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CODE OF FEDERAL REGULATIONS

Title 48

Federal Acquisition Regulations System

Chapters 3 to 6

Revised as of October 1, 2020

Containing a codification of documents
of general applicability and future effect

As of October 1, 2020

Published by the Office of the Federal Register
National Archives and Records Administration
as a Special Edition of the Federal Register

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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

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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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An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

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OLIVER A. POTTS,
Director,
Office of the Federal Register
October 1, 2020

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, 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, 2020.

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, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 48—Federal Acquisition Regulations System

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SUBCHAPTER A—GENERAL

PART 300 [RESERVED]

PART 301—HHS ACQUISITION REGULATION SYSTEM

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301.603–1 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 301.1—Purpose, Authority, and Issuance

301.101 Purpose.

(a) The Department of Health and Human Services (HHS) Acquisition Regulation (HHSAR) establishes uniform HHS acquisition policies and procedures that implement and supplement the Federal Acquisition Regulation (FAR).

(b)(1) The HHSAR contains HHS policies that govern the acquisition process or otherwise control acquisition relationships between HHS' contracting activities and contractors. The HHSAR contains—

(i) Requirements of law;

(ii) HHS-wide policies;

(iii) Deviations from FAR requirements; and

(iv) Policies that have a significant effect beyond the internal procedures of HHS or a significant cost or administrative impact on contractors or offerors.

(2) Relevant internal procedures, guidance, and information not meeting the criteria in paragraph (b)(1) of this section are issued by HHS in other announcements, internal procedures, guidance, or information.

301.103 Authority.

(b) The Assistant Secretary for Financial Resources (ASFR) prescribes the HHSAR 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. 121(c)(2)), as delegated by the Secretary).

(c) 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.''

301.106 Office of Management and Budget approval under the Paperwork Reduction Act.

(a) The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting the same information from 10 or more members of the public.

(b) The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this chapter:

HHSAR Segment	OMB Control No.
311.7102	0990–0434
311.7202(b)	0990–0434
311.7300	0990–0436
337.103(d)(3)	0990–0430
337.103(d)(4)	0990–0433
370.301	0990–0431
370.401	0990–0432
352.211–1	0990–0434
352.211–2	0990–0434
352.211–3	0990–0436
352.227–11	0990–0419
352.227–14	0990–0419
352.227–71	0990–0430
352.237–72	0990–0433
352.237–73	0990–0431
352.270–4a	0990–0431
352.270–4b	0990–0431
352.270–10	0990–0431

HHSAR Segment	OMB Control No.
352.270–11	0990–0432
352.270–5a	0990–0432
352.270–5b	0990–0432

Subpart 301.2 [Reserved]

Subpart 301.4—Deviations from the FAR

301.401 Deviations.

Contracting officers are not permitted to deviate from the FAR or HHSAR without seeking proper approval. With full acknowledgement of FAR 1.102(d) regarding innovative approaches, any deviation to FAR or the HHSAR requires approval by the Senior Procurement Executive (SPE).

Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

301.602 Contracting officers.

301.602–3 Ratification of unauthorized commitments.

(b) *Policy*. (1) The Government is not bound by agreements with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority. Unauthorized commitments do not follow the appropriate process for the expenditure of Government funds. Consequently, the Government may not be able to ratify certain actions, putting a contractor at risk for taking direction from a Federal official other than the contracting officer. See FAR 1.602–1. Government employees responsible for unauthorized commitments are subject to disciplinary action. Contractors perform at their own risk when accepting direction from unauthorized officials. Failure to follow statutory and regulatory processes for the expenditure of Government funds is a very serious matter.

(2) The head of the contracting activity (HCA) is the official authorized to ratify an unauthorized commitment. No other re-delegations are authorized.

(c) *Limitations*. (5) The HCA shall coordinate the request for ratification with the Office of General Counsel, General Law Division and submit a copy to the SPE.

301.603 Selection, appointment, and termination of appointment of contracting officers.

301.603–1 General.

(a) The Agency head has delegated broad authority to the Chief Acquisition Officer, who in turn has further delegated this authority to the SPE. The SPE has further delegated specific acquisition authority to the Operating and Staff Division heads and the HCAs. The HCA (non-delegable) shall select, appoint, and terminate the appointment of contracting officers.

(b) To ensure proper control of re-delegated acquisition authorities, HCAs shall maintain a file containing successive delegations of HCA authority through the contracting officer level.

PART 302—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 302.1—Definitions

302.101 Definitions.

(a) *Agency head or head of the agency*, unless otherwise stated, means the Secretary of Health and Human Services or specified designee.

(b) *Contracting Officer's Representative (COR)* is a Federal employee designated in writing by a contracting officer to act as the contracting officer's representative in monitoring and administering specified aspects of contractor performance *after* award of a contract or order. In accordance with local procedures, operating divisions (OPDIVs) or staff divisions (STAFFDIVs) may designate CORs for firm fixed-price contracts or orders. COR's responsibilities may include verifying that:

(1) The contractor's performance meets the standards set forth in the contract or order;

(2) The contractor meets the contract or order's technical requirements by

the specified delivery date(s) or within the period of performance; and

(3) The contractor performs within cost ceiling stated in the contract or order. CORs must meet the training and certification requirements specified in 301.604.

(c) *Head of the Contracting Activity (HCA)* is an official having overall responsibility for managing a contracting activity, *i.e.* the organization within an OPDIV or STAFFDIV or other HHS organization which has been delegated broad authority regarding the conduct of acquisition functions.

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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303.1003 Requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 303.1—Safeguards

303.101 Standards of conduct.

303.101–3 Agency regulations.

(a)(3) The HHS Standards of Conduct are prescribed in 45 CFR part 73.

303.104–7 Violations or possible violations of the Procurement Integrity Act.

(a)(1) The contracting officer shall submit to the head of the contracting activity (HCA) for review and concurrence the determination (along with supporting documentation) that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a contractor for award.

(2) The contracting officer shall refer the determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a contractor, along with all related information available, to the HCA. The HCA shall—

(i) Refer the matter immediately to the Associate Deputy Assistant Secretary—Acquisition (ADAS–A) for review, who may consult with the appropriate legal office representative and the Office of Inspector General (OIG) as appropriate; and

(ii) Determine the necessary action in accordance with FAR 3.104–7(c) and (d). The HCA shall obtain the approval or concurrence of the ADAS–A before proceeding with an action.

(b) The HCA (non-delegable) shall act with respect to actions taken under the Federal Acquisition Regulation (FAR) clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Authority.

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

HHS personnel shall report suspected violations of the clause at FAR 52.203–3, Gratuities, to the contracting officer, who will in turn report the matter to the Office of General Counsel (OGC), Ethics Division for disposition.

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

303.602 Exceptions.

The HCA (non-delegable) is the official authorized to approve an exception to the policy stated in FAR 3.601.

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

(a) For purposes of supplementing FAR subpart 3.7, the HCA (non-delegable) is the designee. Coordination with the Senior Procurement Executive is required.

Subpart 303.8—Limitation on the Payment of Funds to Influence Federal Transactions

303.808–70 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 352.203–70, Anti-lobbying, in solicitations and contracts that exceed the simplified acquisition threshold.

Subpart 303.10—Contractor Code of Business Ethics and Conduct

303.1003 Requirements.

(b) The contracting officer, when notified of a possible contractor violation, in accordance with FAR 3.1003(b), shall notify the OIG and the HCA.

(c)(2) The contracting officer shall specify the title of HHS' OIG hotline poster and the Web site where the poster can be obtained in paragraph (b)(3) of the clause at FAR 52.203–14.

PART 304—ADMINISTRATIVE MATTERS

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 304.6—Contract Reporting

304.602 General.

Follow internal department procedures for reporting information to the Federal Procurement Data System (FPDS) and for resolving technical or policy issues relating to FPDS contract reporting.

304.604 Responsibilities.

The Department of Health and Human Services (HHS) acquisition officials and staff shall report their contract information in FPDS accurately and timely.

Subpart 304.13—Personal Identity Verification

304.1300 Policy.

To ensure compliance with Homeland Security Presidential Directive-12: Policy for a Common Identification Standard for Federal Employees and Contractors (HSPD–12) and the Presidential Cross Agency Priority for strong authentication, contracting officers shall provide in each acquisition those HSPD–12 requirements necessary for contract performance.

Subpart 304.16—Unique Procurement Instrument Identifiers

304.1600 Scope of subpart.

This subpart provides guidance for assigning identification numbers to solicitation or contract actions. The Senior Procurement Executive shall be responsible for establishing a numbering system within the department that conforms to Federal Acquisition Regulation (FAR) subpart 4.16.

Subpart 304.70 [Reserved]

Subpart 304.71—Review and Approval of Proposed Contract Actions

304.7100 Policy.

In accordance with HHS delegated acquisition authority, the FAR, this regulation, internal policies and guidance, the head of the contracting activity (non-delegable) shall establish review and approval procedures for proposed contract actions to ensure that—

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

(b) Contract actions properly reflect the mutual understanding of the parties; and

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

Subpart 304.72—Affordable Care Act Prevention and Public Health Fund—Reporting Requirements

304.7200 Scope of subpart.

This subpart implements Section 220 of Public Law 112–74, FY 2012 Labor, HHS and Education Appropriations Act, which requires, semi-annual reporting on the use of funds from the Prevention and Public Health Fund (PPHF), Public Law 111–148, sec. 4002. Contractors that receive awards (or modifications to existing awards) with a value of $25,000 or more funded, in whole or in part, from the PPHF, shall report information specified in the clause at 352.204–70, Prevention and Public Health Fund—Reporting Requirements, including, but not limited to—

(a) The dollar amount of contractor invoices;

(b) The supplies delivered and services performed; and

(c) Specific information on subcontracts with a value of $25,000 or more.

304.7201 Procedures.

(a) In any contract action funded in whole or in part by the PPHF, the contracting officer shall indicate that the contract action is being made under the PPHF, and indicate which products or services are funded under the PPHF. This requirement applies whenever PPHF funds are used, regardless of the contract instrument.

(b) To maximize transparency of PPHF funds that shall be reported by the contractor, the contracting officer shall structure contract awards to allow for separately tracking PPHF funds. For example, the contracting officer may consider awarding dedicated separate contracts when using PPHF funds or establishing contract line item number structures to prevent commingling of PPHF funds with other funds.

(c) Contracting officers shall ensure that the contractor complies with the reporting requirements of 352.204–70. Upon receipt of each report, the contracting officer shall review it for completeness, address any clarity or completeness issues with the contractor, and submit the final approved report in Section 508 compliant format to an Assistant Secretary for Public Affairs point-of-contact for posting on HHS' PPHF Web site at *http://www.hhs.gov/open/prevention/index.html* no later than 30 days after the end of the reporting period. If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies.

(d) The contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under FAR subpart 42.15.

304.7202 Contract clause.

Insert the clause at 352.204–70, Prevention and Public Health Fund—Reporting Requirements, in all solicitations and contract actions funded in whole or in part with PPHF funds, except classified solicitations and contracts. This includes, but is not limited to, awarding or modifying orders against existing or new contracts issued under FAR subparts 8.4 and 16.5 that will be funded with PPHF funds. Contracting officers shall include this clause in any existing contract or order that will be funded with PPHF funds. This clause is not required for any contract or order which contains a prior version of the clause at 352.204–70.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 305—PUBLICIZING CONTRACT ACTIONS

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305.303 Announcement of contract awards.

Subpart 305.5—Paid Advertisements

305.502 Authority.

Subpart 305.70—Publicizing Requirements Funded From the Affordable Care Act Prevention and Public Health Fund

305.7001 Scope.
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305.7004 Publicizing postaward.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

(a) *Public announcement.* The contracting officer shall report awards, not exempt under Federal Acquisition Regulation (FAR) 5.303, to the Office of the Assistant Secretary for Legislation (Congressional Liaison Office.)

Subpart 305.5—Paid Advertisements

305.502 Authority.

Written approval at least one level above the contracting officer shall be obtained prior to placing advertisements or notices in newspapers.

Subpart 305.70—Publicizing Requirements Funded From the Affordable Care Act Prevention and Public Health Fund

305.7001 Scope.

Pursuant to appropriations acts, this subpart prescribes requirements for posting presolicitation and award notices for actions funded in whole or in part from the Prevention and Public Health Fund (PPHF). The requirements of this subpart enhance transparency to the public.

305.7002 Applicability.

This subpart applies to all actions funded in whole or in part by the PPHF.

305.7003 Publicizing preaward.

Notices of all proposed contract actions, funded in whole or in part by the PPHF, shall be identified on HHS' Prevention and Public Health Fund Web site at *http://www.hhs.gov/open/prevention/index.html* no later than 1-day after issuance of the solicitation or other request for proposal or quotation document. When applicable, the notice shall provide a link to the full text; for example, a link to the FedBizOpps notice required by FAR 5.201.

305.7004 Publicizing postaward.

Notices of contract actions exceeding $25,000, funded in whole or in part by the PPHF, shall be identified on HHS' PPHF Web site at *http://www.hhs.gov/open/prevention/index.html* no later than 5 days after the contract action occurs.

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.

Subpart 306.5—Competition Advocates

306.501 Requirement.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 306.2—Full and Open Competition After Exclusion of Sources

306.202 Establishing or maintaining alternative sources.

(a) The Senior Procurement Executive (SPE) shall make the determination required in Federal Acquisition Regulation (FAR) 6.202(a).

(b)(1) The contracting officer shall prepare the required determination and findings (D&F), see FAR 6.202(b)(1), based on the data provided by program personnel. The appropriate Competition Advocate (CA) (non-delegable) shall sign the D&F, indicating concurrence. The final determination will be made by the SPE.

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. See FAR 6.302–1.

For acquisitions covered by 42 U.S.C. 247d–6a(b)(2)(A), ''available from only one responsible source'' shall be deemed to mean ''available from only one responsible source or only from a limited number of responsible sources''.

Subpart 306.5—Competition Advocates

306.501 Requirement.

The Department Competition Advocate for Health and Human Services is located in the Division of Acquisition.

PART 307—ACQUISITION PLANNING

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

307.105 Contents of written acquisition plans.

Federal Acquisition Regulation 7.105 specifies the content requirements for a written Acquisition Plan (AP). The Department of Health and Human Services requires a written AP for all acquisitions above the simplified acquisition threshold.

PART 308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 308.4—Federal Supply Schedules

Sec.
308.405–6 Limited source justification and approval.

Subpart 308.8—Acquisition of Printing and Related Supplies

308.800 Scope of subpart.
308.801 Definitions.
308.802 Policy.
308.803 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 308.4—Federal Supply Schedules

308.405–6 Limited source justification and approval.

(d)(1) As required by Federal Acquisition Regulation (FAR) 8.405–1 or 8.405–2, the responsible program office must provide a written justification for an acquisition under the Federal Supply Service program that restricts the number of schedule contractors or when procuring an item peculiar to one manufacturer.

Subpart 308.8—Acquisition of Printing and Related Supplies

308.800 Scope of subpart.

This subpart provides the Department of Health and Human Services (HHS) policy for the acquisition of Government printing and related supplies. The HHS Office of the Assistant Secretary for Public Affairs is responsible for the review and clearance of print and electronic publications,

printing and related supplies, audiovisual products, and communication service contracts. See FAR 8.802 for exceptions.

308.801 Definitions.

The terms ''printing'' and ''duplicating/copying'' are defined in the Government Printing and Binding Regulations of the Joint Committee on Printing. The regulations are available at *http://www.gpo.gov*.

308.802 Policy.

In accordance with FAR 8.802(b), the Central Printing and Publications Management Organization at Program Support Center is the HHS designated central printing authority.

308.803 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 352.208–70, Printing and Duplication, in all solicitations, contracts, and orders over the simplified acquisition threshold, unless printing or increased duplication is authorized by statute.

PART 309—CONTRACTOR QUALIFICATIONS

Subpart 309.4—Debarment, Suspension, and Ineligibility

Sec.
309.403 Definitions.
309.404 System for Award Management (SAM) exclusions.
309.405 Effect of listing (compelling reason determinations).
309.406 Debarment.
309.406–3 Procedures.
309.407 Suspension.
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.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 309.4—Debarment, Suspension, and Ineligibility

309.403 Definitions.

The following definition applies to this subpart:

The HHS Suspension and Debarment Official is the Deputy Assistant Secretary (DAS) for the Office of Grants and Acquisition Policy and Accountability (OGAPA).

309.404 System for Award Management (SAM) exclusions.

(c) For actions made by HHS pursuant to FAR 9.406 and 9.407, the Office of Recipient Integrity Coordination shall perform the actions required by FAR 9.404(c).

309.405 Effect of listing (compelling reason determinations).

(a) The head of the contracting activity (HCA) (non-delegable) may, with the written concurrence of the Suspension and Debarment Official, make the determinations referenced in FAR 9.405(a) regarding contracts.

(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 appropriate acquisition channels to the HCA. The documentation shall include the date by which approval is required and a compelling reason for the proposed action. Compelling reasons for award of a contract or consent to a subcontract with a debarred or suspended contractor include the following:

(i) Only the cited contractor can provide the property or services, and

(ii) The urgency of the requirement dictates that HHS conduct business with the cited contractor.

(2) If the HCA decides to approve the requested action, the HCA shall request the concurrence of the Suspension and Debarment Official and, if given, shall inform the contracting officer in writing of the determination within the required time period.

309.406 Debarment.

309.406–3 Procedures.

Refer all matters appropriate for consideration by an agency Suspension and Debarment Official as soon as practicable to the appropriate Suspension and Debarment Official identified in 309.403. Any person may refer a matter to the Suspension and Debarment Official.

309.407 Suspension.

309.407–3 Procedures.

Refer all matters appropriate for consideration by an agency Suspension and Debarment Official as soon as practicable to the appropriate Suspension and Debarment Official identified in 309.403. Any person may refer a matter to the Suspension and Debarment Official.

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

309.470–1 Situations where reports are required.

The contracting officer shall report to the HCA and the Associate Deputy Assistant Secretary—Acquisition whenever the contracting officer—

(a) Knows or suspects that a contractor is committing or has committed any of the acts described in FAR 9.406–2 or 9.407–2; or

(b) Suspects a contractor is attempting to evade the prohibitions of debarment or suspension imposed under FAR 9.405, or any other comparable regulation, by changes of address, multiple addresses, formation of new companies, or by other devices.

PART 310—MARKET RESEARCH

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

310.001 Policy.

Market research shall be conducted as prescribed in Federal Acquisition Regulation part 10.

PART 311—DESCRIBING AGENCY NEEDS

Subpart 311.70—Section 508 Accessibility Standards

Sec.
311.7000 Defining electronic information technology requirements.

Subpart 311.71—Public Accommodations and Commercial Facilities

311.7100 Policy.
311.7101 Responsibilities.
311.7102 Contract clause.

Subpart 311.72—Conference Funding and Sponsorship

311.7200 Policy.
311.7201 Funding and sponsorship.
311.7202 Contract clause.

Subpart 311.73—Contractor Collection of Information

311.7300 Policy.
311.7301 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 311.70—Section 508 Accessibility Standards

311.7000 Defining electronic and information technology requirements.

The contracting officer shall ensure that requiring activities specify agency needs for electronic and information technology (EIT) supplies and services, and document market research, document EIT requirements, and identify the applicable Section 508 accessibility standards. See FAR 11.002(f) and HHSAR subpart 339.2.

Subpart 311.71—Public Accommodations and Commercial Facilities.

311.7100 Policy.

(a) It is HHS policy that all contractors comply with current and any future changes to 28 CFR part 36—Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities. For the purpose of this policy, accessibility is defined as both physical access to public

accommodations and commercial facilities, and access to aids and services enabling individuals with sensory disabilities to fully participate in events in public accommodations and commercial facilities.

(b) This policy applies to all contracts requiring contractors to conduct events in public accommodations and commercial facilities open to the public or involving HHS personnel, but not ad hoc meetings necessary or incidental to contract performance.

311.7101 Responsibilities.

The contractor shall submit a plan assuring that any event held will meet or exceed the minimum accessibility standards set forth in 28 CFR part 36. A consolidated or master plan for contracts requiring numerous events in public accommodations and commercial facilities is acceptable.

311.7102 Contract clause.

The contracting officer shall insert the clause at 352.211–1, Public Accommodations and Commercial Facilities, in solicitations, contracts, and orders requiring the contractor to conduct events in accordance with 311.7100(b).

Subpart 311.72—Conference Funding and Sponsorship

311.7200 Policy.

HHS policy requires that all conferences the agency funds or sponsors shall: be consistent with HHS missions, objectives, and policies; represent an efficient and effective use of taxpayer funds; and withstand public scrutiny.

311.7201 Funding and sponsorship.

Funding a conference through a HHS contract does not automatically imply HHS sponsorship, unless the conference is funded entirely by the agency. Also, HHS staff attendance or participation at a conference does not imply HHS conference sponsorship. Accordingly, for non-conference contracts funded entirely by HHS prior to a contractor claiming HHS sponsorship, the contractor must provide the contracting officer a written request for permission to designate HHS the conference sponsor. The OPDIV or STAFFDIV (operating division or staff division) head, or designee, shall approve such requests. The determination on what constitutes a ''conference contract'' or a ''non-conference contract'' shall be made by the contracting officer.

311.7202 Contract clause.

To ensure that a contractor:

(a) Properly requests approval to designate HHS the conference sponsor, where HHS is not the sole provider of conference funding; and

(b) Includes an appropriate Federal funding disclosure and content disclaimer statement for conference materials, the contracting officer shall include the clause at 352.211–2, Conference Sponsorship Request and Conference Materials Disclaimer, in solicitations, contracts, and orders providing funding which partially or fully supports a conference.

Subpart 311.73—Contractor Collection of Information

311.7300 Policy.

In accordance with the Paperwork Reduction Act (PRA), contractors shall not proceed with collecting information from surveys, questionnaires, or interviews until the COR obtains an Office of Management and Budget clearance and the contracting officer issues written approval to proceed. For any contract involving a 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 contracting officer must comply with the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

311.7301 Contract clause.

The contracting officer shall insert the clause at 352.211–3, Paperwork Reduction Act, in solicitations, contracts, and orders that require a contractor to collect the same information from 10 or more persons.

PART 312—ACQUISITION OF COMMERCIAL ITEMS

Subpart 312.1—Acquisition of Commercial Items—General

Sec.
312.101 Policy.

Subpart 312.2—Special Requirements for the Acquisition of Commercial Items

312.202(d) Market research and description of agency need.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 312.1—Acquisition of Commercial Items—General

312.101 Policy.

Contracting offices shall use the HHS Smarter Buying Program to the maximum extent practicable. See HHS Acquisition Regulation part 307, Acquisition Planning.

Subpart 312.2—Special Requirements for the Acquisition of Commercial Items

312.202(d) Market research and description of agency need.

