4. All communications concerning this order must refer to order number and be addressed to the originating office.

5. Discount terms, if any, must be shown on all bills.

U.S. GOVERNMENT PRINTING OFFICE : 1973 O - 579-441

653.302.206A OPTIONAL FORM 206A, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER—CONTINUATION SHEET

Form approved by
Comptroller General, U. S.
March 19, 1958.

PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Continuation Sheet

U. S. _____ Sheet No. _____ of Bureau Vou. No. _____
(Department or establishment)
Purchase Order No. _____

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
			Cost	Per	

OPTIONAL FORM 206A
(FORMERLY FS-455A)
MARCH 1975
DEPT. OF STATE

U.S. GOVERNMENT PRINTING OFFICE : 1975 O—579-102

50206-201

653.303-DS-1771 DEPARTMENT OF STATE FORM (DS) 1771, CONTRACTOR EVALUATION STATEMENT

DEPARTMENT OF STATE

WASHINGTON, D.C. 20520

CONTRACTOR EVALUATION STATEMENT

(If additional space is required, continue on blank paper, referencing items by number)	Date Prepared

NOTE: The information contained on this form is for the internal use of the Department of State and shall not be disclosed outside the Department except as authorized by the Assistant Secretary of State for Administration

TO: Chief Contract Section OPR/ST/P, Room 530, 5A6 Washington, D.C. 20520	FROM: (Name and location of program office)
Name and Address of Contractor	Contract No.

I. EVALUATION OF CONTRACTOR'S PERFORMANCE

1. Explain the contractor's performance as compared to the requirements of the statement of work and its proposal, including quantity, quality, and timeliness of work done.

2. Explain relationship of contractor's personnel to the Department and other parties involved in the performance of the contract. (Did contractor's personnel conduct themselves in a professional and businesslike manner? Did they respond in a constructive way for problems and difficulties as they arose? Was there stability in the leadership and personnel assigned to the contractor or were there numerous changes?)

3. Did contractor report on progress in a timely and thorough manner as called for by the contract?
☐ Yes ☐ No (Explain)

4. Did contractor perform within the cost structure of the contract? ☐ Yes ☐ No (Explain)

5. To what extent was the final product of the contractor, including data and conclusions, responsive to the stated purpose of the contract?

6. How do you rate the contractor's overall performance?
☐ Excellent ☐ Satisfactory ☐ Less Than Satisfactory (Explain)

7. Do you recommend that the contractor be used again? ☐ Yes ☐ No (Explain)

II. EVALUATOR

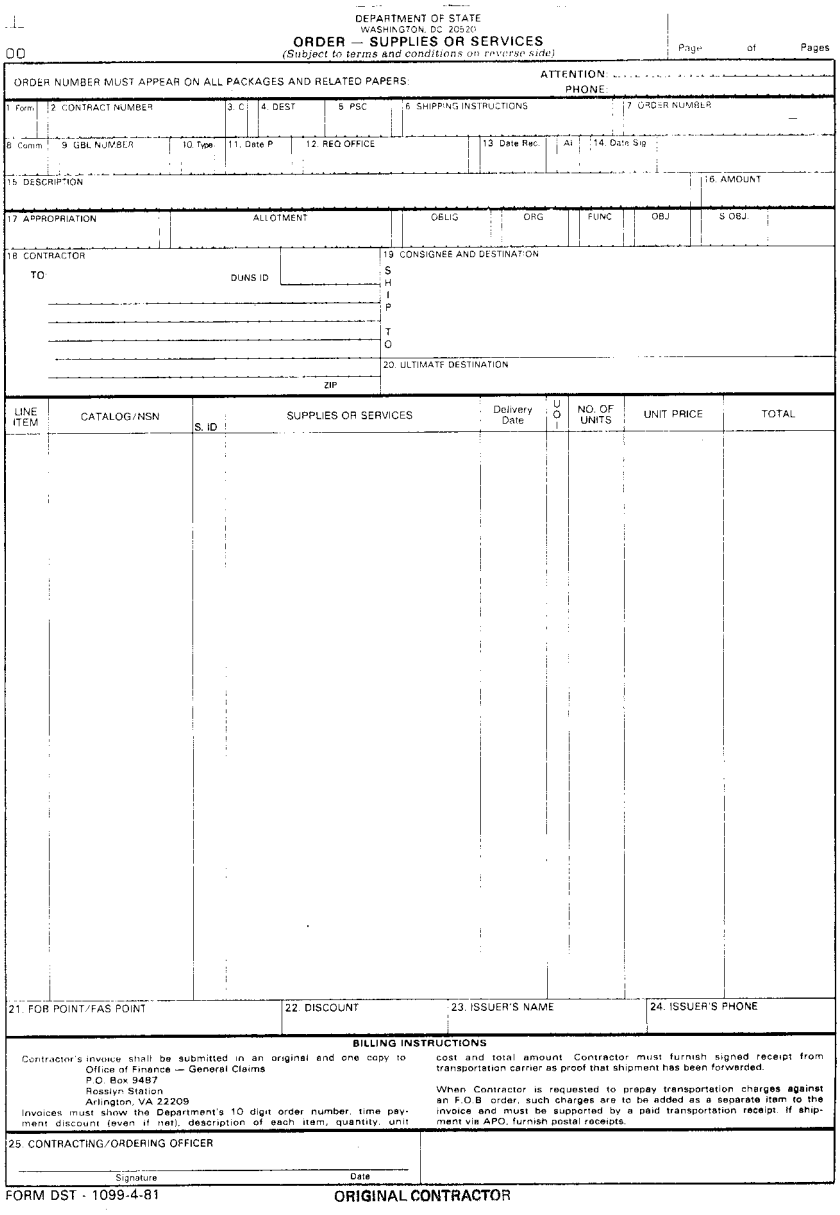
Typed name and title of Technical Project Officer	Signature	Date Signed

III. APPROVAL (By Deputy Assistant Secretary/Major Office Director)

Typed name and title of approving official	Signature	Date Approved

FORM 3-78 DS-1771

653.303–DST–1089 DEPARTMENT OF STATE FORM 1089, ORDER—SUPPLIES OR SERVICES



DEPARTMENT OF STATE
WASHINGTON, DC 20520
ORDER — SUPPLIES OR SERVICES
(Subject to terms and conditions on reverse side)

OD

Page of Pages

ORDER NUMBER MUST APPEAR ON ALL PACKAGES AND RELATED PAPERS.

ATTENTION:
PHONE:

1. Form	2. CONTRACT NUMBER	3. C	4. DEST	5. PSC	6. SHIPPING INSTRUCTIONS	7. ORDER NUMBER

8. Comm	9. GBL NUMBER	10. Type	11. Date P	12. REQ OFFICE	13. Date Rec	AI	14. Date Sig

15. DESCRIPTION — 16. AMOUNT

17. APPROPRIATION	ALLOTMENT	OBLIG	ORG	FUNC	OBJ	S OBJ

18. CONTRACTOR
TO
DUNS ID
ZIP

19. CONSIGNEE AND DESTINATION
SHIP TO

20. ULTIMATE DESTINATION

LINE ITEM	CATALOG/NSN	S. ID	SUPPLIES OR SERVICES	Delivery Date	U O	NO. OF UNITS	UNIT PRICE	TOTAL

21. FOB POINT/FAS POINT	22. DISCOUNT	23. ISSUER'S NAME	24. ISSUER'S PHONE

BILLING INSTRUCTIONS

Contractor's invoice shall be submitted in an original and one copy to
Office of Finance — General Claims
P.O. Box 9487
Rossiyn Station
Arlington, VA 22209

Invoices must show the Department's 10 digit order number, time payment discount (even if net), description of each item, quantity, unit cost and total amount. Contractor must furnish signed receipt from transportation carrier as proof that shipment has been forwarded.

When Contractor is requested to prepay transportation charges against an F.O.B. order, such charges are to be added as a separate item to the invoice and must be supported by a paid transportation receipt. If shipment via APO, furnish postal receipts.

25. CONTRACTING/ORDERING OFFICER

Signature — Date

FORM DST - 1099-4-81 — ORIGINAL CONTRACTOR

TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER

Note: If a contract number is shown, Terms and Conditions of the applicable contract shall apply to this Delivery Order which is issued pursuant thereto.

1. INSPECTION AND ACCEPTANCE - Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. VARIATION IN QUANTITY - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. DISCOUNTS - (a) Time discounts will be computed from: (1) date of delivery of the supplies to carrier when delivery and acceptance are at the point of origin, (2) date of delivery at destination or port of embarkation, when delivery and acceptance are at either of those points, or (3) date a proper invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of delivery. (b) Payment will be deemed to have been made on the date which appears on payment checks.

4. DISPUTES - (This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563 "the Act")). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract. The parties to this contract must comply with certain time restrictions on rendering of contracting officer decisions on claims, and on the appeal of those decisions. Further details on the rights and remedies under the Act may be found in the Federal Procurement Regulations at 1-1.318.4.

5. FOREIGN SUPPLIES - This contract is subject to the Buy American Act (41 U.S.C. 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. CONVICT LABOR - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c) (2)) and Executive Order 11775, December 29, 1973.

7. OFFICIALS NOT TO BENEFIT - No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. FEDERAL, STATE, AND LOCAL TAXES - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this Purchase Order.

10. SERVICE CONTRACT ACT OF 1965, As Amended (Service contracts not exceeding $2,500) - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any sub-contractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed by 29 CFR Part 4 are hereby incorporated by reference in this contract.

11. The following terms and conditions are applicable to purchases in excess of $2,500: (a) Employment of the Handicapped - Federal Procurement Regulation, Temporary Regulation 38, dated May 26, 1976. (b) Contract Work Hours and Safety Standards Act - Overtime Compensation Section - Federal Procurement Regulation 1-12.303. (c) Service Contract Act of 1965 - (Services contracts in excess of $2,500) Federal Procurement Regulation 1-12.904-1.

MARKING INSTRUCTIONS

CONTAINERS OR PACKAGES shall be plainly marked to show the order number, brief description of contents, including form number, if any, quantity and vendor's name. Receiving clerk may reject any deliveries which do not bear such identification.

SHIPPING DOCUMENTS AND CORRESPONDENCE

All shipping documents and correspondence pertaining to this order (except invoices as stated below) shall be referred or forwarded to the person and organization who signed the order. Such documents MUST refer to the departments order number.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
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332.770 Removed 15563
332.902—332.905 (Subpart 332.9) Added 43208
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333.203—333.214 (Subpart 333.2) Added 15563
339.7001 Introductory text, (a), and (b) amended 43208
339.7002 (a) and (b) (2) and (3) amended 43208
342.7200—342.7206–3 (Subpart 342.72) Removed 43209
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352.215–70 Removed 15564
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352.242–72—342.242–79 Removed 43209
352.243–70 Removed 15564
352.247–70 Removed 15564
352.270–6 Removed 15564
352.270–8 Removed 15564
352.370 Amended 15564
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409.504 Added 6063
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412 Added 6063
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415.407 Added 6063
415.608 Added 6063
415.1070 Added 6063
416.404–2 Revised 6063
416.405 Added 6065
416.470 Added 6065
416.505—416.570 (Subpart 416.5) Added 6065
416.603–4 Added 6065
416.670 Added 6065
417.208 (Subpart 417.2) Added 6065
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422.7001—422.7005 (Subpart 422.70) Added 6066
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428.310 Added 6067
432.103 Added 6067
432.111 Revised 6067
432.7000—432.7004 (Subpart 432.70) Removed 6067
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436.570—436.579 (Subpart 436.5) Revised 6067
437.110 Added 6068
437.270 Added 6068
439.7001 Revised 6068
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439.7002 Revised 6068
442.704 (Subpart 442.7) Added 6069
445.106 (Subpart 445.1) Added 6069
445.302–7 Added 6069
446.370 (Subpart 446.3) Added 6069
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501.171–2 Revised 131
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501.403 Revised 132
501.404 Revised 132
501.602–3 Temporary Reg. AC–88–1 added 7366
501.603 Temporary Reg. AC–87–4 added 132
501.675 Temporary Reg. AC–88–1 added 7366
501.675–1 Temporary Reg. AC–88–1 added 7366
501.675–2 Temporary Reg. AC–88–1 added 7366
501.675–3 Temporary Reg. AC–88–1 removed 7366
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505.301 Temporary Reg. AC–88–2 added 28886
507.305 Temporary Reg. AC–87–1, Supp. 2 added 10395
Temporary Reg. AC–87–1, Supp. 3 added 36580
507.306 Temporary Reg. AC–87–1, Supp. 2 added 10395
Temporary Reg. AC–87–1, Supp. 3 added 36580
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513.7001 Temporary Reg. AC–87–4 added 133
514.201–6 (a) removed 30842
514.301–70 Revised 30842
514.304–1 Revised 30842
514.370 Revised 30842
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514.402–1 (a) revised 30843
514.402–3 (a) revised 30843
514.406–3 (b) and (c) revised 30843
514.406–4 Revised 30843
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514.408–1 Temporary Reg. AC–88–2 added 28886
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515.407 (a) removed 30843
515.411 Revised 30843
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519.701 Temporary Reg. AC–88–3 added 48911
519.702 Temporary Reg. AC–88–3 added 48911
519.704 Temporary Reg. AC–88–3 added 48911
519.705–2 Temporary Reg. AC–88–3 added 48911
519.705–4 Temporary Reg. AC–88–3 added 48911
519.705–5 Temporary Reg. AC–88–3 added 48912
519.705–6 Temporary Reg. AC–88–3 added 48912
519.706 Added 33812