Whenever a requiring activity specifies electronic and information technology (EIT) supplies and services subject to Section 508 of the Rehabilitation Act of 1973, as amended, the requiring activity shall acquire commercially available supplies and services to the maximum extent possible while ensuring Section 508 compliance. See part 339.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 313—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
313.003 Policy.

Subpart 313.3—Simplified Acquisition Methods

313.301 Government-wide commercial purchase card.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

313.003 Policy.

Electronic and information technology (EIT) supplies and services acquired pursuant to Federal Acquisition Regulation part 13 shall comply with Section 508 of the Rehabilitation Act of 1973, as amended. See part 339.

Subpart 313.3—Simplified Acquisition Methods

313.301 Government-wide commercial purchase card.

(b) Make all HHS transactions utilizing the government-wide commercial purchase card in accordance with the HHS Purchase Card Program.

PART 314—SEALED BIDDING

Subpart 314.1—Use of Sealed Bidding

Sec.
314.103 Policy.

Subpart 314.4—Opening of Bids and Award of Contract

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

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 314.1—Use of Sealed Bidding

314.103 Policy.

Electronic and information technology (EIT) supplies and services acquired using sealed-bid procedures shall comply with Section 508 of the Rehabilitation Act of 1973, as amended. See part 339.

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 head of the contracting activity (HCA) shall make the determinations specified in FAR 14.404–1(c).

314.407 Mistakes in bids.

314.407–3 Other mistakes disclosed before award.

(e) The HCA has the authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR 14.407–3.

314.407–4 Mistakes after award.

(c) The HCA has the authority to make administrative determinations in connection with alleged post-award mistakes.

PART 315—CONTRACTING BY NEGOTIATION

Subpart 315.2—Solicitation and Receipt of Proposals and Information

Sec.
315.204–5 Part IV—Representations and instructions.
315.208 Submission, modification, revision, and withdrawal of proposals.

Subpart 315.3—Source Selection

315.303–70 Policy.
315.304 Evaluation factors and significant subfactors.
315.305 Proposal evaluation.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.
315.404–2 Information to support proposal analysis.

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.
315.606 Agency procedures.
315.606–1 Receipt and initial review.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 315.2—Solicitation and Receipt of Proposals and Information

315.204–5 Part IV—Representations and instructions.

(c) *Section M, Evaluation factors for award.* (1) The requiring activity shall develop technical evaluation factors and submit them to the contracting officer as part of the acquisition plan or other acquisition request documentation for inclusion in a solicitation. The requiring activity shall indicate the relative importance or weight of the evaluation factors based on the requirements of an individual acquisition.

(2) Only a formal amendment to a solicitation can change the evaluation factors.

315.208 Submission, modification, revision, and withdrawal of proposals.

(b) In addition to the provision in Federal Acquisition Regulation (FAR) 52.215–1, Instructions to Offerors—Competitive Acquisition, if the head of the contracting activity (HCA) determines that biomedical or behavioral research and development (R&D) acquisitions are subject to conditions other than those specified in FAR 52.215–1(c)(3), the HCA may authorize for use in competitive solicitations for R&D, the provision at 352.215–70, Late Proposals and Revisions. This is an authorized FAR deviation.

(2) When the provision at 352.215–70 is included in the solicitation and if the HCA intends to consider a proposal or proposals received after the exact time specified for receipt, the contracting officer, with the assistance of cost or technical personnel as appropriate, shall determine in writing that the proposal(s) meets the requirements of the provision at 352.215–70.

Subpart 315.3—Source Selection

315.303–70 Policy.

(a) If an operating division (OPDIV) is required by statute to use peer review for technical review of proposals, the requirements of those statutes, any implementing regulatory requirements, the Federal Advisory Committee Act, and as applicable, any approved Department of Health and Human Services Acquisition Regulation (HHSAR) deviation(s) from this subpart take precedence over the otherwise applicable requirements of this subpart.

(b) The statutes that require such review and implementing regulations are as follows: National Institutes of Health—42 U.S.C. 289a, Peer Review Requirements and 42 CFR part 52h, Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects; Substance Abuse and Mental Health Services Administration—42 U.S.C. 290aa–3, Peer Review and Agency for Healthcare Research and Quality—42 U.S.C. 299c–1, Peer review with respect to grants and contracts.

315.304 Evaluation factors and significant subfactors.

When acquiring electronic and information technology supplies and services (EIT) using negotiated procedures, contracting officers shall comply with Section 508 of the Rehabilitation Act of 1973, as amended.

315.305 Proposal evaluation.

(c) *Use of non-Federal evaluators.* (1) Except when peer review is required by statute as provided in 315.303–70(a), decisions to disclose proposals to non-Federal evaluators shall be made by the official responsible for appointing Source Selection Evaluation Team members in accordance with OPDIV procedures. The avoidance of organizational and personal conflicts of interest must be taken into consideration when making the decision to use non-Federal evaluators.

(2) When a solicited proposal will be disclosed outside the Government to a contractor or a contractor employee for evaluation purposes, the following or similar conditions shall be part of the written agreement with the contractor prior to disclosure:

CONDITIONS FOR EVALUATING PROPOSALS

The contractor agrees that it and its employees, as well as any subcontractors and their employees (in these conditions, ''evaluator'') will use the data (trade secrets, business data, and technical data) contained in the proposal for evaluation purposes only. The foregoing requirement does not apply to data obtained from another source without restriction. Any notice or legend placed on the proposal by either HHS or the offeror 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 to the Government the furnished copy of the proposal or abstract, and all copies thereof, to the HHS office which initially furnished the proposal for evaluation. The evaluator shall not contact the offeror concerning any aspects of a proposal's contents.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.

315.404–2 Information to support proposal analysis.

(a)(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained from the cognizant audit agency, or by other means including data obtained through market research (See FAR part 10 and HHSAR part 310) the contracting officer 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 will be used. When field-pricing support is required, contracting officers shall make the request through the HCA.

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.

(d) *Warranty by offeror*. To ensure against contacts between HHS personnel and prospective offerors that would exceed the limits of advance guidance set forth in FAR 15.604 and potentially result in an unfair advantage to an offeror, the prospective offeror of an unsolicited proposal must include the following warranty in any unsolicited proposal. Contracting officers receiving an unsolicited proposal without this warranty shall not process the proposal until the offeror is notified of the missing language and given an opportunity to submit a proper warranty. If no warranty is provided in a reasonable time, the contracting officer shall reject the unsolicited proposal, notify the offeror of the rejection, and document the actions in the file.

UNSOLICITED PROPOSAL

WARRANTY BY OFFEROR

This is to warrant 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 HHS personnel has been within the limits of appropriate advance guidance set forth in FAR 15.604; and,

(d) No prior commitments were received from HHS personnel regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This warranty shall be signed by a responsible management official of the proposing organization who is a person authorized to contractually obligate the organization.)

315.606 Agency procedures.

(a) The HCA is responsible for establishing procedures to comply with FAR 15.606(a).

(b) The HCA or designee shall be the point of contact for coordinating the

receipt and processing of unsolicited proposals.

315.606–1 Receipt and initial review.

(d) OPDIVs may consider an unsolicited proposal even though an organization initially submitted it as a grant application. However, OPDIVs shall not award contracts based on unsolicited proposals that have been rejected for grant awards due to lack of scientific merit.

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-Reimbursement Contracts

Sec.
316.307 Contract clauses.

Subpart 316.5—Indefinite-Delivery Contracts

316.505 Ordering.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.
316.603–3 Limitations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 316.3—Cost-Reimbursement Contracts

316.307 Contract clauses.

(a)(1) If a contract for research and development is with a hospital (profit or nonprofit), the contracting officer shall modify the ''Allowable Cost and Payment'' clause at FAR 52.216–7 by deleting from paragraph (a) the words ''Federal Acquisition Regulation (FAR) subpart 31.2'' and substituting ''45 CFR part 75.''

(2) The contracting officer shall also insert the clause at 352.216–70, Additional Cost Principles for Hospitals (Profit or Non-Profit), in solicitations and contracts with a hospital (profit or non-profit) when a cost-reimbursement contract is contemplated.

Subpart 316.5—Indefinite-Delivery Contracts

316.505 Ordering.

(b)(8) The Department of Health and Human Services (HHS) Competition Advocate is the task-order and delivery-order ombudsman for the department. Ombudsmen for each of the HHS contracting activities shall be designated in writing by the head of the contracting activity. See part 306.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.

316.603–3 Limitations.

An official one level above the contracting officer shall make the written determination, to be included in the contract file, that no other contract type is suitable and to approve all letter contract modifications. No letter contract or modification can exceed the limits prescribed in FAR 16.603–2(c).

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.1—Multi-Year Contracting

Sec.
317.104 General.
317.105 Policy.
317.105–1 Uses.
317.107 Options.
317.108 Congressional notification.

Subpart 317.2—Options

317.204 Contracts.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 317.1—Multi-Year Contracting

317.104 General.

(b) The Senior Procurement Executive (SPE) is the agency approving official for determinations under Federal Acquisition Regulation (FAR) 17.104(b).

317.105 Policy.

317.105–1 Uses.

(a) Each head of the contracting activity (HCA) determination to use multi-year contracting, as defined in FAR 17.103, is limited to individual acquisitions where the full estimated cancellation ceiling does not exceed 20 percent of the total contract value over the multi-year term or $12.5 million, whichever is less. Cancellation ceiling provisions shall conform to the requirements of FAR 17.106–1(c). The determination is not delegable and shall address the issues in FAR 17.105–1(a).

(b)(1) SPE approval is required for any—

(i) Individual determination to use multi-year contracting with a cancellation ceiling in excess of the limits in 317.105–1(a); or

(ii) Class determination (see FAR subpart 1.7).

(2) A determination involving a cancellation ceiling in excess of the limits in 317.105–1(a) shall present a well-documented justification for the estimated cancellation ceiling. When the estimated cancellation ceiling exceeds $12.5 million, the determination shall accompany a draft congressional notification letter pursuant to FAR 17.108 and 317.108.

317.107 Options.

When included as part of a multi-year contract, use of options shall not extend the performance of the original requirement beyond 5 years. Options may serve as a means to acquire related services (severable or non-severable) and, upon their exercise, shall receive funding from the then-current fiscal year's appropriation.

317.108 Congressional notification.

(a) The SPE shall give the approval of the written notification required by FAR 17.108(a). Upon approval of the determination required by 317.105–1(b)(1), the HCA will finalize and sign the congressional notification letter and provide it to the appropriate House and Senate committees.

Subpart 317.2—Options

317.204 Contracts.

(e)(1) *Information technology contracts.* Notwithstanding FAR 17.204(e), the 5-year limitations apply also to information technology contracts unless a longer period is authorized by statute.

(2) *Requests to exceed 5-year limitation.* A request to exceed the 5-year limitation specified in FAR 17.204(e) must follow guidance in FAR Part 1.7.

(3) *Approval authority.* All requests to exceed the 5-year limitations specified in FAR 17.204(e) must be supported with a Determination and Finding and approved by:

(i) The HCA; and

(ii) The HHS SPE.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 319—SMALL BUSINESS PROGRAMS

Subpart 319.2—Policies

Sec.
319.201 General policy.
319.270–1 Mentor Protégé Program Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 319.2—Policies

319.201 General policy.

(d) The functional management responsibilities for the Department of Health and Human Services' (HHS) small business program are delegated to the Office of Small and Disadvantaged Business Utilization (OSDBU) Director.

(e)(1) The HHS OSDBU Director shall exercise full management authority over the small business program. The small business specialist (SBS) shall review and make recommendations for all acquisitions, unless exempted by statute, that are not being set aside for small business in accordance with Federal Acquisition Regulation (FAR) 19.502. The review must take place prior to issuing the solicitation.

(2) Within the Indian Health Service (IHS), the primary SBSs are responsible for IHS' overall implementation of the HHS small business program; however, each IHS contracting office will assign a small business technical advisor (SBTA) to perform those functions and responsibilities necessary to implement the small business program. The primary IHS SBS shall assist and provide guidance to respective SBTAs.

319.270–1 Mentor Protégé Program Solicitation provision and contract clause.

(a) The contacting officer shall insert the provision at 352.219–70, Mentor-Protégé Program, in solicitations that include the clause at FAR 52.219–9, Small Business Subcontracting Plan. The provision requires offerors to provide the contracting officer a copy of their HHS Office of OSDBU-approved mentor-protégé agreement in response to a solicitation.

(b) The contacting officer shall insert the clause at 352.219–71, Mentor-Protégé Program Reporting Requirements, in contracts that include the clause at FAR 52.219–9, Small Business Subcontracting Plan, and which are awarded to a contractor with an HHS OSDBU-approved mentor-protégé agreement.

PART 322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 322.8—Equal Employment Opportunity

322.810 Solicitation provisions and contract clauses.

(h) The contracting officer shall insert the clause at 352.222–70, Contractor Cooperation in Equal Employment Opportunity Investigations, in solicitations, contracts, and orders that include the clause at FAR 52.222–26, Equal Opportunity.

PART 323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 323.70—Safety and Health

Sec.
323.7000 Scope of subpart.
323.7001 Policy.
323.7002 Actions required.

Subpart 323.71—Sustainable Acquisition Requirements

323.7100 Policy.
323.7101 Applicability.
323.7102 Procedures.
323.7103 Solicitation Provision.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

323.7000 Scope of subpart.

This subpart provides procedures for administering safety and health requirements.

323.7001 Policy.

The contracting officer shall follow the guidance in this subpart when additional requirements for safety and health are necessary for an acquisition.

323.7002 Actions required.

Contracting activities. The contracting officer shall insert the clause at 352.223–70, Safety and Health, or a clause substantially the same, in solicitations and contracts that involve hazardous materials or hazardous operations for the following types of requirements:

(a) Services or products.

(b) Research, development, or test projects.

(c) Transportation of hazardous materials.

(d) Construction, including construction of facilities on the contractor's premises.

Subpart 323.71—Sustainable Acquisition Requirements

323.7100 Policy.

This subpart provides procedures for sustainable acquisitions and use of the following: Designated recycled content; energy efficient, environmentally preferred, Electronic Product Environmental Assessment Tool (EPEAT)-registered, bio-based, water efficient, non-ozone depleting products and services; and alternate fuel vehicles and fuels. The Department of Health and Human Services (HHS) has designated product and service codes for supplies and services having sustainable acquisition attributes. See FAR part 23.

323.7101 Applicability.

It is HHS policy to include a solicitation provision and to include an evaluation factor for an offeror's Sustainable Action Plan when acquiring sustainable products and services. This applies only to new contracts and orders above the micro-purchase threshold. Such contracts and orders include, but are not limited to: Office supplies; construction, renovation or repair; building operations and maintenance; landscaping services; pest management; electronic equipment, including leasing; fleet maintenance; janitorial services; laundry services; cafeteria operations; and meetings and conference services. If using a product or service code designated for supplies or services having sustainable acquisition attributes but a review of the requirement determines that no opportunity exists to acquire sustainable acquisition supplies or services, document the determination in the contract file and make note in the solicitation.

323.7102 Procedures.

(a) When required by the solicitation, offerors or quoters must include a Sustainable Acquisition Plan in their technical proposal addressing the environmental products and services for delivery under the resulting contract.

(b) The contracting officer shall incorporate the final Sustainable Acquisition Plan into the contract.

(c) The contracting officer shall ensure that sustainability is included as an evaluation factor in all applicable new contracts and orders when the acquisition utilizes a product or service code designated by HHS for supplies or services having sustainable acquisition attributes.

323.7103 Solicitation Provision.

The contracting officer shall insert the provision at 352.223–71, Instruction to Offerors—Sustainable Acquisition, in solicitations above the micro-purchase threshold when the acquisition utilizes a product or service code designated by HHS as having sustainable acquisition attributes.

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Sec.

324.103 Procedures for the Privacy Act.
324.104 Restrictions on Contractor Access to Government or Third Party Information.

324.105 Contract clauses.

Subpart 324.70—Health Insurance Portability and Accountability Act of 1996 (HIPAA)

324.7000 Scope of subpart.
324.7001 Policy on Compliance with HIPAA Business Associate Contract Requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 324.1—Protection of Individual Privacy

324.103 Procedures for the Privacy Act.

(a) The contracting officer shall review all acquisition request documentation to determine whether the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) are applicable. The Privacy Act requirements apply when a contract or order requires the contractor to design, develop, or operate any Privacy Act system of records on individuals to accomplish an agency function. When applicable, the contracting officer shall include the two Privacy Act clauses required by Federal Acquisition Regulation (FAR) 24.104 in the solicitation and contract or order. In addition, the contracting officer shall include the two FAR Privacy Act clauses, and other pertinent information specified in this subpart, in any modification which results in the Privacy Act requirements becoming applicable to a contract or order.

(b) The contracting officer shall ensure that the statement of work or performance work statement (SOW or PWS) specifies the system(s) of records or proposed system(s) of records to which the Privacy Act and the implementing regulations are applicable or may be applicable. The contracting officer shall send the contractor a copy of 45 CFR part 5b, which includes the rules of conduct and other Privacy Act requirements.

(c) The contracting officer shall ensure that the contract SOW or PWS specifies for both the Privacy Act and the Federal Records Act the disposition to be made of the system(s) of records upon completion of contract performance. The contract SOW or PWS may require the contractor to destroy the records, remove personal identifiers, or turn the records over to the contracting officer. If there is a legitimate need for a contractor to keep copies of the records after completion of a contract, the contractor must take measures, as approved by the contracting officer, to keep the records confidential and protect the individuals' privacy.

(d) For any acquisition subject to Privacy Act requirements, the requiring activity prior to award shall prepare and have published in the FEDERAL REGISTER a ''system notice,'' describing the Department of Health and Human Services' (HHS) 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. The requiring activity shall attach a copy of the system notice to the acquisition plan or other acquisition request documentation. If a system notice is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the requiring activity for inclusion in the contract file. If a notice for the system of records 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 the contracting officer verifies its publication.

324.104 Restrictions on Contractor Access to Government or Third Party Information.

The contracting officer shall establish the restrictions that govern the contractor employees' access to Government or third party information in order to protect the information from unauthorized use or disclosure.

324.105 Contract clauses.

(a) The contracting officer shall insert the clause at 352.224–70, Privacy Act, in solicitations, contracts, and orders that require the design, development, or operation of a system of records to notify the contractor that it and its employees are subject to criminal penalties for violations of the Privacy Act (5 U.S.C. 552a(i)) to the same

extent as HHS employees. The clause also requires the contractor to ensure each of its employees knows the prescribed rules of conduct in 45 CFR part 5b and each contractor employee is aware that he or she is subject to criminal penalties for violations of the Privacy Act. These requirements also apply to all subcontracts awarded under the contract or order that require the design, development, or operation of a system of records.

(b) The contracting officer shall insert the clause at 352.224–71, Confidential Information, in solicitations, contracts, and orders that require access to Government or to third party information.

Subpart 324.70—Health Insurance Portability and Accountability Act of 1996

324.7000 Scope of subpart.

All individually identifiable health information that is Protected Health Information (PHI), as defined in 45 CFR 160.103 shall be administered in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementing regulations at 45 CFR parts 160 and 164 (the HIPAA Privacy, Security, and Breach Notification Rules). The term ''HIPAA'' is used in this part to refer to title II, subtitle F of the HIPAA statute, at part C of title XI of the Social Security Act, 42 U.S.C. 1320d *et seq.*, section 264 of HIPAA, subtitle D of title XIII of the American Recovery and Reinvestment Act of 2009, and regulations under such provisions.

324.7001 Policy on Compliance with HIPAA business associate contract requirements.

(a) HHS is a HIPAA ''covered entity'' that is a ''hybrid entity'' as these terms are defined at sections 160.103 and 164.103 respectively. As such, only the portions of HHS that the Secretary has designated as ''health care components'' (HCC) as defined at section 164.103, are subject to HIPAA. HHS' HCCs may utilize persons or entities known as ''business associates,'' as defined at section 160.103. Generally, ''business associate'' means a ''person'' as defined by section 160.103 (including contractors, and third-party vendors, etc.) if or when the person or entity:

(1) Creates, receives, maintains, or transmits ''protected health information'', as the term is defined at section 160.103, on behalf of an HHS HCC to carry out HHS HIPAA ''covered functions'' as that term is defined at 164.103; or

(2) Provides certain services to an HHS HCC that involve PHI.

(b) Where the Department as a covered entity is required by 45 CFR 164.502(e)(1) and 164.504(e) and, if applicable, sections 164.308(b)(3) and 164.314(a), to enter into a HIPAA business associate contract, the relevant HCC contracting officer, acting on behalf of the Department, shall ensure that such contract meets the requirements at section 164.504(e)(2) and, if applicable, section 164.314(a)(2).

PART 326—OTHER SOCIOECONOMIC PROGRAMS

Subpart 326.5—Indian Preference in Employment, Training, and Subcontracting Opportunities

Sec.

326.501 Statutory requirements.
326.502 Definitions.
326.503 Compliance enforcement.
326.504 Tribal Preference requirement.
326.505 Applicability.

Subpart 326.6—Acquisitions Under the Buy Indian Act

326.600 Scope of subpart.
326.601 Policy.
326.602 Definitions.
326.603 Requirements.
326.604 Competition.
326.605 Responsibility determinations.

Subpart 326.7—Acquisitions Requiring the Native American Graves Protection and Repatriation Act

326.700 Scope of subpart.
326.701 Applicability.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 326.5—Indian Preference in Employment, Training, and Subcontracting Opportunities

326.501 Statutory requirements.

Any contract or subcontract pursuant to subchapter II, chapter 14, title 25 of the United States Code, 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, to the greatest extent feasible, comply with 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) which provides preferences and opportunities for training and employment in connection with the administration of such contracts, and preference in the award of subcontracts in connection with the administration of such contracts to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of title 25, United States Code.

326.502 Definitions.

For purposes of this subpart, 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 provide evidence within 30 days from the tribe concerned that the person is a member of the 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 as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601), which the United States recognizes as eligible for special programs and services because of its status as Indian.

(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 the ownership shall encompass active operation and control of the enterprise.

(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 commute to and from in the course of a work day.

326.503 Compliance enforcement.

The contracting officer shall promptly investigate and resolve written complaints of noncompliance with the requirements of the clauses at 352.226–1, Indian Preference and 352.226–2, Indian Preference Program filed with the contracting activity.

326.504 Tribal preference requirements.

(a) When the contractor will perform work under a contract on an Indian reservation, the contracting officer may supplement the clause at 352.226–2, Indian Preference Program by adding specific Indian preference requirements of the tribe on whose reservation the contractor will work. The contracting activity and the tribe shall jointly develop supplemental requirements for the contract. Supplemental preference requirements shall represent a further implementation of the requirements of section 7(b) of Public Law 93–638 and require the approval of the affected program director and the appropriate legal office, or a regional attorney, before the contracting officer adds them to a solicitation and resultant contract. Any supplemental preference requirements the contracting officer adds to the clause at 352.226–2, Indian Preference Program shall also clearly

identify in the solicitation the additional requirements.