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519.706–70 Temporary Reg. AC–87–3, Supp. 1 added 21824
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525.402 Temporary Reg. AC–86–8, Supp. 2 added..... 1925
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532.908 Temporary Reg. AC–88–1 added 7366
534.002–70 Revised..... 30844
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537.110 (a) and (b) revised..... 30844
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552.207–71 Temporary Reg. AC–87–1, Supp. 2 added 10395
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552.210–78 Revised..... 30844
552.210–79 Introductory text revised..... 30845
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552.232–71 Temporary Reg. AC–88–1 added 7367
552.232–72 Temporary Reg. AC–88–1 added 7368
552.232–73 Temporary Reg. AC–88–1 added 7368
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301.270 (a) and (b) amended 24342
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301.403 Amended 24342
301.404 Amended 24342
301.470 Amended 24342
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303.104–4 Added; interim 31528
303.104–5 Added; interim 31528
303.104–6 Added; interim 31529
303.104–9 Added; interim 31529
303.104–11 Added; interim 31529
303.104–12 Added; interim 31529
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304.870 (c)(4) amended 24342
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307.7004 (c) amended 24342
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309.404 (c) amended 24342, 43965
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314.406–4 (c) amended 24342
315.406–2 (a)(3) amended 24342
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316.702 (d)(2), (f) (1), and (4) amended 24342
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319.201–70 (a) amended 24342
322.604–2 (c)(1) amended 24342
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330.3 Removed 24344
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333.102 (c) (1) and (3) amended 24344
333.103 (a) amended 24344
333.104 (a)(6), (b) (1), (2), (c)(2), and (f) amended 24344
333.213 (a) amended 24344
335.070–4 (c) (1) and (2) amended 24344
342.7002 (e) added 43966
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352.215–71 Removed 24344
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501.670–3 Revised 13888
501.670–4 Revised 13888
501.670–5 Revised 13889
501.670–6 Revised 13889
501.675—501.675–3 Removed 9050
501.707 Table 501–1 amended 51885
502.101 Corrected 40059
503.104 Temporary Reg. AC–89–2 added 29721

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503.104–4 Temporary Reg. AC–89–2 added 29721
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503.104–5 Temporary Reg. AC–89–2 added 29721
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503.104–9 Temporary Reg. AC–89–2 added 29722
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503.104–10 Temporary Reg. AC–89–2 added 29722
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503.104–11 Temporary Reg. AC–89–2 added 29722
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505.301 Removed 10149
505.302 Removed 10149
505.303 Revised 10149
505.303–70 (b)(3)(iii) revised 40060
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505.403 Revised 10150
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512.104 (d) and (e) revised 11955
514.201–2 Revised 9050
515.406–2 Removed 51885
519.704 (c)(2) revised 40060
525.402 Temporary Reg. AC–89–3 added 33554
532.70 Temporary Reg. AC–89–1 added 14235
532.111 (b), (c), (d) (2) and (3), and (e) removed; (d)(1), (f), and (g) redesignated as (b), (c), and (d); new (b) revised 9050
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532.905–70 Temporary Reg. AC–89–1 added 14235
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532.7001—532.7003 (Subpart 532.70) Added 43180
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552.225–70 Amended 40060
552.228–75 Introductory text revised 40060
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552.232–70 Temporary Reg. AC–89–1 added 14235
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552.232–73 Removed 9052
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552.232–75 Introductory text revised 9052
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552.232–78 Introductory text amended 9052
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552.232–79 Introductory text amended 9052
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552.237–72 (a) revised 40060
552.242–70 Revised 11956
552.242–72 Removed 11956
552.246–17 (c)(7) revised 40061
552.246–70 Revised 11956
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552.246–73 Redesignated as 552.246–72 and revised 11957
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553.370–2932 Removed 10150
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570.501 Temporary Reg. AC–89–4 added; eff. 11–30–90 49090
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303.104–4 Suspended; eff. to 11–30–90 2078
303.104–5 Suspended; eff. to 11–30–90 2078
303.104–6 Suspended; eff. to 11–30–90 2078
303.104–9 Suspended; eff. to 11–30–90 2078
303.104–11 Suspended; eff. to 11–30–90 2078
303.104–12 Suspended; eff. to 11–30–90 2078
306.501 Amended 42197
314.202–7—314.213 (Subpart 314.2) Added 13536
315.402 Added 13536
315.471 Added 13536
316.307 Added 42197
317.7002 (b)(3) amended 13536
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332.406 (c)(2) amended 42197
332.407 (d) introductory text amended 42197
332.409–1 Amended 42197
332.501–2 (a)(3) amended 42197
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501.603–3 Temporary Reg. AC–90–1 (a) revised 13278
501.603–70 Temporary Reg. AC–90–1 (c) amended; (d)(2), (4), (f), and (h)(6) revised; (h)(1)(ix) added 13278
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502.101 Amended 48847
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503.104–4 Added 39972

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503.104–5 Added 39972
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503.104–8 Added 39973
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503.104–11 Added 39974
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505.403 Added 39974
506.302–1 Revised 48847
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507.104 (a) and (d) revised 28631
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513.106 (a) revised 48847
513.107 Removed 48847
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514.201–70 (c) revised 20458
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514.301–70 Removed 20458
515.402 (c) added 20458
515.414 Revised 48847
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515.501 Revised 20458
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515.612 Added 39974
515.803 Revised 48848
515.905 (c) added 48848
515.905–1 (a) revised 48848
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517.208 Added 39279
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525.406 Added 38552

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528.202–70 Revised 5223
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528.203 Revised 5223
528.203–7 Added 5223
528.204 Added 5224
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552.203–5 (b) amended 6256
552.203–71 Added 39974
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552.209–74 Revised 8954
552.216–72 Added 39279
552.217–70 Added 39280
552.219–1 Revised 8954
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552.225–9 Temp. Reg. AC–90–2 46069
552.228–72 Revised 5224
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552.228–73 Revised 5224
552.228–74 Removed 5224
552.229–72 Revised 6256
570.208–2 (a) and (e) revised 11588
570.208–3 Revised 11588
570.208–5 (b) revised 11588
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605.404—605.404–1 (Subpart 605.4) Added 5774
607 Added 5774
608.302 (Subpart 608.3) Added 5774
609.404 Heading revised 5774
622.302 (Subpart 622.3) Added 5774
622.404—622.406–12 (Subpart 622.4) Added 5774
622.1308 Added 5775
622.1408 Added 5775
623 Heading revised 5775
623.506 (Subpart 623.5) Added 5775
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625.1003 (Subpart 625.10) Added 5775
632.903 (Subpart 632.9) Added 5775

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636.602 Revised 5775
637.110 Added 5775
648.102 Revised 5775
648.201 (Subpart 648.2) Added 5775
653.107 Removed 5775