(b) Nothing in this part shall 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) of this section, become a requirement in contracts covered under this subpart, and shall not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

326.505 Applicability.

The contracting officer shall insert the clause at 352.226–1, Indian Preference, and the clause at 352.226–2, Indian Preference Program, in contracts to implement section 7(b) of Public Law 93–638 for all Department of Health and Human Services (HHS) activities. Contracting activities shall use the clauses as follows, except for those exempted solicitations and contracts issued and or awarded pursuant to Title I of Public Law 93–638 (25 U.S.C. 450 *et seq.*):

(a) The contracting officer shall insert the clause at 352.226–1, Indian Preference, in solicitations, contracts, and orders when—

(1) The award is (or will be) pursuant to an act specifically authorizing such awards with Indian organizations; or

(2) The work 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 contracting officer shall insert the clause at 352.226–2, Indian Preference Program, in solicitations, contracts, and orders when—

(1) The dollar amount of the acquisition is expected to equal or exceed $650,000 for non-construction work or $1.5 million for construction work;

(2) The solicitation, contract, or order includes the Indian Preference clause; and

(3) The contracting officer makes the determination, prior to solicitation, that performance will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the contracting officer may insert the Indian Preference Program clause in solicitations, contracts, and orders below the $650,000 or $1.5 million level for non-construction 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 officer, offer substantial opportunities for Indian employment, training, and subcontracting.

Subpart 326.6—Acquisitions Under the Buy Indian Act

326.600 Scope of subpart.

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Buy Indian Act. This subpart applies only to acquisitions made by or on behalf of Indian Health Service (IHS).

326.601 Policy.

(a) IHS shall utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever authorized and practicable. The Buy Indian Act, 25 U.S.C. 47, prescribes the application of the advertising requirements of 41 U.S.C. 6101 to the acquisition of Indian supplies. As specified in 25 U.S.C. 47, the Buy Indian Act provides that, so far as practicable, the Government shall employ Indian labor and, at the discretion of the Secretary of the Interior, purchase products of Indian industry (including, but not limited to printing, notwithstanding any other law) from the open market.

(b) Due to the transfer of authority from the Department of the Interior to HHS, the Secretary of HHS may use the Buy Indian Act to acquire products of Indian industry in connection with the maintenance and operation of Indian hospital and health facilities, and for the overall conservation of Indian health. This authority is exclusively delegated to IHS and is not available for use by any other HHS component (unless that component makes an acquisition on behalf of IHS). However, the Buy Indian Act itself does not exempt IHS from meeting the statutorily mandated small business goals.

(c) Subsequent legislation, particularly Public Law 94–437 and Public Law 96–537, emphasize using the Buy Indian Act negotiation authority.

326.602 Definitions.

(a) *Buy Indian contract* means any contract involving activities covered by the Buy Indian Act and negotiated under the provisions of 41 U.S.C. 3104 and 25 U.S.C. 47 between an Indian firm and a contracting officer representing IHS.

(b) *Indian* means a member of any tribe, pueblo, band, group, village, or community recognized by the Secretary of the Interior as being Indian or any individual or group of individuals recognized by the Secretary of the Interior or the Secretary of HHS. The Secretary of HHS in making determinations may take into account the determination of the tribe with which affiliation is claimed.

(c) *Indian firm* means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by:

(1) One or more Indians (including, for the purpose of sections 301 and 302 of Public Law 94–437, former or currently federally recognized Indian tribes in the State of New York); or

(2) By an Indian firm (as defined in paragraph (1) of this definition); or

(3) A nonprofit firm organized for the benefit of Indians and controlled by Indians (see 326.601(a)).

(d) *Product of Indian industry* means anything produced by Indians through either physical labor or intellectual effort involving the use and application of their skills. To classify as a product of Indian industry, the total cost of the item's production must equal or exceed 51 percent Indian effort.

326.603 Requirements.

(a) *Indian ownership.* Indian ownership shall constitute at least 51 percent of an Indian firm during the period covered by a Buy Indian contract.

(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 contracting officer shall approve the joint venture 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 public works, the Miller Act (40 U.S.C. 3131 *et seq.*) and Federal Acquisition Regulation (FAR) part 28 require performance and payment bonds. Bonds are not required in the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. However, bonds are required when dealing with private business entities owned by an Indian tribe or members of an Indian tribe. The contracting officer may require bonds of private business entities that 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 25 U.S.C. 450e, which requires giving preference to Indians in employment, training, and subcontracting. The contracting officer shall include the Indian Preference clause specified at 326.505(a) in all Buy Indian solicitations and resultant contracts. The contracting officer shall use the Indian Preference Program clause specified at 326.505(b). The contracting officer shall follow all requirements specified in subpart 326.2 which apply to a Buy Indian acquisition (e.g., 326.604 and 326.605).

(e) *Subcontracting.* A contractor shall not subcontract more than 50 percent of the work under a prime contract awarded pursuant to the Buy Indian Act to non-Indian firms. For this purpose, contract work does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* The contracting officer shall include a determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a) 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 contracting officer shall include the wage rate determination in contracts with private business entities, even when owned by an Indian tribe or a member 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.

326.604 Competition.

(a) Contracts awarded under the Buy Indian Act are subject to competition among Indians or Indian firms to the maximum extent practicable. When the contracting officer determines that competition is not practicable, a justification and approval is required in accordance with subpart 306.3.

(b) The contracting officer shall: Synopsize and publicize solicitations in the Government point of entry and provide copies of the synopses to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian firms and others having a legitimate interest. The synopses shall state that the acquisitions are restricted to Indian firms under the Buy Indian Act.

326.605 Responsibility determinations.

(a) The contracting officer may award a contract under the Buy Indian Act only if it is determined that the contractor will likely perform satisfactorily and properly complete or maintain the contracted project or function.

(b) The contracting officer shall make the written determination specified in paragraph (a) of this section prior to the award of a contract. The determination shall reflect an analysis of FAR 9.104–1 standards.

Subpart 326.7—Acquisitions Requiring the Native American Graves Protection and Repatriation Act

326.700 Scope of subpart.

Public Law 101–601, dated November 16, 1990, also known as the Native American Graves Protection and Repatriation Act, imposes certain responsibilities on individuals and organizations when they discover Native American cultural items (including human remains) on Federal or tribal lands.

326.701 Applicability.

The contracting officer shall insert the clause at 352.226–3, Native American Graves Protection and Repatriation Act, in solicitations, contracts, and orders requiring performance on tribal lands or those for construction projects on Federal or tribal lands.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 327—PATENTS, DATA, AND COPYRIGHTS

Subpart 327.3—Patent Rights Under Government Contracts

Sec.
327.303 Solicitation provision and contract clause.

Subpart 327.4—Rights in Data and Copyrights

327.404–70 Solicitation provision and contract clause.
327.409 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 327.3—Patent Rights Under Government Contracts

327.303 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 352.227–11, Patent Rights—Exceptional Circumstances and any appropriate alternates in lieu of Federal Acquisition Regulation (FAR) 52.227–11 whenever a Determination of Exceptional Circumstances (DEC) involving the provision of materials that has been executed in accordance with Agency policy and procedures calls for its use and the clause at 352.227–11, Patent Rights—Exceptional Circumstances, appropriately covers the circumstances. The contracting officer should reference the DEC in the solicitation and shall attach a copy of the executed DEC to the contract.

Subpart 327.4—Rights in Data and Copyrights

327.404–70 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 352.227–70, Publications and Publicity, in solicitations, contracts, and orders that involve requirements which could lead to the contractor's publishing the results of its work under the contract.

327.409 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 352.227–14, Rights in Data—Exceptional Circumstances, and any appropriate alternates in lieu of the FAR clause at 52.227–14, Rights in Data-General, whenever a DEC executed in accordance with Agency policy and procedures calls for its use. Prior to using this clause, a DEC must be executed in accordance with Agency policy and procedures. The contracting officer should reference the DEC in the solicitation and shall attach a copy of the executed DEC to the contract.

PART 328 [RESERVED]

PART 330—COST ACCOUNTING STANDARDS

Subpart 330.2—CAS Program Requirements

Sec.
330.201 Contract requirements.
330.201–5 Waiver.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 330.2—CAS Program Requirements

330.201 Contract requirements.

330.201–5 Waiver.

The Senior Procurement Executive (SPE) shall exercise the waiver authority under Federal Acquisition Regulation 30.201–5(a)(2). Operating Divisions and Staff Divisions shall forward waiver requests to the SPE.

PART 331—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 331.1—Applicability

331.101–70 Salary rate limitation.

(a) Beginning in fiscal year 1990, Congress has stipulated in the Department of Health and Human Services appropriations acts and continuing resolutions that, under applicable contracts, appropriated funds cannot be used to pay the direct salary of an individual above the stipulated rates. The applicable rates for each year are identified at *www.opm.gov*.

(b) The contracting officer shall insert the clause at 352.231–70, Salary Rate Limitation, in solicitations and contracts when a cost-reimbursement; fixed-price level-of-effort; time-and-materials; or labor-hour contract is contemplated.

PART 332—CONTRACT FINANCING

Subpart 332.4—Advance Payments for Non-Commercial Items

Sec.
332.402 General.
332.407 Interest.

Subpart 332.5—Progress Payments Based on Cost

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.
332.703–71 Incrementally funded cost-reimbursement contracts.
332.703–72 Incremental Funding Table.
332.706 Solicitation provision and contract clauses.
332.706–2 Provision and clauses for limitation of cost or funds.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 332.4—Advance Payments for Non-Commercial Items

332.402 General.

(e) The head of the contracting activity (HCA) (non-delegable) shall make determinations related to advanced payments and assure compliance with FAR 32.402.

332.407 Interest.

(d) The HCA (non-delegable) shall make the determinations in FAR 32.407(d).

Subpart 332.5—Progress Payments Based on Cost

332.501 General.

332.501–2 Unusual progress payments.

(a)(3) The HCA (non-delegable) shall approve unusual progress payments.

Subpart 332.7—Contract Funding

332.702 Policy.

Departmental employees shall report any suspected violation of the Anti-Deficiency Act (31 U.S.C. 1341, 13 U.S.C. 1342, and 31 U.S.C. 1517) immediately to the Operating Division's Chief Financial Officer (CFO), who in turn will report the matter to the HHS Deputy CFO.

332.703 Contract funding requirements.

332.703–1 General.

(b) The following requirements govern all solicitations and contracts using incremental funding, as appropriate:

(1) The contracting officer shall consider the estimated total cost of the contract, including all planned increments of performance when determining the requirements that must be met before contract execution (e.g., Justification and Approvals, clearances, and approvals).

(2) The solicitation and resultant contract shall include a statement of work or performance work statement that describes the total project, covers all proposed increments of performance, and contains a schedule of planned increments of performance. No funding increment may exceed 1 year, and the services rendered during each increment of performance must provide a specific material benefit that can stand alone if the remaining effort is not funded. The resultant contract shall also include the corresponding

amount of funds planned for obligation for each increment of performance.

(3) The contracting officer shall request that offerors respond to the solicitation with technical and cost proposals for the entire project, and shall require distinct technical and cost break-outs of the planned increments of performance.

(4) Proposals shall be evaluated and any discussions and negotiations shall be conducted based upon the total project, including all planned increments of performance.

332.703–71 Incrementally funded cost-reimbursement contracts.

Incremental funding may be used in cost-reimbursement contracts for severable services only when all of the following circumstances are present:

(a) Funding of increments after the initial increment of performance is provided from the appropriation account available for obligation at that time;

(b) The project represents a *bona fide* need of the fiscal year in which the contract is awarded and initially funded (*i.e.*, the initial increment of performance) and is also a *bona fide* need of each subsequent fiscal year whose appropriation will be used; and

(c) The project's significance provides reasonable assurance that subsequent year appropriations will be made available to fund the project's continuation and completion.

332.703–72 Incremental Funding Table.

(a) The contracting officer shall insert substantially the following language in Section B: Supplies or Services and Prices or Costs, Table 1, in all cost-reimbursement contracts for severable services using incremental funding. The language requires the contracting officer to:

(1) Insert the initial funding obligated by the award;

(2) Identify the increment of performance covered by the funding provided; and

(3) Specify the start and end dates for each increment of performance, as required by the ''Limitation of Funds'' clause at FAR 52.232–22.

(b) Modification of the language is permitted to fit specific circumstances of the contract, including but not limited to language necessary to reflect the specific type of cost reimbursement contract awarded, but the language may not be omitted completely.

Table 1—B. ____Estimated Cost—Incrementally Funded Contract

(a) The total estimated cost to the Government for full performance of this contract, including all allowable direct and indirect costs, is $____ [*insert full amount*].

(b) The following represents the schedule* by which the Government expects to allot funds to this contract:

CLIN, task number, or description	Start date of increment of performance	End date of increment of performance	Estimated cost ($)	Fee ($) (as appropriate)	Estimated cost plus fee ($) (as appropriate)
	.....	.....	.		
	.....	.....	.		
	.....	.....	.		
	.....	.....	.		
	.....	.....	.		
	.....	.....	[Total]	[Total]	[Total]

*To be inserted after negotiation

(c) Total funds currently obligated and available for payment under this contract are $____ [*insert amount funded to date*].

(d) The contracting officer may issue unilateral modifications to obligate additional funds to the contract and make related changes to paragraphs (b) and/or (c) above.

(e) Until this contract is fully funded, the requirements of the clause at FAR 52.232–22, *Limitation of Funds*, shall govern. Once the contract is fully funded, the requirements of the clause at FAR 52.232–20, *Limitation of Cost*, govern.

332.706 Solicitation provision and contract clauses.

332.706–2 Provision and clauses for limitation of cost or funds.

(b) In addition to the clause at FAR 52.232–22, Limitation of Funds, the contracting officer shall insert the provision at 352.232–70, Incremental Funding, in all solicitations when a cost-reimbursement contract for severable services using incremental funding is contemplated. The provision requires the contracting officer to insert a specific increment of performance that the initial funding is expected to cover.

PART 333—PROTESTS, DISPUTES, AND APPEALS

Subpart 333.1—Protests

Sec.
333.102 General.
333.103 Protests to the agency.

Subpart 333.2—Disputes and Appeals

333.203 Applicability.
333.209 Suspected fraudulent claims.
333.215–70 Contract clauses.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 333.1—Protests

333.102 General.

(g)(1) The Office of General Counsel-General Law Division serves as the liaison for protests lodged with the Government Accountability Office (GAO); is designated as the office responsible for all protests within the Department of Health and Human Services; and serves as the notification point with GAO for all protests.

(2) The contracting officer will follow the direction of the Operating Division's protest control officer for responding to protests whether they are filed with GAO or directly with the contracting officer.

333.103 Protests to the agency.

(f)(1) Protests to the contracting officer must be in writing. The contracting officer is authorized to make the determination, using the criteria in Federal Acquisition Regulation 33.104(b), to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and consulting with the appropriate legal office.

Subpart 333.2—Disputes and Appeals

333.203 Applicability.

(c) The Civilian Board of Contract Appeals is 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 Inspector General for investigation.

333.215–70 Contract clauses.

(a) The contracting officer shall insert the clause at 352.233–70, Choice of Law (Overseas), in solicitations and contracts when performance will be outside the United States, its possessions, and Puerto Rico, except as otherwise provided in a government-to-government agreement.

(b) The contracting officer shall insert the clause at 352.233–71, Litigation and Claims, in solicitations and contracts when a cost-reimbursement, time-and-materials, or labor-hour contract is contemplated (other than a contract for a commercial item).

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 334—MAJOR SYSTEM ACQUISITION

Subpart 334.2—Earned Value Management System

Sec.
334.201 Policy.
334.202 Integrated Baseline Reviews (IBRs).

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 334.2—Earned Value Management System

334.201 Policy.

The Department of Health and Human Services applies the earned value management system requirement as follows:

(a) For cost or incentive contracts and subcontracts valued at $20 million or more, the contractor's earned value management system shall comply with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748).

(b) For cost or incentive contracts and subcontracts valued at $50 million or more, the contractor shall have an earned value management system that has been determined by the cognizant Federal agency to be in compliance with the guidelines in ANSI/EIA–748.

(c) For cost or incentive contracts and subcontracts valued at less than $20 million—

(1) The application of earned value management is optional at the discretion of the program/project manager and is a risk-based decision that must be supported by a cost/benefit analysis; and

(2) A decision to apply earned value management shall be documented in the contract file.

(d) For firm-fixed-price contracts and subcontracts of any dollar value the application of earned value management is discouraged.

334.202 Integrated Baseline Reviews (IBRs).

(a) An IBR normally should be conducted as a post-award activity. A pre-award IBR may be conducted only if—

(1) The acquisition plan contains documentation that demonstrates the need and rationale for a pre-award IBR, including an assessment of the impact on the source selection schedule and the expected benefits;

(2) The use of a pre-award IBR is approved in writing by the head of the contracting activity prior to the issuance of the solicitation;

(3) The source selection plan and solicitation specifically addresses how the results of a pre-award IBR will be used during source selection, including any weight to be given to it in source evaluation; and

(4) Specific arrangements are made, and budget authority is provided, to compensate all offerors who prepare for or participate in a pre-award IBR; and the solicitation informs prospective offerors of the means for and conditions of such compensation.

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.
335.071 [Reserved]
335.072 Key personnel.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

335.070 Cost-sharing.

335.070–1 Policy.

(a) Contracting activities should encourage contractors to contribute to the cost of performing research and development (R&D), through the use of cost-sharing contracts, where there is a probability that the contractor will receive present or future benefits from participation as described in Federal Acquisition Regulation (FAR) 16.303.

Examples include increased technical know-how, training for employees, acquisition of goods or services, development of a commercially viable product that can be sold in the commercial market and use of background knowledge in future contracts. Cost-sharing is intended to serve the mutual interests of the Government and its contractors by helping to ensure efficient utilization of the resources available for the conduct of R&D projects and by promoting sound planning and prudent fiscal policies of the contractor. The Government's interest includes positive impact on the community at large.

(b) The contracting officer should use a cost-sharing contract for R&D contracts, unless the contracting officer determines that a request for cost-sharing would not be appropriate.

(c) Any determination made by a contracting officer as described in this section shall be evidenced by appropriate documentation in the contract file.

335.070–2 Amount of cost-sharing.

When cost-sharing is appropriate, the contracting officer shall use the following guidelines to determine the amount of cost participation by the contractor:

(a) The amount of cost participation depends on the extent to which the R&D effort or results are likely to enhance the contractor's capability, expertise, or competitive position, and the value of this enhancement to the contractor. Therefore, contractor cost participation could reasonably range from as little as one percent or less of the total project cost to more than 50 percent of the total project cost. Ultimately, cost-sharing is a negotiable item. As such, the amount of cost-sharing shall be proportional to the anticipated value of the contractor's gain.

(b) If the contractor will not acquire title to, or the right to use, inventions, patents, or technical information resulting from the R&D project, it is normally appropriate to obtain less cost-sharing than in cases in which the contractor acquires these rights.

(c) If the R&D is expected to be of only minor value to the contractor, and if a statute does not require cost-sharing, it may be appropriate for the contractor to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project. Alternatively, a limitation on indirect cost rates might be appropriate. See FAR 42.707. See also, FAR 16.303.

(d) The contractor's participation may be considered over the total term of the project, so that a relatively high contribution in 1 year may be offset by a relatively low contribution in another. Care must be exercised that the intent to cost-share in future years does not become illusory. Redetermination of the cost sharing arrangement might be appropriate depending on future circumstances.

(e) A relatively low degree of cost-sharing may be appropriate if an area of R&D requires special stimulus in the national interest.

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. Contractors shall not charge costs contributed to the Government under any other instrument (e.g., grant or contract), including allocations to other instruments as part of any independent R&D program.

335.071 [Reserved]

335.072 Key personnel.

If the contracting officer determines that the personnel to be assigned to perform effort on an R&D contract are critical to the success of the R&D effort, or were a critical factor in the award of the contract, then the contracting officer should consider using the key personnel clause at 352.237–75, Key Personnel.

PART 336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 336.1—General

Sec.

336.104 Policy.

Subpart 336.5—Contract Clause

336.570 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 336.1—General

336.104 Policy.

Contracting officers shall follow the policies described in Federal Acquisition Regulation 36.104 and the guidance promulgated by the Department of Health and Human Services Facilities Management.

Subpart 336.5—Contract Clause

336.570 Contract clause.

(a) The contracting officer shall insert the clause at 352.236–70, Design-Build Contracts, in all solicitations and contracts for all design-build requirements.

(b) The contracting officer shall use Alternate I to the clause at 352.236–70, Design-Build Contracts, in all solicitations and contracts for construction when Fast-Track procedures are being used.

(c) Due to the importance of maintaining consistency in the contractor's personnel during design–build construction, the contracting officer should consider including the clause at 352.237–75, Key personnel.

PART 337—SERVICE CONTRACTING—GENERAL

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 337.1—Service Contracts—General

337.103 Contracting officer responsibility.

(d)(1) The contracting officer shall insert the clause at 352.237–70, Pro-Children Act, in solicitations, contracts, and orders that involve:

(i) Kindergarten, elementary, or secondary education or library services; or

(ii) Health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Pro-Children Act of 1994 (20 U.S.C. 6081–6084).

(2) The contracting officer shall insert the clause at 352.237–71, Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal land or in a federally operated (or contracted) facility and involve the professions/activities performed by persons specified in the Crime Control Act of 1990 (42 U.S.C. 13031) including, but not limited to, teachers, social workers, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers.

(3) The contracting officer shall insert the clause at 352.237–72, Crime Control Act—Requirement for Background Checks, in solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (42 U.S.C. 13041).

(4) Contracting officers supporting the Indian Health Service shall insert the clause at 352.237–73, Indian Child Protection and Family Violence Act in all solicitations, contracts, and orders when performance of the contract may involve regular contact with or control over Indian children. The required declaration shall also be included in Section J of the solicitation and contract.

(e) The contracting officer shall insert the clause at 352.237–74, Non-Discrimination in Service Delivery, in solicitations, contracts, and orders to deliver services under HHS' programs directly to the public.

(f) The contracting officer shall insert the clause at 352.237–75, Key Personnel, in solicitations and contracts when the contracting officer will require the contractor to designate contractor key personnel.

PART 339—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 339.1—General

Sec.
339.101 Policy.

Subpart 339.2—Electronic and Information Technology

339.203 Applicability.
339.203–70 Contract clauses for electronic and information technology (EIT) acquisitions.
339.204 Exceptions.
339.204–1 Approval of exceptions.
339.205 Section 508 accessibility standards for contracts.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 339.1—General

339.101 Policy

In addition to the regulatory guidance in Federal Acquisition Regulation part 39, contracting officers shall collaborate with the requiring activity to ensure information technology (IT) acquisitions for supplies, services, and systems meet the requirements established by the Department of Health and Human Services (HHS).

Subpart 339.2—Electronic and Information Technology

339.203 Applicability.

(a) Electronic and information technology (EIT) supplies and services must comply with Section 508 of the Rehabilitation Act (the Act) of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, and the Architectural and Transportation Barriers Compliance Board (Access Board) Electronic and Information Accessibility Standards (36 CFR part 1194). Requiring activities must consult with their Section 508 Official or designee to determine if the contractor should be responsible for compliance with EIT accessibility standards which apply to Web site content and communications material.

(1) When conducting a procurement and employing the best value continuum, the solicitation shall include a separate technical evaluation factor developed by the contracting officer, requiring activity, and the Operating Division (OPDIV) Section 508 Official or designee.

(2) At a minimum, solicitations for supplies and services shall require the submission of a Section 508 Product Assessment Template (See *http://www.hhs.gov/web/508* for the template). Solicitations for services shall include any other pertinent information that the contracting officer deems necessary to evaluate the offeror's ability to meet the applicable Section 508 accessibility standards.

(3) The HHS Operating Division or Staff Division (OPDIV or STAFFDIV) Section 508 Official or designee is responsible for providing technical assistance in development of Section 508 evaluation factors.

(4) Before conducting negotiations or making an award, the contracting officer shall provide a summary of the Source Selection Evaluation Team's (SSET) assessment of offeror responses to the solicitation's Section 508 evaluation factor. This summary shall be submitted for review by the Section 508 Official or designee. The Section 508 Official or designee shall indicate approval or disapproval of the SSET assessment. The contracting officer shall coordinate the resolution of any issues raised by the Section 508 Official or designee with the chair of the SSET or requiring activity representative, as appropriate. The acquisition process shall not proceed until the Section 508 Official or designee approves the SSET assessment. The contracting officer shall include the assessment in the official contract file. See 339.204–1 regarding processing exception determination requests.

(b) When acquiring commercial items, if no commercially available supplies or services meet all of the applicable Section 508 accessibility standards, OPDIVs or STAFFDIVs shall, under the direction and approval of the Section 508 Official or designee, acquire the supplies and services that best meet the applicable Section 508 accessibility standards. Process exception determinations for EIT supplies and

services not meeting applicable Section 508 accessibility standards in accordance with 339.204–1.

339.203–70 Contract clauses for electronic and information technology (EIT) acquisitions.

(a) The contracting officer shall insert the provision at 352.239–73, Electronic and Information Technology Accessibility Notice, in all solicitations.

(b) The contracting officer shall insert the clause at 352.239–74, Electronic and Information Technology Accessibility, in all contracts and orders.

339.204 Exceptions.

339.204–1 Approval of exceptions.

(a) Procedures to document exception and determination requests are set by the OPDIV Section 508 Official.

(b) In the development of an acquisition plan (AP) or other acquisition request document, the contracting officer shall ensure that all Section 508 exception determination requests for applicable EIT requirements are:

(1) Documented and certified in accordance with the requirements of the HHS Section 508 policy;

(2) Signed by the requestor in the requiring activity;

(3) Certified and approved by the OPDIV Section 508 Official or designee; and

(4) Included in the AP or other acquisition request document provided by the requiring activity to the contracting office.

(c) For instances with an existing technical evaluation and no organization's proposed supplies or services meet all of the Section 508 accessibility standards; in order to proceed with the acquisition, the requiring activity shall provide an exception determination request along with the technical evaluation team's assessment of the Section 508 evaluation factor to the designated Section 508 Official or designee for review and approval or disapproval. The contracting officer shall include the Section 508 Official's or designee's approval or disapproval of the exception determination request in the official contract file and reference it, as appropriate, in all source selection documents. For further information, see HHS Section 508 Policy on *http://www.hhs.gov/web/508*.

339.205 Section 508 accessibility standards for contracts.

(a) Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)), as amended by the Workforce Investment Act of 1998 (Section 508), specifies the applicable accessibility standards for all new solicitations and new or existing contracts or orders, regardless of EIT dollar amount.

(b) The requiring activity shall consult with the OPDIV or STAFFDIV Section 508 Official or designee, as necessary, to determine the applicability of Section 508, identify applicable Section 508 accessibility standards, and resolve any related issues before forwarding a request to the contracting or procurement office for the acquisition of EIT supplies and services—including Web site content and communications material for which the contractor must meet EIT accessibility standards.

(c) Based on those discussions, the requiring activity shall provide a statement in the AP (or other acquisition request document) for Section 508 applicability. See 307.105. If Section 508 applies to an acquisition, include the provision at 352.239–73, Electronic and Information Technology and Accessibility Notice, language in a separate, clearly designated, section of the statement of work or performance work statement, along with any additional information applicable to the acquisition's Section 508 accessibility standards (e.g., the list of applicable accessibility standards of the Access Board EIT Accessibility Standards (36 CFR part 1194)). If an AP does not address Section 508 applicability and it appears an acquisition involves Section 508, or if the discussion of Section 508 applicability to the acquisition is inadequate or incomplete, the contracting officer shall request the requiring activity modify the AP accordingly.

(d) Items provided incidental to contract administration are not subject to this section.

(e) The OPDIV Section 508 Official or designee may, at his or her discretion, require review and approval of solicitations and contracts for EIT supplies and services.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 342—CONTRACT ADMINISTRATION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

Contract actions for which the Department of Health and Human Services is the cognizant Federal agency:

(a) The Financial Management Services, Division of Cost Allocation, Program Support Center, shall establish facilities and administration costs, also known as indirect cost rates, research patient care rates, and, as necessary, fringe benefits, computer, and other special costing rates for use in contracts awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

(b) The National Institute of Health, Division of Financial Advisory Services, shall establish indirect cost rates and similar rates for use in contracts awarded to for profit organizations.

SUBCHAPTER H—CLAUSES AND FORMS

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.1—Instructions for Using Provisions and Clauses

Sec.
352.100 Scope of subpart.
352.101–70 Application of provisions and clauses.

Subpart 352.2—Texts of Provisions and Clauses

352.203–70 Anti-Lobbying.
352.204–70 Prevention and Public Health Fund–Reporting Requirements.
352.208–70 Printing and Duplication.
352.211–1 Public Accommodations and Commercial Facilities.
352.211–2 Conference Sponsorship Request and Conference Materials Disclaimer.
352.211–3 Paperwork Reduction Act.
352.215–70 Late Proposals and Revisions.
352.216–70 Additional Cost Principles for Hospitals (Profit or Non-Profit).
352.219–70 Mentor-Protégé Program.
352.219–71 Mentor-Protégé Program Reporting Requirements.
352.222–70 Contractor Cooperation in Equal Employment Opportunity Investigations.
352.223–70 Safety and Health.
352.223–71 Instructions to Offerors–Sustainable Acquisition.
352.224–70 Privacy Act.
352.224–71 Confidential Information.
352.226–1 Indian Preference.
352.226–2 Indian Preference Program.
352.226–3 Native American Graves Protection and Repatriation Act.
352.227–11 Patent Rights—Exceptional Circumstances.
352.227–14 Rights in Data—Exceptional Circumstances.
352.227–70 Publications and Publicity.
352.231–70 Salary Rate Limitation.
352.232–70 Incremental Funding.
352.233–70 Choice of Law (Overseas).
352.233–71 Litigation and Claims.
352.236–70 Design-Build Contracts.
352.237–70 Pro-Children Act.
352.237–71 Crime Control Act—Reporting of Child Abuse.
352.237–72 Crime Control Act—Requirement for Background Checks.
352.237–73 Indian Child Protection and Family Violence Act.
352.237–74 Non-Discrimination in Service Delivery.
352.237–75 Key Personnel.
352.239–73 Electronic Information and Technology Accessibility Notice.
352.239–74 Electronic Information and Technology Accessibility.
352.270–1—352.270–3 [Reserved]
352.270–4a Notice to Offerors, Protection of Human Subjects.
352.270–4b Protection of Human Subjects.
352.270–5a Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals.
352.270–5b Care of Live Vertebrate Animals.
352.270–6 Restriction on Use of Human Subjects.
352.270–7—352.270–8 [Reserved]
352.270–9 Non-Discrimination for Conscience.
352.270–10 Notice to Offerors—Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required.
352.270–11 Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required.
352.270–12 Needle Exchange.
352.270–13 Continued Ban on Funding Abortion and Continued Ban on Funding of Human Embryo Research.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 352.1—Instructions for Using Provisions and Clauses

352.100 Scope of subpart.

This subpart provides guidance for applying the Department of Health and Human Services provisions and clauses in solicitations, contracts, and orders.

352.101–70 Application of provisions and clauses.

(a) If a clause is included in the master instrument (e.g., in an indefinite delivery/indefinite quantity contract or a blanket purchase agreement), it is not necessary to also include the clause in a task order or delivery order thereunder.

(b) When a dollar amount or dollar threshold is specified (e.g., $25 million or simplified acquisition threshold), the dollar amount of the award (contract or order) includes any options thereunder.

Subpart 352.2—Texts of Provisions and Clauses

352.203–70 Anti-Lobbying.

As prescribed in HHSAR 303.808–70, the Contracting Officer shall insert the following clause:

ANTI-LOBBYING (DEC 2015)

Pursuant to the HHS annual appropriations acts, except for normal and recognized executive-legislative relationships, the Contractor shall not use any HHS contract funds for:

(a) Publicity or propaganda purposes;

(b) The preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any state or local legislature itself; or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government, except in presentation to the executive branch of any state or local government itself; or

(c) Payment of salary or expenses of the Contractor, or any agent acting for the Contractor, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any state government, state legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local, or tribal government in policymaking and administrative processes within the executive branch of that government.

(d) The prohibitions in subsections (a), (b), and (c) above shall include any activity to advocate or promote any proposed, pending, or future federal, state, or local tax increase, or any proposed, pending, or future requirement for, or restriction on, any legal consumer product, including its sale or marketing, including, but not limited to, the advocacy or promotion of gun control.

(End of clause)

352.204–70 Prevention and Public Health Fund—Reporting Requirements.

As prescribed in HHSAR 304.7201, insert the following clause:

PREVENTION AND PUBLIC HEALTH FUND—REPORTING REQUIREMENTS (DEC 2015)

(a) Pursuant to public law this contract requires the contractor to provide products or services or both that are funded from the Prevention and Public Health Fund (PPHF), Public Law 111–148, sec. 4002. Section 220(b)(5) requires each contractor to report on its use of these funds under this contract. These reports will be made available to the public.

(b) Semi-annual reports from the Contractor for all work funded, in whole or in part, by the PPHF, are due no later than 20 days following the end of each 6-month period. The 6-month reporting periods are January through June and July through December. The first report is due no later than 20 days after the end of the 6-month period following contract award. Subsequent reports are due no later than 20 days after the end of each reporting period. If applicable, the Contractor shall submit its final report for the remainder of the contract period no later than 20 days after the end of the reporting period in which the contract ended.

(c) The Contractor shall provide the following information in an electronic and Section 508 compliant format to the Contracting Officer.

(1) The Government contract and order number, as applicable.

(2) The amount of PPHF funds invoiced by the contractor for the reporting period and the cumulative amount invoiced for the contract or order.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in the reporting period.

(4) Program or project title, if any.

(5) The Contractor shall report any subcontract funded in whole or in part with PPHF funding, that is valued at $25,000 or more. The Contractor shall advise the subcontractor that the information will be made available to the public. The Contractor shall report:

(i) Name and address of the subcontractor.

(ii) Amount of the subcontract award.

(iii) Date of the subcontract award.

(iv) A description of the products or services (including construction) being provided under the subcontract.

(End of clause)

352.208–70 Printing and Duplication.

As prescribed in HHSAR 308.803, the Contracting Officer shall insert the following clause:

PRINTING AND DUPLICATION (DEC 2015)

(a) Unless otherwise specified in this contract, no printing by the Contractor or any

subcontractor is authorized under this contract. All printing required must be performed by the Government Printing Office except as authorized by the Contracting Officer. The Contractor shall submit camera-ready copies to the Contracting Officer's Representative (COR). The terms ''printing'' and ''duplicating/copying'' are defined in the Government Printing and Binding Regulations of the Joint Committee on Printing.

(b) If necessary for performance of the contract, the Contractor may duplicate or copy less than 5,000 production units of only one page, or less than 25,000 production units in aggregate of multiple pages for the use of a department or agency. A production unit is defined as one sheet, size 8.5 x 11 inches, one side only, and one color. The pages may not exceed a maximum image size of 10¾ by 14¼ inches. This page limit applies to each printing requirement and not for all printing requirements under the entire contract.

(c) Approval for all printing, as well as duplicating/copying in excess of the stated limits, shall be obtained from the COR who will consult with the designated publishing services office and provide direction to the contractor. The cost of any unauthorized printing or duplicating/copying under this contract will be considered an unallowable cost for which the Contractor will not be reimbursed.

352.211–1 Public Accommodations and Commercial Facilities.

As prescribed in HHSAR 311.7102, the Contracting Officer shall insert the following clause:

PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (DEC 2015)

The Contractor agrees as follows:

(a) Except for ad hoc meetings necessary or incidental to contract performance, the Contractor shall develop a plan to assure that any event held pursuant to this contract will meet or exceed the minimum accessibility standards set forth in 28 CFR part 36—Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities. The Contractor shall submit the plan to the Contracting Officer and must receive approval prior to the event. The Contractor may submit a consolidated or master plan for contracts requiring numerous events in lieu of separate plans.

(b) The Contractor shall manage the contract in accordance with the standards set forth in 28 CFR part 36.

(End of clause)

352.211–2 Conference Sponsorship Requests and Conference Materials Disclaimer.

As prescribed in HHSAR 311.7202, the Contracting Officer shall insert the following clause:

CONFERENCE SPONSORSHIP REQUEST AND CONFERENCE MATERIALS DISCLAIMER (DEC 2015)

(a) If HHS is not the sole provider of funding under this contract, then, prior to the Contractor claiming HHS conference sponsorship, the Contractor shall submit a written request (including rationale) to the Contracting Officer for permission to claim such HHS sponsorship.

(b) Whether or not HHS is the conference sponsor, the Contractor shall include the following statement on conference materials, including promotional materials, agendas, and Web sites:

''This conference was funded, in whole or in part, through a contract (insert contract number) with the Department of Health and Human Services (HHS) (insert name of OPDIV or STAFFDIV). The views expressed in written conference materials and by speakers and moderators at this conference, do not necessarily reflect the official policies of HHS, nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.''

(c) Unless authorized in writing by the Contracting Officer, the Contractor shall not display the HHS logo on any conference materials.

(End of clause)

352.211–3 Paperwork Reduction Act.

As prescribed in HHSAR 311.7301, the Contracting Officer shall insert the following clause:

PAPERWORK REDUCTION ACT (DEC 2015)

(a) This contract involves a 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; therefore, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) 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 the Office of Management and Budget (OMB) first providing clearance. Contractors and the Contracting Officer's Representative shall 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 OMB clearance.

(b) The Contractor shall not expend any funds or begin any data collection until the Contracting Officer provides the Contractor with written notification authorizing the expenditure of funds and the collection of data. The Contractor shall allow at least 120 days for OMB clearance. The Contracting Officer will consider excessive delays caused by the Government which arise out of causes beyond the control and without the fault or negligence of the Contractor in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

352.215–70 Late Proposals and Revisions.

As prescribed in HHSAR 315.208, the Contracting Officer shall insert the following provision:

LATE PROPOSALS AND REVISIONS (DEC 2015)
DEVIATION

Notwithstanding the procedures contained in FAR 52.215–1(c)(3) of the provision of this solicitation entitled Instructions to Offerors–Competitive Acquisition, the Government may consider a proposal received after the date specified for receipt if it appears to offer significant cost or technical advantage to the Government and it was received before proposals were distributed for evaluation, or within 5 calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

352.216–70 Additional Cost Principles for Hospitals (Profit and Non-Profit).

As prescribed in HHSAR 316.307(a)(2), the Contracting Officer shall insert the following clause:

ADDITIONAL COST PRINCIPLES FOR HOSPITALS (PROFIT OR NON-PROFIT) (DEC 2015)

(a) *Bid and proposal (B&P) costs.* (1) B&P 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) B&P costs of the current accounting period are allowable as indirect costs.

(3) B&P 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) B&P costs do not include independent research and development (IR&D) costs covered by the following paragraph, or preaward costs covered by paragraph 36 of Attachment B to OMB Circular A–122.

(b) *IR&D costs.*

(1) IR&D is research and development conducted by an organization which is not sponsored by Federal or non-Federal contracts, grants, or other agreements.

(2) IR&D 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 cost of IR&D, including its proportionate share of indirect costs, is unallowable.

(End of clause)

352.219–70 Mentor-Protégé Program.

As prescribed in HHSAR 319.270–1(a), the Contracting Officer shall insert the following provision:

MENTOR-PROTÉGÉ PROGRAM (DEC 2015)

(a) Large business prime contractors serving as mentors in the HHS Mentor-Protégé Program are eligible for HHS subcontracting plan credit, and shall submit a copy of their HHS Office of Small and Disadvantaged Business Utilization (OSDBU)-approved mentor-protégé agreements as part of their offers. The amount of credit provided by the Contracting Officer to a mentor firm for protégé firm developmental assistance costs shall be calculated on a dollar for dollar basis and reported by the mentor firm in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at *www.esrs.gov*. The mentor firm and protégé firm shall submit to the Contracting Officer a signed joint statement agreeing on the dollar value of the developmental assistance the mentor firm provided. (For example, a mentor firm would report a $10,000 subcontract awarded to a protégé firm and provision of $5,000 of developmental assistance as $15,000 of subcontracting plan credit.) The mentor firm may use this additional credit towards attaining its subcontracting plan participation goal under this contract.

(b) The program consists of—

(1) *Mentor firms*—large businesses that:

(i) Demonstrate the interest, commitment, and capability to provide developmental assistance to small business protégé firms; and

(ii) Have a Mentor-Protégé agreement approved by HHS' OSDBU;

(2) *Protégé firms*—firms that:

(i) Seek developmental assistance;

(ii) Qualify as small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, or woman-owned small businesses; and

(iii) Have a Mentor-Protégé agreement approved by HHS' OSDBU; and

(3) *Mentor-Protégé agreements*—joint agreements, approved by HHS' OSDBU, which detail the specific terms, conditions, and responsibilities of the mentor-protégé relationship.

(End of provision)

352.219–71 Mentor-Protégé Program Reporting Requirements.

As prescribed in HHSAR 319.270–1(b), the Contracting Officer shall insert the following clause:

MENTOR-PROTÉGÉ PROGRAM REPORTING REQUIREMENTS (JANUARY 2010)

The Contractor shall comply with all reporting requirements specified in its Mentor-Protégé agreement approved by HHS' OSDBU.

(End of clause)

352.222–70 Contractor Cooperation in Equal Employment Opportunity Investigations.

As prescribed in HHSAR 322.810(h), the Contracting Officer shall insert the following clause:

CONTRACTOR COOPERATION IN EQUAL EMPLOYMENT OPPORTUNITY INVESTIGATIONS (DEC 2015)

(a) In addition to complying with the clause at FAR 52.222–26, Equal Opportunity, the Contractor shall, in good faith, cooperate with the Department of Health and Human Services (Agency) in investigations of Equal Employment Opportunity (EEO) complaints processed pursuant to 29 CFR part 1614. For purposes of this clause, the following definitions apply:

(1) *Complaint* means a formal or informal complaint that has been lodged with Agency management, Agency EEO officials, the Equal Employment Opportunity Commission (EEOC), or a court of competent jurisdiction.

(2) *Contractor employee* means all current Contractor employees who work or worked under this contract. The term also includes current employees of subcontractors who work or worked under this contract. In the case of Contractor and subcontractor employees, who worked under this contract, but who are no longer employed by the Contractor or subcontractor, or who have been assigned to another entity within the Contractor's or subcontractor's organization, the Contractor shall provide the Agency with that employee's last known mailing address, email address, and telephone number, if that employee has been identified as a witness in an EEO complaint or investigation.

(3) *Good faith cooperation* cited in paragraph (a) includes, but is not limited to, making Contractor employees available for:

(i) Formal and informal interviews by EEO counselors or other Agency officials processing EEO complaints;

(ii) Formal or informal interviews by EEO investigators charged with investigating complaints of unlawful discrimination filed by Federal employees;

(iii) Reviewing and signing appropriate affidavits or declarations summarizing statements provided by such Contractor employees during the course of EEO investigations;

(iv) Producing documents requested by EEO counselors, EEO investigators, Agency employees, or the EEOC in connection with a pending EEO complaint; and

(v) Preparing for and providing testimony in depositions or in hearings before the MSPB, EEOC and U.S. District Court.

(b) The Contractor shall include the provisions of this clause in all subcontract solicitations and subcontracts awarded at any tier under this contract.

(c) Failure on the part of the Contractor or its subcontractors to comply with the terms of this clause may be grounds for the Contracting Officer to terminate this contract for default.

(End of clause)

352.223–70 Safety and Health.

As prescribed in HHSAR 323.7002, the Contracting Officer shall insert the following clause:

SAFETY AND HEALTH (DEC 2015)

(a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Contractor shall comply with all Federal, State, and local laws and regulations applicable to the work being performed under this contract. These laws are implemented or enforced by the Environmental Protection Agency, Occupational Safety and Health Administration (OSHA) and other regulatory/enforcement agencies at the Federal, State, and local levels.

(1) In addition, the Contractor shall comply with the following regulations when developing and implementing health and safety

operating procedures and practices for both personnel and facilities involving the use or handling of hazardous materials and the conduct of research, development, or test projects:

(i) 29 CFR 1910.1030, Bloodborne pathogens; 29 CFR 1910.1450, Occupational exposure to hazardous chemicals in laboratories; and other applicable occupational health and safety standards issued by OSHA and included in 29 CFR part 1910. These regulations are available at *https://www.osha.gov/*.

(ii) Nuclear Regulatory Commission Standards and Regulations, pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*). The Contractor may obtain copies from the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) The following Government guidelines are recommended for developing and implementing health and safety operating procedures and practices for both personnel and facilities:

(i) Biosafety in Microbiological and Biomedical Laboratories, CDC. This publication is available at *http://www.cdc.gov/biosafety/publications/index.htm*.

(ii) Prudent Practices for Safety in Laboratories (1995), National Research Council, National Academy Press, 500 Fifth Street NW., Lockbox 285, Washington, DC 20055 (ISBN 0–309–05229–7). This publication is available at *http://www.nap.edu/catalog/4911/prudent-practices-in-the-laboratory-handling-and-disposal-of-chemicals*.

(b) Further, the Contractor shall take or cause to be taken additional safety measures as the Contracting Officer, in conjunction with the Contracting Officer's Representative or other appropriate officials, determines to be reasonably necessary. If compliance with these additional safety measures results in an increase or decrease in the cost or time required for performance of any part of work under this contract, the Contracting Officer will make an equitable adjustment in accordance with the applicable ''Changes'' clause set forth in this contract.