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302.100 Amended 47002
304.870 (c)(1) and (2) amended 47002
306.304 (a)(1) amended 47002
307.170 (a)(1), (2) and (b) amended 47002
307.170–1 (a)(1), (2), (b)(1) and (2) amended 47002
307.170–2 (a)(1), (2) and (b) amended; (a)(3) added 47002
313.106 (a), (b) introductory text, (4)(i)(D), (c) introductory text and (2) amended 47002
313.107 (d) redesignated as (e) 47003
313.204 (e) redesignated as (e)(5) and amended 47003
315.406–5 (b)(3)(ii)(c) redesignated as (b)(3)(ii)(C) and amended 47003
315.905–71 (d) amended 47003
315.7002 (a) amended 47003
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333.102 (c) redesignated as (d) 47003
333.103 (a) redesignated as (a)(2); (b)(1) designation removed and text transferred to (b) introductory text; (b) introductory text and (2) redesignated as (a)(3) and (4); new (a)(3) amended 47003
333.104 (a)(2) through (6) redesignated as (a)(3) through (7); new (a)(3)(vii), (viii), (4), (5), (6)(i) and (c)(6) amended; (f) and (h) redesignated as (g) and (i); new (g) and (i) amended 47003
333.105 (b)(10) amended 47003
352.228–7 Added 58316
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501.602–2 (a) and (b)(1) revised; (c) amended 15288
501.603–3 Revised 15288
501.603–4 Revised 15288
501.603–70 (a), (d)(2) through (4), (h)(1) introductory text, (iv)(C), (v), (vi)(C), (E), (vii) through (ix) and (h)(2) through (4) revised; (c) and (f) amended; (h)(1)(x) and (i) added; (h)(5) and (6) removed 15289
501.670–4 (a) introductory text, (4), (5), (26), (d) introductory text and (1) through (4) revised 47004
502.101 Amended 47004
504.470 Revised 47004
504.470–1 Revised 47004
504.470–2 Revised 47004
504.471 (b) revised 47005
504.476 Revised 47005
507.103 Added 2864
508.602 Removed 33721
509.405 Revised 51660
509.406–3 (b)(9) revised 47005
510.001 Revised 2864
510.002 Added 2865
Revised 33721
513.7001 (g) revised 47005
514.203–1 (a) revised 47005
514.404–2 (a) revised 47005
515.407 Removed 47006
515.408 Added 47005
515.411 (b) revised 47005
515.1001 Added 47005
515.1070 (a) revised 47005
516.505 (Subpart 516.5) Added 376
519.201 Added 26769
Corrected 30618
519.202–2 (b)(4) added 3044
519.202–5 (b) revised 3044
519.302 Revised 3044
519.304 Revised 47006
519.500 Revised 3044
519.704 (a)(2) and (3) revised 3044
(c)(2) revised 59220
519.705–2 Revised 64213
519.705–4 (d) redesignated as (f); (c) and new (f)(1) revised; new (d) and (e) added 3044

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(d) revised; (e) removed; (f)(1) through (3) redesignated as (e)(1) through (3) and revised 26922
(a) revised 59220
(a)(5) revised 64214
519.705–5 (c) and (d) amended 3044
519.706–70 Revised 3045
(e) revised 26922
(f)(2)(iii) revised 64214
519.708 Revised 64214
519.770–1 (a)(2), (b)(1)(ii), (iii) and (2)(ii) revised 3045
519.803—519.803–70 (Subpart 519.8) Added 26769
523.303 Revised 1740
524.202 Revised 47006
525 Temporary Reg. AC–90–2, Supp. 1 added 52479
533.103 Revised 47006
538.000 Revised 29443
538.203–71 Revised 29443
546.710 (a) revised 1741
547.303–6 Removed 47006
549.001 Removed 33722
549.402–6 (c) revised 33722
549.402–7 (a) and (b)(2) revised 33722
552 Temporary Reg. AC–90–2, Supp. 1 added 52479
552.203–70 Revised 965
552.215–73 Removed 47006
552.215–74 Removed 47006
552.216–73 Added 376
552.219–1 Amended 47006
552.219–70 Removed 47007
552.219–72 Introductory text revised 64214
552.219–73 Added 64214
552.223–70 Introductory text revised 1741
552.223–72 Added 1741
552.225–9 Corrected 377
552.225–72 Temp. Reg. AC–91–2 11692
552.238–70 Added 29443
Amended 51660
552.242–70 Revised 1741
552.246–17 Revised 1741
552.246–70 Revised 1742
552.246–72 Revised 1744
552.247–34 Removed 47007
570.702–1 Temp. Reg. AC–91–1 4735
570.702–2 Temp. Reg. AC–91–1 4735
570.702–5 Temp. Reg. AC–91–1 4735
570.702–11 Temp. Reg. AC–91–1 4735
570.702–14 Temp. Reg. AC–91–1 4735
570.702–15 Temp. Reg. AC–91–1 4735

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570.702–17 Temp. Reg. AC–91–1 4735
570.702–18 Temp. Reg. AC–91–1 4735
570.702–19 Temp. Reg. AC–91–1 4735
570.702–21 Temp. Reg. AC–91–1 4735

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Chapter 3
305.303 (a) amended 11689
306.303–1 (g)(1) and (2) amended 11689
306.302–1 (b)(4)(i) designation removed; (b)(4)(ii) redesignated as (c) and amended 11689
313.105 Revised 11689
315.407 (h) and (i) redesignated as (g) and (n) 11690
319.201–70 (d)(3) amended 11690
319.501 Revised 11690
319.505 Amended 11690
319.705–3 Amended 11690
319.705–4 (c) removed 11690
332.702 (a) revised 35473
333.103 (a)(4) amended 35473
Chapter 5
501.103 (b) revised 37889
501.105 Revised (OMB numbers) 14648
501.170–1 Revised 14649
501.603–70 (h)(1)(ii) and (v) revised 14649
(h)(1)(iv)(K) revised 61583
501.670–4 (a)(3) revised 61583
502.101 Revised 9213
Amended 61583
503.104–10 (a) and (b) revised 37889
503.404 (a) revised 37889
504.201 Revised 61583
504.803 (a)(23) revised 61584
505.101 (c)(2) revised 37889
505.203 (b) revised 37890
508.304–5 Revised 61584
508.371 Removed 61584
510.011 (j) added 61584
513.505–2 (c) revised 7555
513.7001 (a), (b)(1) and (g) revised 26609
514.406–3 Revised 14649
515.406–1 (a) revised 61584
515.414–70 (b) revised 61584
515.804–3 Temporary Reg. AC–92–1 paragraph (c) added 5864
515.804–70 Temporary Reg. AC–92–1 added 5864
517.200 Added 59939