(c) The Contractor shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials or hazardous operations; the injury or death of any person; or damage to property incidental to work performed under the contract resulting from toxic or hazardous materials and resulting in any or all violations for which the Contractor has been cited by any Federal, State or local regulatory/enforcement agency. The report citing all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials or hazardous operations; the injury or death of any person; or damage to property incidental to work performed under the contract resulting from toxic or hazardous materials and resulting in any or all violations for which the Contractor has been cited shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State, or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(d) If the Contractor fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State, or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any such stop work order shall form the basis for a request for extension or costs or damages by the Contractor.

(e) The Contractor shall insert the substance of this clause in each subcontract involving toxic substances, hazardous materials, or hazardous operations. The Contractor is responsible for the compliance of its subcontractors with the provisions of this clause.

(End of clause)

352.223–71 Instructions to Offerors—Sustainable Acquisition.

As prescribed in HHSAR 323.7103, the Contracting Officer shall insert the following provision:

INSTRUCTIONS TO OFFERORS—SUSTAINABLE ACQUISITION (DEC 2015)

Offerors must include a Sustainable Acquisition Plan in their technical proposals. The Plan must describe their approach and the quality assurance mechanisms in place for applying FAR 23.1, Sustainable Acquisition Policy (and other Federal laws, regulations and Executive Orders governing sustainable acquisition purchasing) to this acquisition. The Plan shall clearly identify those products and services included in Federal sustainable acquisition preference programs by categorizing them along with their respective price/cost in the following eight groups: Recycled Content, Energy Efficient, Biobased, Environmentally Preferable, Electronic Product Environment Assessment Tool, Water-Efficient, Non-Ozone Depleting Substances, and Alternative Fuel Vehicle and Alternative Fuels.

(End of provision)

352.224–70 Privacy Act.

As prescribed in HHSAR 324.105(a), the Contracting Officer shall insert the following clause:

PRIVACY ACT (DEC 2015)

This contract requires the Contractor to perform one or more of the following: (a) Design; (b) develop; or (c) operate a Federal agency system of records to accomplish an agency function in accordance with the Privacy Act of 1974 (Act) (5 U.S.C. 552a(m)(1)) and applicable agency regulations.

The term *system of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Violations of the Act by the Contractor and/or its employees may result in the imposition of criminal penalties (5 U.S.C. 552a(i)).

The Contractor shall ensure that each of its employees knows the prescribed rules of conduct in 45 CFR part 5b and that each employee is aware that he/she is subject to criminal penalties for violation of the Act to the same extent as Department of Health and Human Services employees. These provisions also apply to all subcontracts the Contractor awards under this contract which require the design, development or operation of the designated system(s) of records (5 U.S.C. 552a(m)(1)). The contract work statement:

(a) Identifies the system(s) of records and the design, development, or operation work the Contractor is to perform; and

(b) Specifies the disposition to be made of such records upon completion of contract performance.

(End of clause)

352.224–71 Confidential Information.

As prescribed in HHSAR 324.105(b), insert the following clause:

CONFIDENTIAL INFORMATION (DEC 2015)

(a) Confidential Information, as used in this clause, means information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization.

(b) Specific information or categories of information that the Government will furnish to the Contractor, or that the Contractor is expected to generate, which are confidential may be identified elsewhere in this contract. The Contracting Officer may modify this contract to identify Confidential Information from time to time during performance.

(c) Confidential Information or records shall not be disclosed by the Contractor until:

(1) Written advance notice of at least 45 days shall be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, to which an agency response may be appropriate to protect the public interest or that of the agency.

(2) For information provided by or on behalf of the government,

(i) The publication or dissemination of the following types of information are restricted under this contract: [INSERT RESTRICTED TYPES OF INFORMATION. IF NONE, SO STATE.]

(ii) The reason(s) for restricting the types of information identified in subparagraph (i) is/are: [STATE WHY THE PUBLIC OR GOVERNMENT INTEREST REQUIRES THE RESTRICTION OF EACH TYPE OF INFORMATION. ANY BASIS FOR NONDISCLOSURE WHICH WOULD BE VALID UNDER THE FREEDOM OF INFORMATION ACT IS SUFFICIENT UNDER THIS CLAUSE.]

(iii) Written advance notice of at least 45 days shall be provided to the Contracting Officer of the Contractor's intent to disseminate or publish information identified in subparagraph (2)(i). The contractor shall not disseminate or publish such information without the written consent of the Contracting Officer.

(d) Whenever the Contractor is uncertain with regard to the confidentiality of or a property interest in information under this contract, the Contractor should consult with the Contracting Officer prior to any release, disclosure, dissemination, or publication.

352.226–1 Indian Preference.

As prescribed in HHSAR 326.505(a), the Contracting Officer shall insert the following clause:

INDIAN PREFERENCE (DEC 2015)

(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 the necessary statistical records to demonstrate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide reasonable opportunities for training, incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training 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, the Contractor may satisfy those needs by selecting non-Indian persons 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 businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; veteran-owned small businesses; women-owned small businesses; or small disadvantaged businesses.

(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 provide evidence within 30 days from the tribe concerned that the person is a member of the tribe.

(2) *Indian tribe* means an Indian tribe, pueblo, band, nation, or other organized group or community, including 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 the United States recognizes as eligible for the special programs and services provided to Indians because of its 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).

(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) of this clause, 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 pursue any other remedies authorized by law or by other provisions of the contract.

(End of clause)

352.226–2 Indian Preference Program.

As prescribed in HHSAR 326.505(b), the Contracting Officer shall insert the following clause:

INDIAN PREFERENCE PROGRAM (DEC 2015)

(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 preference for employment and training in connection with the work 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 perform the following:

(1) Designate a liaison officer who will maintain liaison with the Government and the Tribe(s) on Indian preference matters; supervise compliance with the provisions of this clause; and administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all employment advertisements that Indian applicants receive preference in employment and training incident to such employment.

(3) Not more than 20 calendar days after award of the contract, post a written notice setting forth the Contractor's employment needs and related training opportunities in the tribal office of any reservations on or near the contract work location. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; any experience or special skills required for employment; 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 Contractor will perform contract work to provide assistance 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 regarding 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 (including 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 from Indian organizations or Indian-owned economic enterprises only. The Contractor shall request assistance and information on Indian firms qualified as subcontractors (including suppliers) from the Tribe(s) on or near whose reservation(s) the Contractor will perform contract work. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact regarding 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 that facilitate the participation of Indian firms;

(ii) A statement indicating that Indian organizations and Indian-owned economic enterprises will receive preference 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'' prescribed under the ''Indian Preference'' clause of this contract;

(iv) A statement that the bidder or offeror shall complete certifying 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 organizations and Indian-owned economic enterprises, the Contractor receives no responsive bid or acceptable proposal, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract. If the Contractor receives one or more responsive bids or conforming proposals, the Contractor shall award the contract to the low, responsive, responsible bidder or conforming offer from a responsible offeror if the price is reasonable. If the Contractor determines the low responsive bid or conforming proposal's price is unreasonable, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If parties cannot agree on a reasonable price, 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 demonstrate—

(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;

(iii) The total number of Indians employed under this contract;

(iv) For those positions having both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Contractor did not select the Indian applicant;

(v) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;

(vi) Reasons why Indian subcontractors and or suppliers did not receive preference for each requirement where the Contractor determined that such preference was inconsistent with efficient contract performance; and

(vii) 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 summarizing the Contractor's Indian preference program and indicating 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 for one year after final payment under this contract, or for such longer period in accordance with requirements of 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 expect to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall 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 pursue any other remedies authorized by law or by other provisions of the contract.

(End of clause)

352.226–3 Native American Graves Protection and Repatriation Act.

As prescribed in HHSAR 326.701, the Contracting Officer shall insert the following clause:

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (DEC 2015)

(a) Public Law 101–601, dated November 16, 1990, also known as the Native American Graves Protection and Repatriation Act, imposes certain responsibilities on individuals and organizations when they discover Native American cultural items (including human remains) on Federal or tribal lands.

(b) In the event the Contractor discovers Native American cultural items (including human remains, associated funerary objects, unassociated funerary objects, sacred objects and cultural patrimony), as defined in the Act during contract performance, the Contractor shall—

(1) Immediately cease activity in the area of the discovery;

(2) Notify the Contracting Officer of the discovery; and

(3) Make a reasonable effort to protect the items discovered before resuming such activity. Upon receipt of the Contractor's discovery notice, the Contracting Officer will notify the appropriate authorities as required by the Act.

(c) Unless otherwise specified by the Contracting Officer, the Contractor may resume activity in the area on the 31st calendar day following the date that the appropriate authorities certify receipt of the discovery notice. The Contracting Officer shall provide to the Contractor the date that the appropriate authorities certify receipt of the discovery notice and the date on which the Contractor may resume activities.

352.227–11 Patent Rights—Exceptional Circumstances.

As prescribed in HHSAR 327.303, the Contracting Officer shall insert the following clause:

PATENT RIGHTS—EXCEPTIONAL CIRCUMSTANCES (SEPT 2014)

This clause applies to all Contractor and subcontractor (at all tiers) Subject Inventions.

(a) *Definitions.* As used in this clause—

Agency means the Agency of the U.S. Department of Health and Human Services that is entering into this contract.

Class 1 Subject Invention means a Subject Invention described and defined in the DEC that will be assigned to a third party assignee, or assigned as directed by the Agency.

Class 2 Subject Invention means a Subject Invention described and defined in the DEC.

Class 3 Subject Invention means a Subject Invention that does not fall into Class 1 or Class 2 as defined in this clause.

DEC means the Determination of Exceptional Circumstances signed by [insert approving official] _____ on ____ [insert date] _____ and titled ''[insert description].''

Invention means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*)

Made means: When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of such invention; or when used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Material means any proprietary material, method, product, composition, compound, or device, whether patented or unpatented, which is provided to the Contractor under this contract.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law

85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

Subject Invention means any invention of the Contractor made in the performance of work under this contract.

Third party assignee means any entity or organization that may, as described in the DEC, be assigned Class 1 inventions.

(b) *Allocation of principal rights.* (1) *Retention of pre-existing rights.* Third party assignees shall retain all preexisting rights to Material in which the Third party assignee has a proprietary interest.

(2) *Allocation of Subject Invention rights.* (i) *Disposition of Class 1 Subject Inventions.* (A) Assignment to the Third party assignee or as directed by the Agency. The Contractor shall assign to the Third party assignee designated by the Agency the entire right, title, and interest throughout the world to each Subject Invention, or otherwise dispose of or transfer those rights as directed by the Agency, except to the extent that rights are retained by the Contractor under paragraph (b)(3) of this clause. Any such assignment or other disposition or transfer of rights will be subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the U.S. Government to practice or have practiced the Subject Invention for or on behalf of the U.S. throughout the world. Any assignment shall additionally be subject to the ''March-in rights'' of 35 U.S.C. 203. If the Contractor is a U.S. nonprofit organization it may retain a royalty free, nonexclusive, nontransferable license to practice the invention for all nonprofit research including for educational purposes, and to permit other U.S. nonprofit organizations to do so.

(B) [Reserved]

(ii) *Disposition of Class 2 and 3 Subject Inventions.* Class 2 Subject Inventions shall be governed by FAR clause 52.227–11, Patent Rights-Ownership (December 2007) (incorporated herein by reference). However, the Contractor shall grant a license in the Class 2 Subject Inventions to the provider of the Material or other party designated by the Agency as set forth in Alternate I.

(iii) Class 3 Subject Inventions shall be governed by FAR clause 52.227–11, Patent Rights—Ownership by the Contractor (December 2007) (previously incorporated herein by reference).

(3) *Greater Rights Determinations.* The Contractor, or an employee-inventor after consultation by the Agency with the Contractor, may request greater rights than are provided in paragraph (b)(1) of this clause in accordance with the procedures of FAR paragraph 27.304–1(c). In addition to the considerations set forth in paragraph 27.304–1(c), the Agency may consider whether granting the requested greater rights will interfere with rights of the Government or any Third party assignee or otherwise impede the ability of the Government or the Third party assignee to, for example, develop and commercialize new compounds, dosage forms, therapies, preventative measures, technologies, or other approaches with potential for the diagnosis, prognosis, prevention, and treatment of human diseases.

A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Agency Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (c)(1) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of the FAR clause at 52.227–13 (incorporated herein by reference), and to any reservations and conditions deemed to be appropriate by the Agency such as the requirement to assign or exclusively license the rights to Subject Inventions to the Third party assignee.

A determination by the Agency denying a request by the Contractor for greater rights in a Subject Invention may be appealed within 30 days of the date the Contractor is notified of the determination to an Agency official at a level above the individual who made the determination. If greater rights are granted, the Contractor must file a patent application on the invention. Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any Subject Invention in any country for which the Contractor has retained title. Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Invention disclosure by Contractor.* The Contractor shall disclose in writing each Subject Invention to the Agency Contracting Officer and to the Director, Division of Extramural Inventions and Technology Resources (DEITR), if directed by the Contracting Officer, as provided in paragraph (j) of this clause within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Agency Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was Made and all inventors. It shall be sufficiently complete in technical detail to convey a clear understanding to the

extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale (offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication, and if so, whether it has been accepted for publication at the time of disclosure.

In addition, after disclosure to the Agency, the Contractor will promptly notify the Contracting Officer and DEITR of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. If the Contractor assigns a Subject Invention to the Third party assignee, then the Contractor and its employee inventors shall assist the Third party assignee in securing patent protection. All costs of securing the patent, including the cost of the Contractor's assistance, are at the Third party's expense. Any assistance provided by the Contractor and its employee inventors to the Third party assignee or other costs incurred in securing patent protection shall be solely at the Third party's expense and not billable to the contract.

(d) *Contractor action to protect the Third party assignee's and the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Agency all instruments necessary to: Establish or confirm the rights the Government has throughout the world in Subject Inventions pursuant to paragraph (b) of this clause; convey title to a Third party assignee in accordance with paragraph (b) of this clause; and enable the Third party assignee to obtain patent protection throughout the world in that Subject Invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each Subject Invention ''Made'' under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights or a Third party assignee's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) If the Contractor is granted greater rights, the Contractor agrees to include, within the specification of any United States non-provisional patent application it files, and any patent issuing thereon, covering a Subject Invention the following statement: ''This invention was made with Government support under (identify the Contract) awarded by (identify the specific Agency). The Government has certain rights in the invention.''

(4) The Contractor agrees to provide a final invention statement and certification prior to the closeout of the contract listing all Subject Inventions or stating that there were none.

(e) *Subcontracts.* (1) The Contractor will include this clause in all subcontracts, regardless of tier, for experimental, developmental, or research work. At all tiers, the clause must be modified to identify the parties as follows: References to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor will not, as part of the consideration for awarding the contract, obtain rights in the subcontractor's Subject Inventions.

(2) In subcontracts, at any tier, the Agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (c)(1)(ii) of FAR clause 52.227–13.

(f) *Reporting on utilization of Subject Inventions in the event greater rights are granted to the Contractor.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees when a request under subparagraph b.3. has been granted by the Agency. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Agency in connection with any march-in proceeding undertaken by the Agency in accordance with paragraph (h) of this clause. As required by 35 U.S.C. 202(c)(5), the Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(g) Preference for United States industry in the event greater rights are granted to the Contractor. Notwithstanding any other provision of this clause, the Contractor agrees

that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *March-in rights in the event greater rights are granted to the Contractor*. The Contractor acknowledges that, with respect to any Subject Invention in which it has acquired ownership through the exercise of the rights specified in paragraph (b)(3) of this clause, the Agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of Agency in effect on the date of contract award.

(i) *Special provisions for contracts with nonprofit organizations in the event greater rights are granted to the Contractor*. If the Contractor is a nonprofit organization, it shall:

(1) Not assign rights to a Subject Invention in the United States without the written approval of the Agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a Subject Invention with the inventor, including Federal employee co-inventors (but through their Agency if the Agency deems it appropriate) when the Subject Invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions for the support of scientific research or education;

(4) Make efforts that are reasonable under the circumstances to attract licensees of Subject Inventions that are small business concerns, and give a preference to a small business concern when licensing a Subject Invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor; and

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) *Communications*. All invention disclosures and requests for greater rights shall be sent to the Agency Contracting Officer, as directed by the Contracting Officer. Additionally, a copy of all disclosures, confirmatory licenses to the Government, face page of the patent applications, waivers and other routine communications under this funding agreement at all tiers must be sent to:

[Insert Agency Address]

Agency Invention Reporting Web site: *https://public.era.nih.gov/iedison*.

Alternate I (Sept 2014). As prescribed in 327.303, the license to Class 2 inventions recited in 352.227–11(b)(2)(a) is as follows:

[Insert description of license to Class 2 inventions]

(End of clause)

352.227–14 Rights in Data—Exceptional Circumstances.

As prescribed in HHSAR 327.409, insert the following clause with any appropriate alternates:

RIGHTS IN DATA—EXCEPTIONAL CIRCUMSTANCES (SEPT 2014)

(a) *Definitions*. As used in this clause—Definitions may be added or modified in paragraph (a) as applicable.

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software—(i) Means (A) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(B) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(ii) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice in Alternate II paragraph (g)(3) if included in this clause. ''Limited rights data'' means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of Alternate III paragraph (g)(4) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer or in the following paragraphs.

(4) In addition to any other provisions, set forth in this contract, the Contractor shall ensure that information concerning possible inventions made under this contract is not prematurely published thereby adversely affecting the ability to obtain patent protection on such inventions. Accordingly, the Contractor will provide the Contracting Officer a copy of any publication or other public disclosure relating to the work performed under this contract at least 30 days in advance of the disclosure. Upon the Contracting Officer's request the Contractor agrees to delay the public disclosure of such data or publication of a specified paper for a reasonable time specified by the Contracting Officer, not to exceed 6 months, to allow for the filing of domestic and international patent applications in accordance with Clause 352.227–11, Patent Rights—Exceptional Circumstances (abbreviated month and year of Final Rule publication).

(5) *Data on Material(s).* The Contractor agrees that in accordance with paragraph (d)(2), proprietary data on Material(s) provided to the Contractor under or through this contract shall be used only for the purpose for which they were provided, including screening, evaluation or optimization and for no other purpose.

(6) *Confidentiality.* (i) The Contractor shall take all reasonable precautions to maintain Confidential Information as confidential, but no less than the steps Contractor takes to secure its own confidential information.

(ii) Contractor shall maintain Confidential Information as confidential unless specifically authorized otherwise in writing by the Contracting Officer. Confidential Information includes/does not include [Government may define confidential information here.]

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (4) of this clause (if those alternate paragraphs are included in this clause), and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting

Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the Head of the Contracting Activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final Agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with Agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings*. (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software*. (1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i) through (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting*. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (Sept 2014). As prescribed in HHSAR 327.409, substitute the following definition for ''limited rights data'' in paragraph (a) of the basic clause:

Limited rights data means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (Sept 2014). As prescribed in HHSAR *327.409*, insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request

the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following ''Limited Rights Notice'' to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (SEPT 2014)

(a) These data are submitted with limited rights under Government Contract No. ____ (and subcontract ____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: Agencies may list additional purposes or if none, so state.

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (SEPT 2014). As prescribed in HHSAR 327.409, insert the following paragraph (g)(4) in the basic clause: (g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following ''Restricted Rights Notice'' to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

RESTRICTED RIGHTS NOTICE (SEPT 2014)

(a) This computer software is submitted with restricted rights under Government Contract No. ____ (and subcontract ____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

RESTRICTED RIGHTS NOTICE SHORT FORM (SEPT 2014)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. ____ (and subcontract, if appropriate) with ____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV Sept 2014). As prescribed in HHSAR 327.409, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) *Copyright*—(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any

data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (Sept 2014). As prescribed in HHSAR 327.409, add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to 3 years after acceptance of all deliverables under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

(End of clause)

352.227–70 Publications and Publicity.

As prescribed in HHSAR 327.404–70, the Contracting Officer shall insert the following clause:

PUBLICATIONS AND PUBLICITY (DEC 2015)

(a) Unless otherwise specified in this contract, the Contractor may publish the results of its work under this contract. The Contractor shall promptly send a copy of each article submitted for publication to the Contracting Officer's Representative. The Contractor shall also inform the Contracting Officer's Representative when the article or other publication is published, and furnish a copy of it as finally published.

(b) Unless authorized in writing by the Contracting Officer, the Contractor shall not display the HHS logo including Operating Division or Staff Division logos on any publications.

(c) The Contractor shall not reference the product(s) or service(s) awarded under this contract in commercial advertising, as defined in FAR 31.205–1, in any manner which states or implies HHS approval or endorsement of the product(s) or service(s) provided.

(d) The contractor shall include this clause, including this section (d) in all subcontracts where the subcontractor may propose publishing the results of its work under the subcontract.

(End of clause)

352.231–70 Salary Rate Limitation.

As prescribed in HHSAR 331.101–70(b), the Contracting Officer shall insert the following clause:

SALARY RATE LIMITATION (DEC 2015)

(a) The Contractor shall not use contract funds to pay the direct salary of an individual at a rate in excess of the Federal Executive Schedule Level II in effect on the date the funding was obligated.

(b) For purposes of the salary rate limitation, the terms ''direct salary,'' ''salary,'' and ''institutional base salary,'' have the same meaning and are collectively referred to as ''direct salary,'' in this clause. An individual's direct salary is the annual compensation that the Contractor pays for an individual's direct effort (costs) under the contract. Direct salary excludes any income that an individual may be permitted to earn outside of duties to the Contractor. Direct salary also excludes fringe benefits, overhead, and general and administrative expenses (also referred to as indirect costs or facilities and administrative costs). The salary rate limitation does not restrict the salary that an organization may pay an individual working under a Department of Health and Human Services contract or order; it merely limits the portion of that salary that may be paid with contract funds.

(c) The salary rate limitation also applies to individuals under subcontracts.

(d) If this is a multiple-year contract or order, it may be subject to unilateral modification by the Contracting Officer to ensure that an individual is not paid at a rate that exceeds the salary rate limitation provision established in the HHS appropriations act used to fund this contract.

(e) See the salaries and wages pay tables on the Office of Personnel Management Web site for Federal Executive Schedule salary levels.

(End of clause)

352.232–70 Incremental Funding.

As prescribed in HHSAR 332.706–2(b), the Contracting Officer shall insert the provision provided below in all solicitations when a cost-reimbursement contract for severable services using incremental funding is contemplated.

INCREMENTAL FUNDING (DEC 2015)

The Government intends to negotiate and award a cost-reimbursement contract using incremental funding as described in the clause at FAR 52.232–22, ''Limitation of Funds''. The initial obligation of funds under the contract is expected to cover [*insert the appropriate increment of performance*]. The Government intends to obligate additional funds up to and including the full estimated cost of the contract for the remaining periods of performance by unilateral contract modification. However, the Government is not required to reimburse the Contractor for costs incurred in excess of the total amount obligated, nor is the Contractor required to perform beyond the level supported by the total amount obligated.

(End of provision)

352.233–70 Choice of Law (Overseas).