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Chapter 5—Continued
517.201 Removed 59939
517.202 Added 59939
517.203 Added 59939
517.204 Revised 59939
517.207 Revised 59939
517.208 Revised 59939
519.202–5 Revised 37890
519.304 Revised 37890
519.708 (a) revised 37890
522.000 Added 7555
522.001 Added 7555
522.101–1 Revised 7556
522.101–3 Added 7556
522.103–5 Added 7556
522.406–13 Revised 7556
522.807 Revised 7556
522.1001 Removed 7556
522.1003–4 Revised 7556
522.1003–7 Revised 7556
522.1006 (b) and (c) revised 22666
522.1013 Added 7556
522.1014 Added 7556
522.1021 Revised 7556
522.1303 Revised 7556
522.1403 Revised 7556
525.402 (a) revised 648
(b) revised 42708
525.407 Revised 42708
530.201–5 Revised 61584
530.470 (Subpart 530.4) Added 61584
532.502–3 Removed 14649
532.908 (c) revised 37890
533.104 (c) revised 61584
538.203–70 Temporary Reg. AC–92–1 added 5867
552 Temporary Reg. AC–91–2; Supp. 1 added 21041
552.217–71 Added 59939
552.222–43 Revised 22666
552.270–10 Corrected 52826
552.270–28 Corrected 52826
552.270–37 Corrected 52826
552.223–72 Amended 14649
552.225–8 Added 42709
552.225–9 Added 42709
552.225–72 Revised 42709
552.232–73 Revised 37890
552.232–74 Removed 14649
552.242–70 Revised 26609
552.270–3 Revised 23163
552.270–6 Revised 37890
552.270–10 Revised 37890
552.270–11 Revised 37891
552.270–12 Revised 37891
552.270–13 Revised 37891
552.270–14 Reserved 37891

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552.270–15 Revised 37891
552.270–16 Revised 37891
552.270–17 Revised 37891
552.270–18 Revised 37892
552.270–20 Revised 37892
552.270–21 Revised 37892
552.270–22 Revised 37892
552.270–24 Revised 37892
552.270–26 Reserved 37893
552.270–27 Revised 37893
552.270–28 Revised 37893
552.270–29 Reserved 37893
552.270–30 Revised 37893
552.270–31 Added 37893
552.270–32 Added 37893
552.270–33 Added 37893
552.270–34 Added 37894
552.270–35 Added 37894
552.270–36 Added 37894
552.270–37 Added 37894
552.270–38 Added 37894
552.270–39 Added 37894
552.270–40 Added 37894
570.201—570.210 (Subpart 570.2) Heading revised 37895
570.202 (a) revised 37895
570.203 (a)(5), (8) and (9) revised; (a)(10) added 37895
(a)(8)(vii) table and (9) corrected 52826
570.204 (c)(3) revised 37895
570.206 (b) revised 37895
570.208–1 (b) revised 37896
570.208–3 (b)(5) added 37896
570.208–5 Revised 37896
570.301—570.304–6 (Subpart 570.3) Heading revised 37896
570.301 Revised 37896
570.302 Revised 37896
570.303 Revised 37896
Corrected 52826
570.304 Revised 37896
570.304–1 (b) revised 37896
570.304–2 Revised 37896
570.304–3 Revised 37896
570.304–4 Revised 37896
570.304–5 Revised 37897
570.502 (a), (b)(1) and (3)(i) revised 37897
570.503 (b) and (c) revised 37897
570.504 (a) revised 37897
570.602–2 (f)(3) revised 37897
570.701–1 Revised 37897
570.701–2 Revised 37897
570.701–3 Revised 37897
570.701–4 Revised 37898

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570.701–5 Revised 37898
570.701–6 Revised 37898
570.702–1 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37898
570.702–2 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37898
570.702–3 Revised 37898
570.702–4 Revised 37898
570.702–5 Temp. Reg. AC–91–1, Supp. 1 added 4939
Removed 37898
570.702–6 Revised 37898
570.702–7 Revised 37898
570.702–8 Revised 37898
570.702–9 Revised 37898
570.702–10 Revised 37898
570.702–11 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37898
570.702–12 Revised 37898
570.702–14 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37898
570.702–15 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37899
570.702–16 Revised 37899
570.702–17 Temp. Reg. AC–91–1, Supp. 1 added 4939
Removed 37899
570.702–18 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37899
570.702–19 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37899
570.702–20 Removed 37899
570.702–21 Temp. Reg. AC–91–1, Supp. 1 added 4939
Revised 37899
570.702–22 Added 37899
570.702–23 Added 37899
570.702–24 Added 37899
570.702–25 Added 37899
570.702–26 Added 37899
570.702–27 Added 37899
570.702–28 Added 37899
570.702–29 Added 37899
570.702–30 Added 37900
Heading corrected 52826
570.702–31 Added 37900
570.801 Revised 37900
570.802 Revised 37900

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Chapter 5
501.105 Amended 52443
501.603-3 Revised 58284
501.603-4 Revised 58284
501.603-70 (c) and (f) amended; (d)(1), (2), (4), (h)(1)(i), (4), (i)(1), (2) and (3) revised 58284
(h)(1)(v) revised 64694
501.670 Removed 52443
501.670-1 Removed 52443
501.670-2 Removed 52443
501.670-3 Removed 52443
501.670-4 Removed 52443
501.670-5 Removed 52443
501.670-6 Removed 52443
501.704-70 (b)(2) removed 52443
503.104-8 Revised 52443
507.305 Removed 52443
508.307-1 Revised 52443
508.705-72 Removed 52443
509.106-1 Removed 52443
509.106-2 Revised 64694
509.405 Removed 52443
509.406–3 (b)(6) through (9) redesignated as (b)(7) through (10); new (b)(6) added 26920
509.407–3 (b)(5) and (6) redesignated as (b)(6) and (7) and revised; new (b)(5) added 26920
(b)(7)(iii) corrected 29254
511.001 Removed 52443
514.201-72 Removed 52443
514.208 Removed 52443
514.402-1 (i) revised 52443
514.404-1 (b) revised 52443
514.407-2 Removed 52443
515.170 Removed 52443
515.402 Revised 52443
515.403 Removed 52443
515.405-1 Revised 52443
515.414-70 (a) revised 52443
515.506-1 Removed 52443
519.705-5 (d) revised 52444
519.705-6 (a) revised; (c) removed 52444
519.770-1 (b)(2)(i) revised 52444
519.770-3 (a) revised 52444
522.1006 Revised 47398
522.407 Removed 52444
525.203 Revised; eff. 1-1-94 through 12-31-94 69243
525.205 Revised; eff. 1-1-94 through 12-31-94 69244
525.402 (a) amended; eff. 1-1-94 through 12-31-94 69244

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525.1003—525.1004 (Subpart 525.10) Removed 52444
528.102-3 Removed 52444
528.106-70 Removed 52444
528.202 Revised 52444
529.401-70 Revised 52444
529.401-71 Removed 52444
532.803 Removed 52444
536.201 Revised 52445
536.203 Revised 52445
536.206 Removed 52445
536.303 Removed 52445
536.303-70 Revised 52445
536.303-71 (g) removed 52445
536.303-72 (c) removed; (d) redesignated as (c) 52445
538.203-71 (c) added 54524
542.302 (c) removed; (d) redesignated as (c) 52445
543.202 Revised 52445
552.207-70 Removed 52445
552.222–43 Corrected; CFR correction 8235
Removed 47399
552.222-82 Removed 52445
552.225-8 Revised; eff. 1-1-94 through 12-31-94 69244
552.225-9 Revised; eff. 1-1-94 through 12-31-94 69244
552.225-75 Revised; eff. 1-1-94 through 12-31-94 69245
552.228-70 Introductory text revised 52446
552.238-74 Added 54524
552.246-70 Amended 64694
570.208-1 (c) removed 52446

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Chapter 5
501.105 Revised (OMB numbers) 63260
516.505 Revised 32384
519.701 Removed 38933
519.702 Removed 38933
519.704 Removed 38933
519.705–2 Revised 38933
519.705–4 Removed 38933
519.705–5 Removed 38933
519.705–6 Removed 38933
519.706 Removed 38933
519.706–70 Removed 38933
519.708 Revised 38933
519.770 Removed 38934
519.770–1 Removed 38934

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519.770–3 Removed 38934
519.803–70 Revised 38934
525.203 Corrected 5484
Revised 64856
525.205 Revised 64857
525.402 (a) revised 64857
533.105 (a)(1)(iii), (2) and (4) revised 22520
(a)(4) corrected 29480
533.7103–1 (b)(1) and (4) revised 22520
Correctly designated 29480
538.203–71 (d) added; interim 3657
Heading revised; (e) added 52451
(d) revised 63260
538.272 Added 52451
552 Technical correction 5484
552.216–73 Revised 32384
552.216–74 Added 32385
552.219–9 Added 38934
552.219–16 Added 38935
Correctly designated 45063
552.219–72 Revised 38936
552.219–73 Revised 38936
552.219–74 Added 38936
Corrected 45063
552.225–8 Revised 64857
552.225–9 Revised 64857
552.225–72 Amended 64858
552.225–75 Revised 64858
552.238–75 Added 3657
Revised 63260
552.238–76 Added 52452
552.246–70 Amended 15134
552.270–4 Amended 52253
552.270–21 Amended 52253
552.270–25 Amended 52253
552.270–28 Amended 52253
552.270–31 Revised 52253
552.270–41 Added 52253
570.203 (a)(8)(vi) revised 38937
570.702–22 Revised 52254
570.702–32 Added 52254
Chapter 6
601 Authority citation revised 66750
601.000 Amended 66750
601.101—601.105 (Subpart 601.1) Added 66750
601.201–1 Amended 66750
601.301 Revised 66751
601.302 (a) amended 66751
601.303 (c) revised 66751
601.403 Amended 66751
601.404 Amended 66751
601.405 Amended 66751
601.470 Amended 66751

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601.471 (a) introductory text amended; (a)(1) and (b) revised 66751
601.570 Revised 66751
601.602–1 (a) and (b) amended 66751
601.602–3 (b)(1) and (c) amended; (b)(2) revised 66751
601.602–3–70 Revised 66751
601.603–3 Revised 66752
601.603–70 Revised 66752
601.670 Added 66753
602 Authority citation revised 66750
602.101–70 Amended 66753
602.201—602.201–70 (Subpart 602.2) Removed 66753
603 Authority citation revised 66750
603.104—603.104–11 (Subpart 603.1) Added 66753
603.203 Amended 66754
603.303 (c) amended 66754
603.601 Added 66754
603.670 Added 66754
603.704—603.705 (Subpart 603.7) Added 66754
604 Authority citation revised 66750
604.202 Amended 66754
604.7002 (a) and (b) revised; (c) amended 66754
605 Authority citation revised 66750
605.202–70 (a), (c)(1) and (2) introductory text amended; (b), (c)(2)(i), (ii) and (d) revised; (e) added 66754
605.207 (a)(1) added 66755
605.303 (Subpart 605.3) Added 66755
605.403 Added 66755
605.502 Revised 66755
606 Authority citation revised 66750
606.101–70 Amended 66755
606.302–1 Added 66755
606.302–4 Added 66755
606.302–6 Added 66755
606.303–1 Amended 66755
606.304 (a)(2) and (d) added 66755
606.304–70 Revised 66756
606.370 Added 66756
606.501 Revised 66756
606.570 Added 66756
608 Authority citation revised 66750
608.402—608.402–70 (Subpart 608.4) Removed 66756
609 Authority citation revised 66750
609.202 Amended 66756
609.404 Amended 66756
609.405 Revised 66756

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609.405–70 (c) removed; introductory text, (a) and (b) redesignated as (a), (b) and (c); new (a) revised 66756
610 Added 66756
613 Authority citation revised 66750
613.6–70 Added 66758
613.103–70 (a) and (b) designation removed 66757
613.505–1 Added 66757
613.505–2 Revised 66758
613.505–70 Added 66758
613.507–70 Amended 66758
614 Authority citation revised 66750
614.201–7–70 (a)(1) and (d) removed; (a)(2) redesignated as (a); (b) amended; (c) revised 66758
614.404–1 Amended 66758
615 Authority citation revised 66750
615.106–70 Amended 66758
615.403—615.413–2 (Subpart 615.4) Added 66758
615.504—615.506 (Subpart 615.5) Added 66758
615.604 Added 66759
615.607 Amended 66759
615.608 Amended 66759
616 Authority citation revised 66750
616.102–70 Revised 66759
616.203–4 Amended 66759
616.301–3 Amended 66759
616.306 Amended 66759
616.603–2 Amended 66759
617 Authority citation revised 66750
617.102–2 Amended 66759
617.102–3 Added 66759
617.201–70 Amended 66759
617.204 Added 66759
617.207 Removed 66759
617.207–70 Removed 66759
617.502 Amended 66759
617.504–70 Added 66759
619 Authority citation revised 66750
Nomenclature change 66759
619.201 (c) and (d)(5) amended 66759
619.501 Added 66759
619.506 Added 66759
619.705–1 Added 66760
619.705–3 Amended 66760
619.705–6–70 (b) amended 66760
619.708–70 Added 66760
619.801 Revised 66760
619.810 Added 66760
619.812 Added 66760
619.870 (b) amended 66760
622 Authority citation revised 66750