As prescribed in HHSAR 333.215–70(a), the Contracting Officer shall insert the following clause:

CHOICE OF LAW (OVERSEAS) (DEC 2015)

This contract shall be construed in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Civilian Board of Contract Appeals or the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

352.233–71 Litigation and Claims.

As prescribed in HHSAR 333.215–70(b), the Contracting Officer shall insert the following clause:

LITIGATION AND CLAIMS (DEC 2015)

(a) The Contractor shall provide written notification immediately to the Contracting Officer of 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 any claim against the Contractor the cost and expense of which is allowable under the clause entitled ''Allowable Cost and Payment.''

(b) Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent documents 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 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 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.

(c) If the Government undertakes a settlement or defense of an action or claim, 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 other terms or conditions of this contract, 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 Government shall not reimburse or indemnify the Contractor 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)

352.236–70 Design-Build Contracts.

As prescribed in HHSAR 336.570(a), the Contracting Officer shall insert the following clause:

DESIGN-BUILD CONTRACTS (DEC 2015)

(a) *General.* (1) The contract constitutes and defines the entire agreement between the Contractor and the Government. This

contract includes the standard or special contract clauses and schedules included at the time of award. This contract incorporates by reference:

(i) The solicitation in its entirety (with the exception of instructions to offerors and evaluation criteria which do not become part of the award document);

(ii) The specifications and statement of work;

(iii) All drawings, cuts and illustrations, included in the solicitation and any amendments during all proposal phases leading up to award;

(iv) Exhibits and other attachments; and

(v) The successful Offeror's accepted proposal.

(2) In the event of conflict or inconsistency between any of the requirements of the various portions of this contract, precedence shall be given in the following order:

(i) Betterments: Any portions of the Offeror's proposal which exceed the requirements of the solicitation and which go beyond repair and improve the value of the property.

(ii) The contract clauses and schedules included during the solicitation or at the time of award.

(iii) All requirements (other than betterments) of the accepted proposal.

(iv) Any design products, including but not limited to plans, specifications, engineering studies and analyses, shop drawings, equipment installation drawings, *etc*. These are ''deliverables'' under the contract and are not part of the contract itself.

(3) Design products must conform to all requirements of the contract, in the order of precedence stated here.

(b) *Responsibility of the contractor for design*. (1) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

(2) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of these services furnished under this contract.

(3) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(4) If the Contractor is comprised of more than one legal entity each such entity shall be jointly and severally liable with respect to all rights and remedies of the Government.

(c) *Sequence of design—construction*. (1) After receipt of the Contract Award, the Contractor shall initiate design, comply with all design submission requirements, and obtain Government review of each submission. No construction may be started until the Government reviews the Final Design submission and determines it satisfactory for purposes of beginning construction. The Contracting Officer will notify the Contractor when the design is cleared for construction. The Government will not grant any time extension for any design resubmittal required when, in the opinion of the Contracting Officer, the initial submission failed to meet the minimum quality requirements as set forth in the Contract.

(2) If the Government allows the Contractor to proceed with limited construction based on pending minor revisions to the reviewed Final Design submission, no payment will be made for any completed or in-progress construction related to the pending revisions until they are completed, resubmitted, and are satisfactory to the Government.

(3) No payment will be made for any completed or in-progress construction until all required submittals have been made, reviewed, and are satisfactory to the Government.

(d) *Constructor's role during design*. The Contractor's construction management key personnel shall be actively involved during the design process to effectively integrate the design and construction requirements of this contract. In addition to the typical required construction activities, the constructor's involvement includes, but is not limited to actions such as: integrating the design schedule into the Master Schedule to maximize the effectiveness of fast-tracking design and construction (within the limits, if any, allowed in the contract), ensuring constructability and economy of the design, integrating the shop drawing and installation drawing process into the design, executing the material and equipment acquisition programs to meet critical schedules, effectively interfacing the construction Quality Control (QC) program with the design QC program, and maintaining and providing the design team with accurate, up-to-date redline and as-built documentation. The Contractor shall require and manage the active involvement of key trade subcontractors in the above activities.

(e) *Preconstruction conference.* (1) A preconstruction conference will be arranged by the Contracting Officer after award of contract and before commencement of work. The Contracting Officer or designated representative will notify the Contractor of the time, date, and location for the meeting. At this conference, the Contractor shall be oriented with respect to Government procedures and line of authority, contractual, administrative, and construction matters.

(2) The Contractor shall bring to this conference, in completed form, a Certificate of Insurance, plus the following items in either completed or draft form:

(i) Accident Prevention Plan;

(ii) Quality Control Plan;

(iii) Letter Appointing Superintendent;

(iv) Transmittal Register;

(v) Power of Attorney and Certified Copy of Resolution;

(vi) Network Analysis System, (when identified in the contract schedule as applicable);

(vii) List of Subcontractors;

(viii) SF 1413;

(ix) Performance and Payment Bonds; and

(x) Schedule of Values.

(3) A letter of record will be written documenting all items discussed at the conference, and a copy will be furnished by the Contracting Officer to all in attendance.

(f) *Payment for design under fixed-price design-build contracts.* (1) The Contracting Officer may approve progress payments for work performed during the project design phase up to the maximum amount of ____ (*Contracting Officer to insert percent figure. If none stated, the amount is four (4) percent*) percent of the contract price.

(2) Contractor invoices for payment must be accompanied by satisfactory documentation supporting the amounts for which payments are requested. Progress payments approved by the Contracting Officer during the project design phase in no way constitute an acceptance of functional and aesthetic design elements nor acceptance of a final settlement amount in the event of a buy-out nor a waiver of any contractual requirements.

(g) *Unscheduled jobsite shutdowns.* Due to security reasons during the life of this contract the Government may on an unscheduled basis require the contractor to shut down its jobsite for 2 days per year at no additional cost. This shall not constitute a suspension of work under FAR 52.242–14, Suspension of Work

(End of clause)

Alternate I (DEC 2015).

When Fast Track procedures are being used, replace paragraph (c) of the basic clause with the following:

(c) *Sequence of design build.* (1) After receipt of the Contract Award the Contractor shall initiate design, comply with all design submissions requirements and obtain Government review of each submission. The contractor may begin construction on portions of the work for which the Government has reviewed the final design submission and has determined satisfactory for purposes of beginning construction. The Contracting Officer will notify the Contractor when the design is cleared for construction. The Government will not grant any time extension for any design resubmittal required when, in the opinion of the Contracting Officer, the initial submission failed to meet the minimum quality requirements as set forth in the Contract.

(2) If the Government allows the Contractor to proceed with the construction based on pending minor revisions to the reviewed Final Design submission, no payment will be made for any in-place construction related to the pending revisions until they are completed, resubmitted, and are satisfactory to the Government.

(3) No payment will be made for any in-place construction until all required submittals have been made, reviewed, and are satisfactory to the Government.

(End of clause)

352.237–70 Pro-Children Act.

As prescribed in HHSAR 337.103(d)(1), the Contracting Officer shall insert the following clause:

PRO-CHILDREN ACT (DEC 2015)

(a) Public Law 103–227, Title X, Part C, also known as the *Pro-Children Act of 1994* (Act), 20 U.S.C. 7183, imposes restrictions on smoking in facilities where certain federally funded children's services are provided. The Act prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of: (i) Kindergarten, elementary, or secondary education or library services or (ii) health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible

entity. Each day a violation continues constitutes a separate violation.

352.237–71 Crime Control Act—Reporting of Child Abuse.

As prescribed in HHSAR 337.103(d)(2), the Contracting Officer shall insert the following clause:

CRIME CONTROL ACT OF 1990—REPORTING OF CHILD ABUSE (DEC 2015)

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Act designates ''covered professionals'' as those persons engaged in professions and activities in eight different categories including, but not limited to, teachers, social workers, physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, alcohol or drug treatment personnel, psychologists, psychiatrists, mental health professionals, child care workers and administrators, and commercial film and photo processors. The Act defines the term ''child abuse'' as the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(c) Accordingly, any person engaged in a covered profession or activity under an HHS contract or subcontract, regardless of the purpose of the contract or subcontract, shall immediately report a suspected child abuse incident in accordance with the provisions of the Act. If a child is suspected of being harmed, the appropriate State Child Abuse Hotline, local child protective services (CPS), or law enforcement agency shall be contacted. For more information about where and how to file a report, the Childhelp USA, National Child Abuse Hotline (1–800–4–A–CHILD) shall be called. Any covered professional failing to make a timely report of such incident shall be guilty of a Class B misdemeanor.

(d) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

352.237–72 Crime Control Act—Requirement for Background Checks.

As prescribed in HHSAR 337.103(d)(3), the Contracting Officer shall insert the following clause:

CRIME CONTROL ACT OF 1990—REQUIREMENT FOR BACKGROUND CHECKS (DEC 2015)

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services to children under the age of 18 undergo a criminal background check. ''Child care services'' include, but are not limited to, social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), and rehabilitative programs. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee providing any of the services listed above.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

352.237–73 Indian Child Protection and Family Violence Act.

As prescribed in HHSAR 337.103(d)(4) the Contracting Officer shall insert the following clause:

INDIAN CHILD PROTECTION AND FAMILY VIOLENCE ACT (DEC 2015)

(a) This contract is subject to the Indian Child Protection and Family Violence Act, Public Law 101–630 (25 U.S.C. 3201 *et seq.*) The duties and responsibilities required by this contract may involve regular contact with or control over Indian children. Public Law 101–630 prohibits employment, including Personal Service Contracts, with anyone who has been convicted of any crime of violence.

Any such conviction should immediately be brought to the attention of the Contracting Officer. The contractor will be subject to a character investigation, conducted by the Indian Health Service, Office of Human Resources. Until such time as the contractor has been notified of completion of the investigation, the contractor shall have no unsupervised contact with Indian children. In order to initiate this background investigation, the contractor must provide information as required in this contract or as directed by the Contracting Officer.

(b) As a prerequisite to providing services under this contract, the Contractor is required to complete and sign the declaration found in Section J of this contract.

(End of clause)

352.237–74 Non-Discrimination in Service Delivery.

As prescribed in HHSAR 337.103(e), the Contracting Officer shall insert the following clause in solicitations and contracts:

NON-DISCRIMINATION IN SERVICE DELIVERY (DEC 2015)

It is the policy of the Department of Health and Human Services that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all sub-contracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

352.237–75 Key Personnel.

As prescribed in HHSAR 337.103(f), the Contracting Officer shall insert the following clause:

KEY PERSONNEL (DEC 2015)

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract (including, when applicable, Human Subjects Testing requirements). If the employee of the contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties.

(End of clause)

352.239–73 Electronic Information and Technology Accessibility Notice.

(a) As prescribed in HHSAR 339.203–70(a), the Contracting Officer shall insert the following provision:

ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY NOTICE (DEC 2015)

(a) Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 and the Architectural and Transportation Barriers Compliance Board Electronic and Information (EIT) Accessibility Standards (36 CFR part 1194), require that when Federal agencies develop, procure, maintain, or use electronic and information technology, Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

(b) Accordingly, any offeror responding to this solicitation must comply with established HHS EIT accessibility standards. Information about Section 508 is available at *http://www.hhs.gov/web/508*. The complete text of the Section 508 Final Provisions can be accessed at *http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards*.

(c) The Section 508 accessibility standards applicable to this solicitation are stated in

the clause at 352.239–74, Electronic and Information Technology Accessibility.

In order to facilitate the Government's determination whether proposed EIT supplies meet applicable Section 508 accessibility standards, offerors must submit an HHS Section 508 Product Assessment Template, in accordance with its completion instructions. The purpose of the template is to assist HHS acquisition and program officials in determining whether proposed EIT supplies conform to applicable Section 508 accessibility standards. The template allows offerors or developers to self-evaluate their supplies and document—in detail—whether they conform to a specific Section 508 accessibility standard, and any underway remediation efforts addressing conformance issues. Instructions for preparing the HHS Section 508 Evaluation Template are available under Section 508 policy on the HHS Web site *http://www.hhs.gov/web/508*.

In order to facilitate the Government's determination whether proposed EIT services meet applicable Section 508 accessibility standards, offerors must provide enough information to assist the Government in determining that the EIT services conform to Section 508 accessibility standards, including any underway remediation efforts addressing conformance issues.

(d) Respondents to this solicitation must identify any exception to Section 508 requirements. If a offeror claims its supplies or services meet applicable Section 508 accessibility standards, and it is later determined by the Government, *i.e.*, after award of a contract or order, that supplies or services delivered do not conform to the described accessibility standards, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its expense.

(End of provision)

352.239–74 Electronic and Information Technology Accessibility.

As prescribed in HHSAR 339.203–70(b), insert the following clause:

ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY (DEC 2015)

(a) Pursuant to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, all electronic and information technology (EIT) supplies and services developed, acquired, or maintained under this contract or order must comply with the ''Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards'' set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the ''Access Board'') in 36 CFR part 1194. Information about Section 508 is available at *http://www.hhs.gov/web/508*. The complete text of Section 508 Final Provisions can be accessed at *http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards*.

(b) The Section 508 accessibility standards applicable to this contract or order are identified in the Statement of Work or Specification or Performance Work Statement. The contractor must provide any necessary updates to the submitted HHS Product Assessment Template(s) at the end of each contract or order exceeding the simplified acquisition threshold (see FAR 2.101) when the contract or order duration is one year or less. If it is determined by the Government that EIT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(c) The Section 508 accessibility standards applicable to this contract are:

_____

(Contract staff must list applicable standards)

(d) In the event of a modification(s) to this contract or order, which adds new EIT supplies or services or revises the type of, or specifications for, supplies or services, the Contracting Officer may require that the contractor submit a completed HHS Section 508 Product Assessment Template and any other additional information necessary to assist the Government in determining that the EIT supplies or services conform to Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found under Section 508 policy on the HHS Web site: (*http://www.hhs.gov/web/508*). If it is determined by the Government that EIT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(e) If this is an Indefinite Delivery contract, a Blanket Purchase Agreement or a Basic Ordering Agreement, the task/delivery order requests that include EIT supplies or services will define the specifications and accessibility standards for the order. In those cases, the Contractor may be required to provide a completed HHS Section 508 Product Assessment Template and any other additional information necessary to assist the Government in determining that the EIT supplies or services conform to Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section

508 Product Assessment Template may be found at *http://www.hhs.gov/web/508*. If it is determined by the Government that EIT supplies and services provided by the Contractor do not conform to the described accessibility standards in the provided documentation, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(End of clause)

352.270–1—352.270–3 [Reserved]

352.270–4a Notice to Offerors, Protection of Human Subjects.

As prescribed in HHSAR 370.303(a), the Contracting Officer shall insert the following provision:

NOTICE TO OFFERORS, PROTECTION OF HUMAN SUBJECTS (DEC 2015)

(a) The Department of Health and Human Services (HHS) regulations for the protection of human subjects, 45 CFR part 46, are available on the Office for Human Research Protections (OHRP) Web site at: *http://www.hhs.gov/ohrp/index.html*.

These regulations provide a systematic means, based on established ethical principles, to safeguard the rights and welfare of human subjects participating in research activities supported or conducted by HHS.

(b) The regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains data or identifiable public information through intervention or interaction with the individual, or identifiable private information. In most cases, 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. 45 CFR part 46 does not directly regulate the use of autopsy materials; instead, applicable state and local laws govern their use.

(c) Activities which involve human subjects in one or more of the categories set forth in 45 CFR 46.101(b)(1)–(6) are exempt from complying with 45 CFR part 46. See *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html*.

(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.

(e) In accordance with 45 CFR part 46, offerors considered for award shall file an acceptable Federal-wide Assurance (FWA) of compliance with OHRP specifying review procedures and assigning responsibilities for the protection of human subjects. The FWA is the only type of assurance that OHRP accepts or approves. The initial and continuing review of a research project by an institutional review board shall ensure that: The risks to subjects are minimized; risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result; selection of subjects is equitable; and informed consent will be obtained and documented by methods that are adequate and appropriate. Depending on the nature of the research, additional requirements may apply; see *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html#46.111* for additional requirements regarding initial and continuing review. HHS regulations for the protection of human subjects (45 CFR part 46), information regarding OHRP registration and assurance requirements/processes, and OHRP contact information is available at the OHRP Web site (at *http://www.hhs.gov/ohrp/assurances/index.html*).

(f) Offerors may consult with OHRP only for general advice or guidance concerning either regulatory requirements or ethical issues pertaining to research involving human subjects. ONLY the contracting officer may offer information concerning a solicitation.

(g) The offeror shall document in its proposal the approved FWA from OHRP, related to the designated Institutional Review Board (IRB) reviewing and overseeing the research. If the offeror does not have an approved FWA from OHRP, the offeror must obtain an FWA before the deadline for proposal submission. When possible, the offeror shall also certify the IRB's review and approval of the research. If the offeror cannot obtain this certification by the time of proposal submission they must include an explanation in their proposal. Never conduct research covered by 45 CFR part 46 prior to receiving certification of the research's review and approval by the IRB.

(End of provision)

Alternate I (DEC 2015).

As prescribed in HHSAR 370.303(a), the Contracting Officer shall substitute the following paragraph (g) for paragraph (g) of the basic clause.

(g) The offeror's proposal shall document that it has an approved or active FWA from OHRP, related to the designated IRB reviewing and overseeing the research. When possible the offeror shall also certify the IRB has reviewed and approved the research. If the offeror cannot make this certification at the time of proposal submission, its proposal must include an explanation. Never conduct research covered by 45 CFR part 46 prior to receiving certification of the research's review and approval by the IRB.

If the offeror does not have an active FWA from OHRP, the offeror shall take all necessary steps to obtain an FWA prior to the deadline for proposal submission. If the offeror cannot obtain an FWA before the proposal submission date, the proposal shall indicate the steps/actions the offeror will take to obtain OHRP approval within *(Contracting Officer must insert a time period in which the FWA must be obtained)*. Upon obtaining FWA approval, submit the approval notice to the Contracting Officer.

352.270–4b Protection of Human Subjects.

As prescribed in HHSAR 370.304(a), the Contracting Officer shall insert the following clause:

PROTECTION OF HUMAN SUBJECTS (DEC 2015)

(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 Federal-wide Assurance (FWA) on file with the Office for Human Research Protections (OHRP), Department of Health and Human Services. 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 and shall ensure that work is conducted 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 create an agency or employee relationship between the Government and the Contractor, or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever. 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 judgment or otherwise, as an independent Contractor without creating liability on the part of the Government for the acts of the Contractor or its employees.

(c) Contractors involving other agencies or institutions in activities considered to be engaged in research involving human subjects must ensure that such other agencies or institutions obtain their own FWA if they are routinely engaged in research involving human subjects or ensure that such agencies or institutions are covered by the Contractors' FWA via designation as agents of the institution or via individual investigator agreements (see OHRP Web site at: *http://www.hhs.gov/ohrp/policy/guidanceonalternativetofwa.pdf*).

(d) If at any time during the performance of this contract 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 the noncompliance. The Contracting Officer may communicate the notice of suspension by telephone with confirmation in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, after consultation with OHRP, terminate this contract in whole or in part.

(End of clause)

352.270–5a Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals.

As prescribed in HHSAR 370.403(a), the Contracting Officer shall insert the following provision:

NOTICE TO OFFERORS OF REQUIREMENT FOR COMPLIANCE WITH THE PUBLIC HEALTH SERVICE POLICY ON HUMANE CARE AND USE OF LABORATORY ANIMALS (DEC 2015)

The Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals (PHS Policy) establishes a number of requirements for research activities involving animals. Before awarding a contract to an offeror, the organization shall file, with the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), a written Animal Welfare Assurance (Assurance) which commits the organization to comply with the provisions of the PHS Policy, the Animal Welfare Act, and the Guide for the Care and Use of Laboratory Animals (National Academy Press, Washington, DC). In accordance with the PHS Policy, offerors must establish an Institutional Animal Care and Use Committee (IACUC), qualified through the experience and expertise of its members, to oversee the institution's animal program, facilities, and procedures. Offerors must provide verification of IACUC approval prior to receiving an award involving live vertebrate animals. No award involving the use of animals shall be made unless OLAW approves the Assurance and verification of IACUC approval for the proposed animal activities has been provided to the Contracting Officer. Prior to award, the Contracting Officer will notify Contractor(s) selected for

projects involving live vertebrate animals of the Assurance and verification of IACUC approval requirement. The Contracting Officer will request that OLAW negotiate an acceptable Assurance with those Contractor(s) and request verification of IACUC approval. For further information, contact OLAW at NIH, 6705 Rockledge Drive, RKL1, Suite 360, MSC 7982 Bethesda, Maryland 20892–7982 (Email: *olaw@od.nih.gov*; Phone: 301–496–7163).

(End of provision)

352.270–5b Care of Live Vertebrate Animals.

As prescribed in HHSAR 370.404, the Contracting Officer shall insert the following clause:

CARE OF LIVE VERTEBRATE ANIMALS (DEC 2015)

(a) Before undertaking performance of any contract involving animal-related activities where the species is regulated by the United Sates Department of Agriculture (USDA), the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2136 and 9 CFR 2.25 through 2.28. The Contractor shall furnish evidence of the 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, use, and intended use of any live vertebrate animals in the performance of this contract shall conform with the Public Health Service (PHS) Policy on Humane Care of Use of Laboratory Animals (PHS Policy), the current Animal Welfare Assurance (Assurance), the Guide for the Care and Use of Laboratory Animals (National Academy Press, Washington, DC) 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 govern.

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and standards stated in paragraphs (a) through (c) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the 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 Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OLAW, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with 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 Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737 (Email: *ace@aphis.usda.gov*; Web site: (*http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare*).

(End of clause)

352.270–6 Restriction on Use of Human Subjects.

As prescribed in HHSAR 370–304(b), the Contracting Officer shall insert the following clause:

RESTRICTION ON USE OF HUMAN SUBJECTS (DEC 2015)

Pursuant to 45 CFR part 46, Protection of Human Research Subjects, the Contractor shall not expend funds under this award for research involving human subjects or engage in any human subjects research activity prior to the Contracting Officer's receipt of a certification that the research has been reviewed and approved by the Institutional Review Board (IRB) registered with OHRP. This restriction applies to all collaborating sites, whether domestic or foreign, and subcontractors. The Contractor must ensure compliance by collaborators and subcontractors.

(End of clause)

352.270–7—352.270–8 [Reserved]

352.270–9 Non-Discrimination for Conscience.

As prescribed in HHSAR 370.701, the Contracting Officer shall insert the following provision:

NON-DISCRIMINATION FOR CONSCIENCE (DEC 2015)

(a) Section 301(d) of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act, as amended, provides that

an organization, including a faith-based organization, that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961, under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, under the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, or under any amendment to the foregoing Acts for HIV/AIDS prevention, treatment, or care—

(1) Shall not be required, as a condition of receiving such assistance, to—

(i) Endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or

(ii) Endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.

(2) Shall not be discriminated against under the provisions of law in subparagraph (a) for refusing to meet any requirement described in paragraph (a)(1) in this solicitation.

(b) Accordingly, an offeror who believes this solicitation contains work requirements requiring it endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS, or endorse, utilize, make referral to, become integrated with, or otherwise participate in a program or activity to which it has a religious or moral objection, shall identify those work requirements it excluded in its technical proposal.

(c) The Government acknowledges that an offeror has specific rights, as cited in paragraph (b), to exclude certain work requirements in this solicitation from its proposal. However, the Government reserves the right to not make an award to an offeror whose proposal does not comply with the salient work requirements of the solicitation. Any exercise of that Government right will be made by the Head of the Contracting Activity.

(End of provision)

352.270–10 Notice to Offerors—Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required.

As prescribed in HHSAR 370.303(d), the Contracting Officer shall insert the following provision:

NOTICE TO OFFERORS—PROTECTION OF HUMAN SUBJECTS, RESEARCH INVOLVING HUMAN SUBJECTS COMMITTEE (RIHSC) APPROVAL OF RESEARCH PROTOCOLS REQUIRED (DEC 2015)

(a) All Offerors proposing research expected to involve human subjects shall comply with the regulations set forth in 45 CFR part 46, and with the provisions at HHSAR 352.270–4a.

(b) The Offeror shall have an acceptable Assurance of Compliance on file with the Office for Human Research Protections (OHRP), whenever it submits a proposal to the FDA for research expected to involve human subjects. Direct questions regarding Federal-wide Assurance to OHRP. The Offeror's proposal shall include a copy of the acceptable Assurance of Compliance.

(c) After the contract has been awarded, the Contractor shall take the following actions:

(1) The Institutional Review Board (IRB) specified in the Offeror's Assurance of Compliance, hereafter referred to as ''the local IRB,'' shall review the proposed research protocol. A letter from the local IRB stating that the proposed research protocol has been reviewed and approved, and thus adequately protects the rights and welfare of human subjects involved, or a letter stating that the proposed research is exempt under 45 CFR 46.101(b) shall be submitted to the Contracting Officer.

(2) Upon award, the successful Offeror, hereafter ''the Contractor,'' shall submit its proposed research protocol to the FDA's Research Involving Human Subjects Committee (RIHSC). The RIHSC or its designee will review and approve the research protocol to assure it adequately protects the rights and welfare of human subjects involved. The RIHSC or designee will also determine whether the proposed research is exempt under 45 CFR 46.101(b). The Contractor shall submit, to the Contracting Officer of record, a copy of the RIHSC's or its designee's letter stating that it reviewed and approved the proposed research protocol.

(d) The Contractor shall not advertise for, recruit, or enroll human subjects, or otherwise commence any research involving human subjects until RIHSC or its designee reviews and approves its research. The Contractor may begin other limited aspects of contract performance prior to receiving RIHSC's or designee's approval of the proposed research protocol. Research involving human subjects may commence immediately upon the Contractor's receipt of RIHSC's or designee's approval; however, the Contractor shall submit a copy of RIHSC's or its designee's approval to the Contracting Officer within three business days of its receipt.

(e) A Contractor's failure to obtain RIHSC's or its designee's approval of its proposed research may result in termination of its contract. However, failure to obtain RIHSC's or its designee's approval during initial review will not automatically result in termination of the contract. Instead, the Contractor may correct any deficiencies identified during the initial RIHSC or designee review and resubmit the proposed research protocol to RIHSC or its designee for a second review. The Contractor is encouraged to solicit the RIHSC's or its designee's input during the resubmission process.

(f) The Contractor shall seek RIHSC's or its designee's and local IRB review and approval whenever making modifications, amendments or other changes to the research protocol. Such modifications, amendments and changes include, but are not limited to changes in investigators, informed consent forms, and recruitment advertisements. The Contractor may institute changes immediately after receiving both the local IRB and RIHSC or its designee approval (except when necessary to eliminate apparent immediate hazards to the subject); however, the Contractor shall submit a copy of the letter evidencing RIHSC's or its designee's approval of the proposed changes to the Contracting Officer within three business days of its receipt.

(End of provision)

352.270–11 Protection of Human Subjects—Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required.

As prescribed in HHSAR 370.304(c), the Contracting Officer shall insert the following clause:

PROTECTION OF HUMAN SUBJECTS—RESEARCH INVOLVING HUMAN SUBJECTS COMMITTEE (RIHSC) APPROVAL OF RESEARCH PROTOCOLS REQUIRED (DEC 2015)

(a) The Contractor agrees to protect the rights and welfare of human subjects involved in research under this contract by complying with 45 CFR part 46 and the clause at HHSAR 352.270–4b.

(b) Initial proof of compliance with 45 CFR part 46 shall consist of:

(1) A copy of a current Federal-wide Assurance on file with OHRP. The copy of a current Federal–wide Assurance shall be included with the Contractor's proposal;

(2) A letter from the Contractor's local IRB (the Institutional Review Board (IRB) specified in the Offeror's Assurance of Compliance) stating that it has reviewed and approved the proposed research protocol. The letter from the local IRB shall be submitted to the Contracting Office; and

(3) A copy of a letter from the RIHSC stating that it or its designee has reviewed and approved the proposed research protocol. This shall be submitted to the Contracting Officer within three business days of its issuance.

The Contractor shall not advertise for, recruit, or enroll human subjects, or otherwise commence any research involving human subjects under this contract, until RIHSC has reviewed and approved its research. The Contractor may commence other limited aspects of contract performance prior to receiving RIHSC or its designee approval of its proposed research protocol. Research involving human subjects may commence immediately upon the Contractor's receipt of RIHSC or its designee approval; however, the Contractor shall submit a copy of RIHSC's or its designee's letter of approval to the Contracting Officer within three business days of its receipt.

Failure to obtain RIHSC or its designee approval of proposed research protocols may result in the termination of this contract.

(c) The Contractor further agrees that:

(1) The Contractor will provide a letter from RIHSC, at least annually, stating that RIHSC or its designee has reviewed and approved the research protocols for research performed under this contract. This shall be submitted to the Contracting Officer for inclusion in the contract file.

(2) The Contractor will submit all proposed modifications and amendments to research protocols for research performed under this contract to RIHSC for review and approval. Modifications and amendments include, but are not limited, to changes to consent forms and advertising materials, and the addition or deletion of investigators. Changes may be instituted immediately after the Contractor has received both the local IRB and RIHSC or its designee approval (except when necessary to eliminate apparent immediate hazards to the subject); however the Contractor shall submit a copy of the letter evidencing RIHSC's or its designee's approval of the proposed changes to the Contracting Officer within three business days of its receipt.

(End of clause)

352.270–12 Needle Exchange.

As prescribed in HHSAR 370.304(d), the Contracting Officer shall insert the following clause:

NEEDLE EXCHANGE (DEC 2015)

The Contractor shall not use any funds obligated under this contract to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

(End of clause)

352.270–13 Continued Ban on Funding Abortion and Continued Ban on Funding of Human Embryo Research.

As prescribed in HHSAR 370.304(e), the Contracting Officer shall insert the following clause:

CONTINUED BAN ON FUNDING ABORTION AND CONTINUED BAN ON FUNDING OF HUMAN EMBRYO RESEARCH (DEC 2015)

(a) The Contractor shall not use any funds obligated under this contract for any abortion.

(b) The Contractor shall not use any funds obligated under this contract for the following:

(1) The creation of a human embryo or embryos for research purposes; or

(2) Research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury of death greater than that allowed for research on fetuses in utero under 45 CFR part 46 and Section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(c) The term ''human embryo or embryos'' includes any organism, not protected as a human subject under 45 CFR part 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes of human diploid cells.

(d) The Contractor shall not use any Federal funds for the cloning of human beings.

(End of clause)

PART 353—FORMS [RESERVED]

SUBCHAPTERS I–L [RESERVED]

SUBCHAPTER M—HHS SUPPLEMENTATIONS

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

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Subpart 370.7—Acquisitions under the Leadership Act

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370.701 Contract clause.
370.702 Solicitation provision.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2)

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subparts 370.1–370.2 [Reserved]

Subpart 370.3—Acquisitions Involving Human Subjects

370.300 Scope of subpart.

This subpart applies to all research activities conducted under contracts involving human subjects. See 45 CFR 46.102(d) and (f).

370.301 Policy.

It is the Department of Health and Human Services (HHS) policy that the contracting officer shall not award a contract involving human subjects until the prospective contractor provides assurance that the activity will undergo initial and continuing review by an appropriate Institutional Review Board (IRB) in accordance with HHS regulations at 45 CFR 46.103. The contracting officer shall require a Federal-wide assurance (FWA), approved by the HHS Office for Human Research Protections (OHRP), of each contractor, subcontractor, or institution engaged in human subjects research in performance of a contract. OHRP administers the assurance covering all HHS-supported or HHS-conducted activities involving human subjects.

370.302 Federal-wide Assurance (FWA).

(a) OHRP-Approved FWAs are found at the following Web site: *http://ohrp.cit.nih.gov/search/search.aspx?styp=bsc*.

(b) Normally a contractor, subcontractor, or institution must provide approval of a FWA before a contract is awarded. If a contractor, subcontractor, or institution does not currently hold an approved FWA, it shall submit an explanation with its proposal and an FWA application prior to submitting a proposal. The contracting officer, on a case by case basis, may make award without an approved assurance in consultation with OHRP.

(c) A contractor, subcontractor, or institution must submit all FWAs, including new FWAs, using the electronic submission system available through the OHRP Web site at *http://ohrp.cit.nih.gov/efile/*, unless an institution lacks the ability to do so electronically. If an institution believes it lacks the ability to submit its FWA electronically, it must contact OHRP by telephone or email (see *http://www.hhs.gov/ohrp/assurances/index.html*) and explain why it is unable to submit its FWA electronically.

370.303 Notice to offerors.

(a) The contracting officer shall insert the provision at 352.270–4a, Notice to Offerors, Protection of Human Subjects, in solicitations that involve human subjects. The contracting officer shall use the clause with its Alternate I when the agency is prescribing a date later than the proposal submission by which the offeror must have an approved FWA.

(b) Institutions having an OHRP-approved FWA shall certify IRB approval of submitted proposals in the manner required by instructions for completion of the contract proposal; by completion of an OMB Form No. 0990–0263, Protection of Human Subjects Assurance Identification/IRB Certification/Declaration of Exemption (Common Rule); or by letter indicating the institution's OHRP-assigned FWA number, the date of IRB review and approval, and the type of review (convened or expedited). The date of IRB approval must not be more than 12 months prior to the deadline for proposal submission.

(c) The contracting officer generally will not request FWAs for contractors, subcontractors, or institutions prior to selecting a contract proposal for negotiation. When a contractor submits an FWA, it provides certification for the initial contract period; no additional documentation is required. If the contract provides for additional years to complete the project, the contractor shall certify annually in the manner described in 370.303(b).

(d) For the Food and Drug Administration (FDA), the contracting officer shall insert the provision at 352.270–10, Notice to Offerors—Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required, in solicitations that involve human subjects when the research is subject to RIHSC review and approval.

370.304 Contract clauses.

(a) The contracting officer shall insert the clause at 352.270–4b, Protection of Human Subjects, in solicitations, contracts and orders involving human subjects.

(b) The contracting officer shall insert the clause at 352.270–6, Restriction on Use of Human Subjects, in contracts and orders if the contractor has an approved FWA of compliance in place, but cannot certify prior to award that an IRB registered with OHRP reviewed and approved the research, because definite plans for involvement of human subjects are not set forth in the proposal (e.g., projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds). Under these conditions, the contracting officer may make the award without the requisite certification, as long as the contracting officer includes appropriate conditions in the contract or order.

(c) For FDA, the contracting officer shall insert the clause at 352.270–11, Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required, in contracts and orders that involve human subjects when the research is subject to RIHSC review and approval.

(d) The contracting officer shall insert the clause at 352.270–12, Needle Exchange, in solicitations, contracts, and orders involving human subjects.

(e) The contracting officer shall insert the clause at 352.270–13, Continued Ban on Funding Abortion and Continued Ban on Funding of Human Embryo Research, in solicitations, contracts, and orders involving human subjects.

Subpart 370.4—Acquisitions Involving the Use of Laboratory Animals

370.400 Scope of subpart.

This subpart applies to all research, research training, biological testing, housing and maintenance, and other activities involving live vertebrate animals conducted under contract. Additional information can be found in Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals *http://grants.nih.gov/grants/olaw/references/phspolicylabanimals.pdf*.

370.401 Policy.

(a) It is HHS policy that contracting activities shall not award a contract involving live vertebrate animals until the Contractor provides acceptable assurance the contract work is subject to initial and continuing review by an appropriate Institutional Animal Care and Use Committee (IACUC) as described in the PHS Policy at IV.B.6 and 7. The contracting officer shall require an applicable Animal Welfare Assurance approved by the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), of each contractor, subcontractor, or institution having responsibility for animal care

and use involved in performance of the contract. Normally the assurance shall be approved before award. The contracting officer, on a case-by-case basis, may make award without an approved assurance in consultation with OLAW. For additional information see PHS Policy II., IV.A, and V.B.

(b) The OLAW, NIH, is responsible for negotiating assurances covering all HHS/PHS-supported or HHS/PHS-conducted activities involving the care and use of live vertebrate animals. OLAW shall provide guidance to contracting officers regarding adequate animal care and use, approval, disapproval, restriction, or withdrawal of approval of assurances. For additional information see PHS Policy V.A.

(c) If using live vertebrate animals, HHS policy requires that offerors address the points in the Vertebrate Animal Section (VAS) of the Technical Proposal. Each of the points must be addressed in the VAS portion of the Technical Proposal. For additional information see PHS Policy and use Contract Proposal VAS Worksheet. *http://grants.nih.gov/grants/olaw/references/phspol.htm#InformationRequiredinApplications-ProposalsforAwardsSubmittedtoPHS* and *http://grants.nih.gov/grants/olaw/VAScontracts.pdf*.

370.402 Assurances.

(a) Animal Welfare Assurances may be one of three types:

(1) *Domestic Assurance (DA).* A DA describes the institution's animal care and use program, including but not limited to the lines of authority and responsibility, veterinary care, IACUC composition and procedures, occupational health and safety, training, facilities, and species housed. A DA listed in OLAW's list of institutions with an approved DA is acceptable for purposes of this policy.

(2) *Inter-institutional Assurance (IA).* The offeror, its proposed subcontractor, or institution shall submit an IA when it does not have a proprietary animal care and use program, facilities to house animals or IACUC, and does not conduct animal research on-site. The offeror will perform the animal activity at an institution with an Animal Welfare Assurance named as a performance site. An IA approval extends to the full period of contract performance (up to 5 years) limited to the specific award or single project.

(3) *Foreign Assurance (FA).* The Foreign Assurance is required for institutions outside the U.S. that receive PHS funds directly through a contract award. The Foreign Assurance also applies to institutions outside the U.S. that receive PHS funds indirectly (named as a performance site). An FA listed in OLAW's list of institutions with an approved FA is acceptable for purposes of this policy.

(b) The contracting officer shall forward copies of proposals selected for negotiation and requiring an assurance to OLAW at *olawdoa@od.nih.gov*, as early as possible to secure the necessary assurances.

(c) A contractor providing animal care services at an institution with an Animal Welfare Assurance, such as a Government-owned, Contractor-operated (GOCO) site, does not need a separate assurance. GOCO site assurances normally cover such contractor services.

370.403 Notice to offerors.

(a) The contracting officer shall insert the provision at 352.270–5a, Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals, in solicitations involving live vertebrate animals.

(b) Offerors having a DA on file with OLAW shall submit IACUC approval of the use of animals in the manner required by the solicitation, but prior to award. The date of IACUC approval must not be more than 36 months prior to award.

(c) It is not necessary for offerors lacking an Animal Welfare Assurance to submit assurances or IACUC approval with proposals. OLAW shall contact contractors, subcontractors, and institutions to negotiate necessary assurances and verify IACUC approvals when requested by the contracting officer.

370.404 Contract clause.

The contracting officer shall insert the clause at 352.270–5b, Care of Live Vertebrate Animals, in solicitations,

contracts, and orders that involve live vertebrate animals.

Subparts 370.5–370.6 [Reserved]

Subpart 370.7—Acquisitions Under the Leadership Act

370.700 Scope of subpart.

This subpart sets forth the acquisition requirements regarding implementation of Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) programs under the President's Emergency Plan for AIDS Relief as established by the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, as amended (Pub. L. 108–25, Pub. L. 110–293, Pub. L. 113–56).

370.701 Solicitation provision.

The contracting officer shall insert the provision at 352.270–9, Non-Discrimination for Conscience, in solicitations valued at more than the micro-purchase threshold:

(a) In connection with the implementation of HIV/AIDS programs under the President's Emergency Plan for AIDS Relief established by the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, as amended; or

(b) Where the contractor will receive funding under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, as amended. In resolving any issues or complaints that offerors may raise regarding meeting the requirements specified in the provision, the contracting officer shall consult with the Office of Global Health Affairs, Office of the General Counsel, the Program Manager, and other HHS officials, as appropriate.

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SUBCHAPTER A—GENERAL

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PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

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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) Electronic form on the USDA Departmental Administration Procurement Homepage (see 401.170).

(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. In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the Administrative Procedure Act exception, and USDA agencies generally are required to provide notice and an opportunity for public comment on proposed rules (36 FR 13804, July 24, 1971). The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA also is required to publish for public comment procurement regulations in the FEDERAL REGISTER, pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 418b), and FAR 1.301.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

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/procurement/*.

[63 FR 26994, May 15, 1998, as amended at 70 FR 44, Jan. 3, 2005]

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 within USDA.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

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 Nutrition Service.
4L Animal and Plant Health Inspection Service.
4M [Reserved]
4N Departmental Administration.
4O–4P [Reserved]
4R Office of Inspector General.
4S [Reserved]

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

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.

(d) AGAR Advisories are only available in electronic format on the USDA

Procurement Web site at *http://www.usda.gov/procurement/*.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

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]
403.104–7 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

403.405 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]

403.104–7 Violations or possible violations.

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.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998. Redesignated and amended at 70 FR 44, Jan. 3, 2005]

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

403.405 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 3.405(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.

[61 FR 53646, Oct. 15, 1996. Redesignated and amended at 70 FR 44, Jan. 3, 2005]

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. 51–58) to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

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 404.2—Contract Distribution

Sec.

404.203 Taxpayer identification information.

Subpart 404.4—Safeguarding Classified Information Within Industry

404.403 Responsibilities of contracting officers.

Subpart 404.6—Contract Reporting

404.601 [Reserved]
404.602 Federal Procurement Data System.

Subpart 404.8—Government Contract Files

404.870 Document numbering system.

Subpart 404.11—Central Contractor Registration

404.1103 Procedures.

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 404.2—Contract Distribution

404.203 Taxpayer identification information.

(a) If the contractor furnishes taxpayer identification number (TIN) and type of organization information pursuant to solicitation provision 52.204–3 or 52.212–3, and the USDA Office of the Chief Financial Officer, Controller Operations Division, New Orleans will be the payment office, that information will be entered into the Foundation Financial Information System (FFIS) in accordance with FFIS Vendor Table Maintenance Procedures set forth in FFIS Bulletins issued by the Office of the Chief Financial Officer and AGAR Advisories issued by the Office of Procurement and Property Management.

(b) Separate submission of the TIN or type of organization information, in accordance with 52.204–3 or 52.212–3, is not required for contractors registered in the Central Contractor Registration (CCR) database.

[70 FR 44, Jan. 3, 2005]

Subpart 404.4—Safeguarding Classified Information Within Industry

404.403 Responsibilities of contracting officers.

When a proposed solicitation is likely to require access to classified information, the contracting officer shall consult with the Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management, regarding the procedures that must be followed.

[70 FR 44, Jan. 3, 2005]

Subpart 404.6—Contract Reporting

404.601 [Reserved]

404.602 Federal Procurement Data System.

(a) Contracting activities shall report contract actions into the Federal Procurement Data System in accordance with the instructions issued or distributed by the SPE.

(b) The unique identifier for each contract action reported to the Federal Procurement Data System shall begin with the two-letter USDA Agency Prefix ''AG''.

[70 FR 44, Jan. 3, 2005]

Subpart 404.8—Government Contract Files

404.870 Document numbering system.

The SPE shall issue AGAR Advisories to establish and maintain a numbering system for USDA contracts, modifications, and delivery/task orders. USDA contracting offices shall number contracts, modifications, and orders in accordance with this numbering system.

[70 FR 44, Jan. 3, 2005]

Subpart 404.11—Central Contractor Registration

404.1103 Procedures.

(a) Contracting officers and other USDA employees shall not enter information into the Central Contractor Registration (CCR) database on behalf of prospective contractors. Prospective contractors who are unable to register on-line at the CCR Web site should be advised to submit a written application to CCR for registration into the CCR database. USDA employees may assist prospective contractors by downloading the registration template, CCR handbook, and other information from the CCR Web site and providing copies of that material to requesters. Written applications for registration may be submitted to Department of Defense Central Contractor Registration, 74 Washington Ave., Suite 7, Battle Creek, MI 49017–3084.

(b) Verification that the prospective contractor is registered in the CCR database shall be done via the CCR Internet Web site *http://www.ccr.gov*. This verification process using the CCR Web site applies both to acquisitions executed using USDA legacy procurement systems and the USDA Integrated Acquisition System.

(c) AGAR Advisories issued by the Office of Procurement and Property Management will address internal procedures for integration of contractor information in the CCR database with the USDA FFIS payment system.

[70 FR 44, Jan. 3, 2005]

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.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 45, Jan. 3, 2005]

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 Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management. Departmental Manuals and Regulations (3400 series) contain guidance on classified information.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 45, Jan. 3, 2005]

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, Office of Procurement and Property Management, has been designated as the Competition Advocate for USDA.

(b) Each HCA shall designate a competition advocate for the contracting activity. The HCA shall forward a copy of the designation memorandum to the Competition Advocate for USDA.

[70 FR 45, Jan. 3, 2005]

PART 407—ACQUISITION PLANNING

Subpart 407.1—Acquisition Plans

Sec.
407.103 Agency-head responsibilities.
407.170 Advance acquisition plans.

Subpart 407.3 [Reserved]

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 maintain an advance acquisition planning system.

[70 FR 45, Jan. 3, 2005]

Subpart 407.3 [Reserved]

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

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart 408.7 of part 408 appear at 70 FR 45, Jan. 3, 2005.

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 Under Secretary or Assistant Secretary of a mission area or the head of a USDA staff office.

[70 FR 45, Jan. 3, 2005]

408.705 Procedures.

(a) The organization head shall appoint one person as Javits-Wagner-O'Day Act (JWOD) Liaison to represent the organization and to coordinate the organization's actions with the Committee Member.

(b) JWOD advocates may represent more than one organization. Liaisons need not be acquisition officials.

(c) The organization head shall issue and maintain a performance plan to promote and enhance the organization's acquisitions from JWOD participating nonprofit agencies.