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622.401 Added 66760
622.404–6 (b)(6) added 66760
622.406–3 Added 66760
623 Authority citation revised 66750
623.302–70 (Subpart 623.3) Added 66760
623.470—623.480 (Subpart 623.4) Added 66760
625 Authority citation revised 66750
625.102 Revised 66762
625.108 Amended 66762
625.202 Revised 66762
625.203 Added 66762
625.304 Amended 66762
625.901 Revised 66762
625.1003 (Subpart 625.10) Removed 66762
627 Added 66763
628 Authority citation revised 66750
628.101—628.106–6 (Subpart 628.1) Added 66763
628.203—628.203–7 (Subpart 628.2) Added 66763
628.305—628.307–70 (Subpart 628.3) Added 66763
631 Added 66764
632 Authority citation revised 66750
632.111–632.111–70 (Subpart 632.1) Removed 66764
632.402 Existing text designated as (c)(1)(iii); (b) added 66764
632.407 Added 66764
632.703–3 (Subpart 632.7) Added 66764
632.803 (Subpart 632.8) Added 66764
632.908 Added 66764
633 Authority citation revised 66750
633.104 Introductory text removed; (a)(1) amended 66764
633.105 Introductory text removed; (a) and (c) amended 66764
633.214–70 Added 66764
634 Authority citation revised 66750
634.001 (b) and (c) amended 66766
634.001–70 Amended 66766
634.003 (a) revised; (b) amended 66766
634.005 Added 66766
634.005–6 Added 66766
636 Authority citation revised 66750
636.101–70 Amended 66766
636.602 Revised 66766
637 Authority citation revised 66750
637.104–70 (f) amended 66766
637.106 Added 66766
637.110 Revised 66766
637.204—637.270 (Subpart 637.2) Removed 66766

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639 Added 66766
642 Authority citation revised 66750
642.270 Revised 66766
642.271 Amended 66766
643 Authority citation revised 66750
643.102–70 (b) revised 66767
647 Added 66767
649 Added 66767
651 Added 66767
652 Authority citation revised 66750
652.202–70 Removed 66767
652.203–70 Added 66767
652.203–71 Added 66767
652.206–70 Added 66767
652.214–70 Removed; new 652.214–70 redesignated from 652.214–71 and amended 66767
652.214–71 Redesignated as 652.214–70; new 652.214–71 redesignated from 652.214–72 and amended 66767
652.214–72 Redesignated as 652.214–71 66767
652.216–70 Amended 66768
652.216–71 Added 66768
652.219–70 Added 66768
652.223–70 Added 66768
652.223–71 Added 66768
652.223–72 Added 66768
652.223–73 Added 66769
652.223–74 Added 66769
652.223–75 Added 66769
652.223–76 Added 66769
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652.223–78 Added 66769
652.228–71 Added 66770
652.228–72 Added 66770
652.228–73 Added 66770
652.228–74 Added 66771
652.228–75 Added 66771
652.228–76 Added 66771
652.228–77 Added 66771
652.232–70 Revised 66771
652.232–71 Revised 66772
652.237–70 Revised 66772
652.237–71 Added 66772
652.237–72 Added 66772
652.242–70 Amended 66772
652.242–72 Amended 66772
653 Authority citation revised 66750
653.213–70 Revised 66773
653.217 Added 66773
653.217–70 Added 66773
653.219 Added 66773
653.219–70 Added 66773
653.302 Removed 66773

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670 (Subchapter I) Removed 66773

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Chapter 3
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Chapter 5
501.103 (b) revised 42794
501.601 Revised 40108
501.602–1 Removed 40108
501.603 Removed 40108
501.603–3 Removed 40108
501.603–4 Removed 40108
501.603–70 Removed 40108
501.700 Removed 54955
501.704 Removed 54955
501.704–70 Removed 54955
501.707 Revised 54955
502.101 Amended 21467, 54957
503.104–10 (a), (b)(3) and (c) revised 42794
503.404 (a) revised 42794
503.570–2 Amended 42802
504.800 Amended 42802
504.7001–2 (c) revised; (f) amended 54955
505.101 (c) introductory text revised 42794
(b) amended 42802
505.202 (a) introductory text revised; (b)(1) removed; (b)(2) and (3) redesignated as (b)(1) and (2) 42794
505.203 (b) revised 42794
505.240–70 (b) amended 42802
505.303–70 (a)(4) and (b)(1) amended 42802
505.503 Amended 42802
506.001 Added 42794
506.304 Introductory text revised 21467
507.100 Removed 42794
507.102 Amended 42802
507.104 (c), (d) and (e) revised 54955
507.104 (c), (e) introductory text and (2) revised 42802
508.301—508.370 (Subpart 508.3) Removed 54956
508.7 Heading revised 54956
508.705–70 (b) and (d) revised 54956
509.106–70 Removed 54956
510.004 (b)(2) amended 42802

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510.011 (a), (e), (g) and (i) revised; (j) removed 42802
512.104 (b) amended 42803
513 Heading revised 42803
513.106 (c)(2) revised 21467
Revised 42803
513.204 Removed 42803
513.501 Removed 42803
513.505–2 (c) and (d) amended 42803
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552 Authority citation correctly revised 48718
552.216–70 (c) corrected 49844
552.216–73 Amended; interim 4789
552.219–72 Revised 15306
552.219–73 Revised 15306
552.219–74 Revised 15307
552.238–72 Amended; interim 4789
552.238–76 Amended; interim 4789
552.243–72 Amended; interim 4789
553 Authority citation correctly revised 48718
570 Authority citation correctly revised 48718
570.502–2 (e) correctly designated 49844

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601.105 Redesignated as 601.106; new 601.105 added 43619
Added 43620
601.105–3 Added 43620
601.106 Redesignated from 601.105 43619
Revised 43620
601.301 (a)(1) designation and (2) removed 43620
601.302 (a) amended 43620
601.303 (c) amended 43620
601.471 Removed 43620
601.601—601.670 (Subpart 601.6) Heading revised 43620
601.602–3 Removed 43620
601.602–3–70 Removed 43620
601.603–3 (a) heading and (d) added; (a) amended; (b) revised 43620
601.603–70 (a)(1) introductory text, (2), (3), (7), (8), (b) introductory text and (1) through (6) amended; (a)(3) heading and (9) revised; (b)(7) added 43620
601.670 Removed 43620
602.101–70 Amended 43620
603.104—603.104–10 (Subpart 603.1) Revised 43620
603.203 Removed 43621
603.303 (Subpart 603.3) Removed 43621
603.405 Added 43621
603.408 Removed 43621
603.408–1 Removed 43621
603.670 Removed 43621
603.905—603.906 (Subpart 603.9) Added 43621
604.202 (Subpart 604.2) Removed 43621

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604.404—604.404–70 (Subpart 604.4) Removed 43621
604.502 (Subpart 604.5) Added 43621
604.7001—604.7002 (Subpart 604.70) Removed 43621
605.202–70 (a) amended 43621
605.207 Removed 43621
605.303 (a) amended 43621
606.101—606.101–70 (Subpart 606.1) Removed 43621
606.302–6 (c)(1) introductory text and (c)(1)(vi) amended 43621
606.304 (a)(2) amended 43621
606.501 (b) amended 43622
606.570 Revised 43622
608 Removed 43622
609.206 Added 43622
609.206–1 Added 43622
609.404 Heading revised 43622
609.405 (d)(4)(i) and (ii) revised 43622
609.406–3 (a)(1) and (b)(7) revised 43622
609.5 Heading revised 43622
610 Removed 43622
611 Added 43622
613 Revised 43623
614.201—614.201–70 (Subpart 614.2) Revised 43623
614.404–1 (f) added 43623
614.406 Redesignated as 614.407 43623
614.406–3 Redesignated as 614.407–3 43623
614.406–4 Redesignated as 614.407–4 43623
614.407 Redesignated from 614.406 43623
614.407–3 Redesignated from 614.406–3 and amended 43623
614.407–4 Redesignated from 614.406–4 and amended 43623
615 Revised 43623
616.102—616.102–70 (Subpart 616.1) Removed 43624
616.301–3—616.306 (Subpart 616.3) Removed 43624
616.505 Redesignated as 616.506; new 616.505 added 43624
616.506 Redesignated from 616.505; heading revised 43624
616.505–70 Redesignated as 616.506–70 43624
616.506–70 Redesignated from 616.505–70 43624
616.603—616.603–2 (Subpart 616.6) Removed 43624

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617.104—617.108 (Subpart 617.1) Revised 43624
617.502 Removed 43624
617.503 Added 43624
617.504–70 (a) amended 43624
619 Heading revised 43624
619.201 (d)(5) amended; (d)(18) revised 43624
619.501 Amended 43624
619.505 Heading revised 43624
619.705—619.708–70 (Subpart 619.7) Heading revised 43624
619.705–3 Revised 43624
619.800—619.812 (Subpart 619.8) Revised 43624
622.401 Removed 43626
622.406–3 Removed 43626
622.803 Added 43626
622.1303—622.1308 (Subpart 622.13) Heading revised 43626
622.1403—622.1402 (Subpart 622.14) Heading revised 43626
623.400—623.404 (Subpart 623.4) Revised 43626
625.901—625.903 (Subpart 625.9) Removed 43626
625.7001—625.7002 (Subpart 625.70) Added 43626
626 Added 43627
628.305 (b) introductory text amended; (b)(1), (2), and (3) removed 43627
628.306 Revised 43627
628.307 Revised 43627
628.307–70 Removed 43627
629.402 Added 43627
629.402–1 Added 43627
629.402–1–70 Added 43627
630 Removed 43627
631.205—231.205–6 (Subpart 631.2) Added 43627
632.006 Added 43627
632.006–1 Added 43627
632.006–2 Added 43627
632.006–4 Added 43627
632.114 (Subpart 632.1) Added 43627
632.201 (Subpart 632.2) Added 43627
632.404 Added 43627
632.702—632.705–70 (Subpart 632.7) Revised 43628
632.803 (b) amended 43628
633.102 Amended 43628
633.103 Revised 43628
633.104 Revised 43628
633.105 Removed 43628
633.211 Removed 43628

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633.214–70 (c) introductory text and (c)(2), (4), (5), and (6)(iii) amended 43628
633.270–1 Amended 43628
633.270–2 Amended 43628
633.270–3 Amended 43628
634.001 Removed 43628
634.001–70 Removed 43628
634.002 Removed 43628
634.003 (a) amended 43628
634.005–6 Amended 43628
636.101–70 Amended 43628
636.513 (Subpart 636.5) Added 43628
636.602–1 Added 43628
637.104–70 Heading revised; (g) and (h) amended; (i) added 43629
637.106 Removed 43629
637.110 (c) amended 43629
637.204 (Subpart 637.2) Added 43629
639 Removed 43629
641 Added 43629
642 Heading revised 43629
642.270—642.271 (Subpart 642.2) Heading revised 43629
642.271 Revised 43629
642.703—642.703–2 (Subpart 642.7) Added 43629
643.102–70 (a) designation and (b) removed 43629
643.104 Added 43629
643.104–70 Added 43629
644 Added 43629
645.403 (Subpart 645.4) Added 43629
646 Removed 43629
647.207—647.207–7 (Subpart 647.2) Added 43629
649.111 Removed 43629
652.203–70 Removed 43629
652.203–71 Removed 43629
652.204–70 Removed 43629
652.204–71 Removed 43629
652.206–70 Revised 43629
652.214–70 Removed 43630
652.214–71 Removed 43630
652.216–70 Introductory text revised 43630
652.216–71 Revised 43630
652.219–71 Added 43630
652.223–70 Removed 43631
652.223–71 Removed 43631
652.223–72 Removed 43631
652.223–73 Removed 43631
652.223–74 Removed 43631
652.223–75 Removed 43631
652.223–76 Removed 43631
652.223–77 Removed 43631

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652.223–78 Removed 43631
652.225–70 Added 43631
652.225–71 Added 43631
652.226–70 Added 43631
652.228–70 Introductory text revised 43632
652.228–71 Revised 43632
652.228–72 Removed 43632
652.228–73 Removed 43632
652.228–74 Revised 43632
652.228–75 Removed 43632
652.228–76 Revised 43632
652.228–77 Removed 43632
652.229–70 Introductory text revised 43632
652.229–71 Added 43633
652.232–70 Amended 43633
652.232–71 Amended 43633
652.232–72 Added 43633
652.236–70 Added 43633
652.237–71 Amended 43634
652.237–72 Amended 43634
652.242–70 Amended 43634
652.242–71 Introductory text revised 43634
652.242–72 Introductory text revised 43634
652.242–73 Added 43634
652.243–70 Added 43634
652.246–70 Removed 43634
653.213–70 Removed 43634
653.219 Heading revised 43634
653.219–70 Revised 43634

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Chapter 5 Regulation at 64 FR 37202 confirmed 11247
501.106 Amended 41378
511.104 Redesignated from 511.170; heading revised 41378
511.104–70 Redesignated from 511.170–3; (c) and (d) removed; new (c) added 41378
511.170 Redesignated as 511.104 41378
511.170–3 Redesignated as 511.104–70 41378
512.301 (a)(3) revised 41378
513.302–70 (a) revised 11247
515.408 (d) revised 11247
525.105 Removed 41379

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525.105–70 Removed 41379
525.109 Removed 41379
525.402—525.408 (Subpart 525.4) Removed 41379
525.570 (Subpart 525.5) Added 41379
525.1101 (Subpart 525.11) Added 41379
532.908 (c) added 41379
532.7002 Revised 11247
532.7003 Revised 11247
536.602—536.602–1 (Subpart 536.6) Added 11247
537.110 Revised 41379
546.710 (b) revised; (c) removed; (d) and (e) redesignated as (c) and (d) 11248
552.211–70 Removed 41379
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552.212–72 Amended 41379
552.225–8 Removed 41379
552.225–9 Removed 41379
552.225–70 Introductory text revised 41379
552.232–76 Amended 11248
552.232–77 Revised 11248
552.232–78 Added 41379
552.233–70 Amended 11248
552.243–72 Amended 41379
552.246–73 Revised 11248
552.246–74 Removed 11248
552.246–75 Introductory text revised 11249
552.246–76 Introductory text revised 11249
552.247–71 Amended 11249