(d) The performance 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 Liaison'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.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 45, Jan. 3, 2005]

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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 fueling, lubrication, or other fluid changes or replenishment, the contracting officer shall include in the contract:

(1) A requirement for the use of fluids and lubricants containing the maximum available amounts of recovered materials, and alternative fuels whenever available; and

(2) A preference for retreaded tires meeting the Federal retread specifications, tires with the maximum recovered material content, or retreading services for the tires on the vehicle.

[70 FR 45, Jan. 3, 2005]

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.

Subpart 409.5—Organizational and Consultant Conflicts of Interest

409.503 Waiver.

AUTHORITY: 40 U.S.C. 121, 41 U.S.C. 421.

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).

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—MARKET RESEARCH

Sec.
410.001 Policy.
410.002 Procedures.

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

SOURCE: 70 FR 45, Jan. 3, 2005, unless otherwise noted.

410.001 Policy.

In addition to those uses listed in FAR 10.001, agencies must use the results of market research to—

(a) Ensure the minimum use of hazardous or toxic materials;

(b) Ensure the maximum use of biobased products and biofuels; and

(c) Identify products and services on or eligible for addition to the Javits-Wagner-O'Day Act Procurement List in order to achieve USDA's goal to increase participation in this program.

410.002 Procedures.

Market research must include obtaining information on the commercial quality assurance practices as an alternative for Government inspection and testing prior to tender for acceptance.

PART 411—DESCRIBING AGENCY NEEDS

Subpart 411.1—Selecting and Developing Requirements Documents

Sec.
411.101 Order of precedence for requirements documents.
411.103 Market acceptance.
411.106 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

411.101 Order of precedence for requirements documents.

(a) Office of Management and Budget (OMB) Circular A–119 establishes a Federal policy requiring the use of voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.

(b) The HCA is authorized to submit the determination required by OMB Circular A–119 that a voluntary standard is inconsistent with law or otherwise impracticable. The HCA must submit the determination to OMB through the National Institute of Standards and Technology in accordance with the Circular with a copy provided to the SPE.

[70 FR 45, Jan. 3, 2005]

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.

411.106 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.

[61 FR 53646, Oct. 15, 1996. Redesignated at 70 FR 45, Jan. 3, 2005]

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 (OFs) 347 and 348 except that use of the OF 347 and OF 348 is authorized when utilizing the USDA Integrated Acquisition System.

[70 FR 45, Jan. 3, 2005]

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 Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management.

[70 FR 45, Jan. 3, 2005]

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 3.104–4, FAR 15.207, and AGAR 415.207.

[64 FR 52674, Sept. 30, 1999; 64 FR 54963, Oct. 8, 1999, as amended at 70 FR 46, Jan. 3, 2005]

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, Office of Procurement and Property Management, has been designated as the Departmental Task Order Ombudsman.

(b) Each HCA shall designate a task order ombudsman for the contracting activity. The HCA shall forward a copy of the designation memorandum to the Departmental Task Order Ombudsman. 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.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 46, Jan. 3, 2005]

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 and contract clauses.

Subpart 419.6—Certificates of Competency and Determinations of Responsibility

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

SOURCE: 70 FR 46, Jan. 3, 2005, unless otherwise noted.

419.201 General policy.

It is the policy of USDA to provide maximum practicable contracting and subcontracting opportunities to small business (SB), small disadvantaged business (SDB), HUBZone small business, women-owned business (WOB), veteran-owned small business (VOSB), and service-disabled veteran-owned small business (SDVOSB) concerns.

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 business program that includes all categories named under 419.201.

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) Reviewing each proposed acquisition expected to exceed the simplified acquisition threshold prior to its solicitation. The coordinator shall:

(1) Recommend section 8(a), HUBZone, or SDVOSB action and identify potential contractors, or

(2) Identify available SDB, WOB, and VOSB to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participating in goal-setting procedures and planning activities and establishing aggressive SDB, WOB, and SDVOSB goals based on the annual review of advance acquisition plans.

(c) Participating in the review of those contracts which require the successful offeror to submit written plans for the utilization of small businesses as subcontractors to include all preference program areas in 419.201.

(d) Ensuring that purchases exceeding $2,500 and not exceeding the simplified acquisition threshold are reserved exclusively for small businesses, including all preference program areas named in 419.201. 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) Maintaining comprehensive source listings of small businesses.

(f) Upon written request, providing small businesses (in the preference program areas named in 419.201) the bidders' mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled ''Utilization of Small Business Concerns'' (FAR 52.219–8). These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Developing a program of contacts with local and small (to include all preference program areas named in 419.201) 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 meeting with program managers to discuss requirements of the small business preference program, to explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small firms, and to encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(i) Establishing internal operating procedures which implement the requirements of the regulations as set forth in this part 419.

(j) Compiling data and preparing all reports pertaining to the small business program activities, and ensuring that these reports are accurate, complete and up-to-date.

(k) Assisting and counseling small business firms.

(l) Reviewing proposed large contract requirements that may be bundled to determine the potential for breaking out components suitable for purchase from small business firms.

(m) Ensuring 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 (including all preference program areas named in 419.201) subcontracting plans.

419.201–73 Reports.

The Director, OSDBU, shall be responsible for submitting reports concerning USDA's progress and achievements in the procurement preference program.

Subpart 419.5—Set-Asides for Small Business

419.508 Solicitation provisions and contract clauses.

The contracting officer shall insert the provision at 452.219–70, Size Standard and NAICS Code Information, in solicitations that are set aside for small businesses.

[61 FR 53646, Oct. 15, 1996, as amended at 66 FR 49317, Sept. 27, 2001]

Subpart 419.6—Certificates of Competency and Determinations of Responsibility

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 Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

422.1305 Waivers.
422.1308 Complaint procedures.

Subpart 422.14—Employment of Workers With Disabilities

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(b). 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.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 46, Jan. 3, 2005]

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 Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor, as appropriate.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 46, Jan. 3, 2005]

Subpart 422.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

SOURCE: 70 FR 46, Jan. 3, 2005, unless otherwise noted.

422.1305 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determination in FAR 22.1305(b) that a contract is essential to the national security.

(b) The contracting officer shall submit requests for exemptions under FAR 22.1305(a) and (b) through the HCA to the SPE for determination by the Assistant Secretary for Administration or referral to the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor as appropriate.

422.1308 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 as prescribed in FAR 22.1308.

Subpart 422.14—Employment of Workers With Disabilities

422.1403 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a) and (b) with the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor.

(b) The contracting officer shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 46, Jan. 3, 2005]

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, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 423.1 [Reserved]

Subpart 423.2—Energy and Water Efficiency and Renewable Energy

Sec.
423.202 Policy.

Subpart 423.4—Use of Recovered Materials

423.400 Scope of subpart.
423.402 [Reserved]
423.403 Policy.
423.404 Agency affirmative procurement programs.
423.405 Procedures.

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 Products and Services

423.703 Policy.

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

SOURCE: 70 FR 47, Jan. 3, 2005, unless otherwise noted.

Subpart 423.1 [Reserved]

Subpart 423.2—Energy and Water Efficiency and Renewable Energy

423.202 Policy.

Information on Energy Star, energy efficient, water efficient, and low standby products covered by this policy is available via the Internet at *http://www.eere.energy.gov/femp/technologies/eeproducts.cfm.*

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 affirmative procurement programs in accordance with Executive Order 13101 and 42 U.S.C. 6962.

423.402 [Reserved]

423.403 Policy.

It is the policy of USDA to acquire and use Environmental Protection Agency (EPA) designated recycled content products.

423.404 Agency affirmative procurement programs.

The USDA affirmative procurement program (APP) policy applicable to all USDA agencies and staff offices is hereby established. The components of this APP include:

(a) *Recovered Materials Preference Program.* In accord with the requirements of Section 402(c) of Executive Order 13101, Greening the Government Through Recycling, Waste Prevention, and Federal Acquisition, USDA agencies will include, in all applicable solicitations and contracts, a preference for products and services which meet or exceed the EPA purchasing guidelines as contained in the EPA product Recovered Materials Advisory Notices (RMANs). Agencies may choose an evaluation factor preference, or other method of indicating preference in accord with their agency needs. Agencies will, as appropriate, eliminate virgin material requirements in contract specifications and replace them with a statement of preference for recycled materials.

(b) *Promotion program.* USDA agencies will actively promote a preference for recovered materials, environmentally preferable products, and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

(c) *Reasonable estimation of recovered materials used in the performance of contracts.* USDA agencies annually will provide in writing to the USDA Senior Procurement Executive, in response to a call for data for the Resource Conservation and Recovery report, reasonable estimates, certification, and verification of recovered material used in the performance of contracts.

(d) *Annual review and monitoring of effectiveness of the program.* USDA agencies will provide an annual assessment of the effectiveness of their affirmative

procurement program actions in increasing the purchase and use of EPA designated products.

(e) *Purchase of EPA designated products.* USDA agencies will require that 100% of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting appropriate performance standards; or

(3) At a reasonable price.

(f) The 100% purchase requirement of paragraph (e) of this section applies to all USDA agency purchases, including those at or below the micro-purchase threshold.

423.405 Procedures.

(a) The threshold of purchase for EPA designated items is $10,000 per year at the USDA departmental, not individual agency, level. Therefore, the APP requirements above, including the 100% purchase requirement, apply at the individual agency and staff office level.

(b) Contracting officers should refer to EPA's list of designated products and products identified as recycled content when purchasing supplies or services. Information on EPA designated products is available at: *www.epa.gov/cpg/products.htm.*

(c) All agencies and USDA Contracting Officers must take necessary actions to carry out the provisions of the USDA APP policy described in this subpart.

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 Products and Services

423.703 Policy.

(a) USDA's Affirmative Procurement Program promotes energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services. In its acquisitions, USDA will support federal ''green purchasing'' principles in the acquisition of products and services that are environmentally preferable or that are biobased content products and services.

(b) USDA agencies will actively promote this preference for environmentally preferable products and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

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.

[70 FR 48, Jan. 3, 2005]

PART 425—FOREIGN ACQUISITION

Subpart 425.1—Buy American Act—Supplies

Sec.

425.102 [Reserved]
425.103 Exceptions.
425.104 Nonavailable articles.
425.105 Determining reasonableness of cost.
425.108 [Reserved]

Subpart 425.2—Buy American Act—Construction Materials

425.202 Exceptions.
425.203–425.204 [Reserved]

Subparts 425.3–425.4 [Reserved]

Subpart 425.6—Trade Sanctions

425.602 Exceptions.

Subpart 425.9 [Reserved]

Subpart 425.10—Additional Foreign Acquisition Regulations

425.1001 Waiver of right to examination of records.

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

SOURCE: 70 FR 48, Jan. 3, 2005, unless otherwise noted.

425.102 [Reserved]

425.103 Exceptions.

(a) The Senior Procurement Executive (SPE) shall make the determination prescribed in FAR 25.103(a).

(b) Copies of determinations of nonavailability in accordance with FAR 25.103(b)(2) or 25.202(a)(2), for articles, material or supplies not listed in FAR 25.104, may be submitted to the SPE for submission to the Civilian Agency Acquisition Council (CAAC).

425.104 Nonavailable articles.

Information required by FAR 25.104(b) shall be submitted to the SPE for submission to the CAAC.

425.105 Determining reasonableness of cost.

The SPE may make the determination prescribed in FAR 25.105(a). Requests for a determination by the SPE shall be submitted by the HCA, in writing, and shall provide a detailed justification supporting why evaluation factors higher than those listed in FAR 25.102(b)(1) and (2) should be applied to determine whether the offered price of a domestic end product is unreasonable.

425.108 [Reserved]

Subpart 425.2—Buy American Act—Construction Materials

425.202 Exceptions.

(a) The SPE shall make the determination prescribed in FAR 25.202(a)(1).

(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, as amended at 70 FR 48, Jan. 3, 2005]

425.203–425.204 [Reserved]

Subparts 425.3–425.4 [Reserved]

Subpart 425.6—Trade Sanctions

425.602 Exceptions.

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 25.602(b).

[70 FR 48, Jan. 3, 2005]

Subpart 425.9 [Reserved]

Subpart 425.10—Additional Foreign Acquisition Regulations

425.1001 Waiver of right to examination of records.

The SPE shall make the determination under FAR 25.1001(a)(2)(iii).

[70 FR 48, Jan. 3, 2005]

PART 426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 426.70 [Reserved]

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 and Other Financial Protections

Sec.

428.101 Bid guarantees.
428.101–1 Policy on use.
428.106 Administration.
428.106–6 Furnishing information.

Subpart 428.2—Sureties and Other Security for Bonds

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 and Other Financial Protections

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 and Other Security for Bonds

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.
432.006–4 Procedures.
432.006–5 Reporting.
432.007 Contract financing payments.

Subpart 432.1—Non-Commercial Item Purchase Financing

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.
432.114 Unusual contract financing.

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

432.301 Definitions.

Subpart 432.4—Advance Payments for Non-Commercial Items

432.402 General.
432.406 Letters of credit.
432.407 Interest.
432.412 Contract clause.

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.
432.770 USDA specific funding limitations.

Subpart 432.8—Assignment of Claims

432.802 Conditions.
432.803 Policies.
432.805 Procedure.
432.806 Contract clauses.

Subpart 432.9—Prompt Payment

432.904 Determining payment due dates.

Subpart 432.10—Performance-Based Payments

432.1007 Administration and payment of performance-based payments.

AUTHORITY: 40 U.S.C. 121, 41 U.S.C. 421.

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.

432.007 Contract financing payments.

The HCA may prescribe, on a case-by-case basis, a shorter period for financing payments.

[61 FR 53646, Oct. 15, 1996. Redesignated at 70 FR 48, Jan. 3, 2005]

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 Civilian Board of Contract Appeals is the responsibility of the contracting officer.

[72 FR 31438, June 7, 2007]

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

432.904 Determining payment due dates.

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.

[61 FR 53646, Oct. 15, 1996. Redesignated at 70 FR 48, Jan. 3, 2005]

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 [Reserved]

Subpart 433.2—Disputes and Appeals

433.203 Applicability.
433.203–70 Civilian Board of Contract Appeals.
433.209 Suspected fraudulent claims.

AUTHORITY: 40 U.S.C. 121, 41 U.S.C. 421.

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 Government Accountability 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).

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 48, Jan. 3, 2005]

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 Government Accountability Office in accordance with 4 CFR part 21. Neither the filing of a protest with USDA nor the filing of a protest with the Government Accountability Office affects your right to file an action in a district court of the United States or the United States Court of Federal Claims.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 48, Jan. 3, 2005]

433.104 [Reserved]

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 Civilian Board of Contract Appeals.

The organization, jurisdiction, and functions of the Civilian Board of Contract Appeals, together with its Rules of Procedure, are set out in 48 CFR part 6101.

[72 FR 31438, June 7, 2007]

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: 70 FR 49, Jan. 3, 2005, 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 (for information technology, life cycle costs) are estimated to be $50 million or more, or

(b) The system, regardless of estimated acquisition or life cycle costs, has been specifically designated to be a major system by the USDA Acquisition Executive or by the Major Information Technology Systems Executive.

434.002 Policy.

In addition to the policy guidance at FAR 34.002 and other parts of the FAR, 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 Chief Information Officer (CIO) is the Major Information Technology Systems Executive. For acquisitions of information technology, the CIO will ensure that A–109 is implemented in USDA and that the management objectives of the Circular are realized. The CIO is responsible for designating the program manager for each major information technology system acquisition, designating an acquisition to be a major information technology system acquisition, and approving the written charter and project control system for each major information technology system acquisition.

(c) The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive for major system acquisitions other than acquisitions of information technology. 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.

(d) Heads of contracting activities must:

(1) Ensure compliance with the requirements of A–109, FAR Part 34 and AGAR Part 434.

(2) Ensure that potential major system acquisitions are brought to the attention of the USDA Acquisition Executive or the Major Information Technology Systems Executive, as appropriate.

(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 and Major Information.

Technology Systems Executive 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 Major Information Technology Systems Executive and other key USDA executives.

434.004 Acquisition strategy.

(a) The program manager will develop, in coordination with the Acquisition Executive or Major Information Technology Systems 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 or Major Information Technology Systems 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 or Major Information Technology Systems Executive.

(d) Specific procedures and requirements for information technology systems are included in the USDA Information Technology Capital Planning and Investment Control Guide which can be accessed on the USDA OCIO Web site at *http://www.ocio.usda.gov*.

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 Contract clause.
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. 121(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 Contract clause.

Insert the clause at 452.236–78, *Fire Suppression and Liability* in solicitations and contracts for Integrated Resource Service Contracts (IRSC) awarded for the Forest Service.

[81 FR 7480, Feb. 12, 2016]

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.

PART 438 [RESERVED]

PART 439—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 439.1—General

Sec.
439.101 Policy.

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

Subpart 439.1—General

439.101 Policy.

(a) In addition to policy and regulatory guidance contained in the FAR and AGAR:

(1) The USDA Information Technology Capital Planning and Investment Control Guide (CPIC) establishes requirements for the acquisition of information technology.

(2) Specific thresholds at which USDA Office of the Chief Information Officer Information Technology Acquisition Approval is required have been established.

(3) The procurement authority delegated to USDA Agencies is established in Departmental Regulations 5000 series.

(4) The CPIC Guide and USDA CIO policy and procedural guidance are available on the USDA OCIO Web site at *http://www.ocio.usda.gov*. Notices of changes in the Information Technology Acquisition Approval Thresholds are also promulgated by AGAR Advisory.

(b) Acquisition of on-line courseware libraries and learning management system services requires specific approval of the ASA and CIO. Information regarding the specific approval requirements and processes is promulgated by AGAR Advisory.

[70 FR 49, Jan. 3, 2005]

PART 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 Contractor Performance System (CPS), developed by the National Institutes of Health, is designated as the single USDA-wide system for maintaining contractor performance/evaluation information. Use of the CPS is mandatory. As a minimum, the CPS shall be accessed for contractor past performance information as part of proposal evaluation in accordance with FAR subpart 15.3, and information resulting from the evaluation of contractor performance in accordance with FAR subpart 42.15 shall be entered into and maintained in this system. The CPS is a part of the USDA Acquisition Toolkit which can be accessed from the USDA Procurement Homepage at *http://www.usda.gov/procurement/*.

[66 FR 49867, Oct. 1, 2001]

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 [Reserved]

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 [Reserved]

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 [Reserved]

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 [Reserved]

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.
452.204–70 Inquiries.
452.211–70 Brand Name or Equal.
452.211–71 Equal Products Offered.
452.211–72 Statement of Work/Specifications.
452.211–73 Attachments to Statement of Work/Specifications.
452.211–74 Period of Performance.
452.211–75 Effective Period of the Contract.
452.214–70 Award by Lot.
452.215–71 Instructions for the Preparation of Technical and Business Proposals.
452.215–72 Amendments to Proposals.
452.215–73 Post Award Conference.
452.216–70 Award Fee.
452.216–71 Base Fee and Award Fee Proposal.
452.216–72 Evaluation Quantities—Indefinite-Delivery Contract.
452.216–73 Minimum and Maximum Contract Amounts.
452.216–74 Ceiling Price.
452.216–75 Letter Contract.
452.219–70 Size Standard and NAICS Code Information.
452.224–70 Confidentiality of Information.
452.226–70—452.226–72 [Reserved]
452.228–70 Alternative Forms of Security.
452.228–71 Insurance Coverage.
452.232–70 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.
452.236–70 Additive or Deductive Items.
452.236–71 Prohibition Against the Use of Lead-Based Paint.
452.236–72 Use of Premises.
452.236–73 Archaeological or Historic Sites.
452.236–74 Control of Erosion, Sedimentation, and Pollution.
452.236–75 Maximum Workweek—Construction Schedule.
452.236–76 Samples and Certificates.
452.236–77 Emergency Response.
452.236–78 Fire Suppression and Liability.
452.236–79 Opted Timber Sale Road Requirements.
452.236–80 Firms Ineligible for Award—Construction.
452.237–70 Loss, Damage, Destruction or Repair.
452.237–71 Pre-Bid/Pre-Proposal Conference.
452.237–73 Equipment Inspection Visit.
452.237–74 Key Personnel.
452.237–75 Restrictions Against Disclosure.
452.237–76 Progress Reporting.
452.237–78 Contracts with Consulting Firms for Services.
452.246–70 Inspection and Acceptance.
452.247–70 Delivery Location.
452.247–71 Marking Deliverables.
452.247–72 Packing for Domestic Shipment.
452.247–73 Packing for Overseas Shipment.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 121(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 452.211–71) 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, as amended at 70 FR 50, Jan. 3, 2005]

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; 70 FR 50, Jan. 3, 2005]

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 NAICS Code Information.

As prescribed in 419.508, insert the following provision:

SIZE STANDARD AND NAICS CODE INFORMATION (SEP 2001)

The North American Industrial Classification System 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): _____* NAICS 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.*

[61 FR 53646, Oct. 15, 1996, as amended at 66 FR 49317, Sept. 27, 2001]

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—452.226–72 [Reserved]

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, 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, as amended at 70 FR 50, Jan. 3, 2005]

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 Fire Suppression and Liability.

As prescribed in section 436.578, the following clause shall be inserted in Intergrated Resource Service Contracts (IRSC) awarded for the Forest Service.

FIRE SUPPRESSION AND LIABILITY CLAUSE

(a) *Contractor's Responsibility for Fire Fighting.* The Contractor, under the provisions of FAR clause at 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. 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 subject to the following fire classifications listed in subsection (b).

(b) *Fire Suppression Costs.* The Contractor's obligations for cost of fire suppression vary according to three classifications of fires as follows:

(1) *Operations Fire.* An ''operations fire'' is a fire caused by the Contractor's operations other than a negligent fire. The Contractor agrees to reimburse Forest Service for such cost for each operations fire, subject to a

maximum dollar amount of [*Contracting Officer insert amount*]. The cost of the Contractor's actions, supplies, and equipment on any such fire, or otherwise provided at the request of Forest Service, shall be credited toward such maximum. If the Contractor's actual cost exceeds contractor's obligation stated above, Forest Service shall reimburse the contractor for the excess.

(2) *Negligent Fire*. A ''negligent fire'' is a fire caused by the negligence or fault of the Contractor's operations including, but not limited to, one caused by smoking by persons engaged in the Contractor's operations during the course of their employment, or during rest or lunch periods; or if the Contractor's failure to comply with requirements under this contract results in a fire starting, or permits a fire to spread. Damages and the cost of suppressing negligent fires shall be borne by the Contractor.

(3) *Other Fires on Contract Area*. Forest Service shall pay the Contractor, at firefighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Contractor at the request of Forest Service, on any fire on contract area other than an operations fire or a negligent fire.

(c) *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.

(d) *Contractor's Responsibility for Responding to Emergencies*. When directed by the Contracting Officer, the Contractor shall temporarily redirect employees and equipment from the work site for emergency work (anticipated to be restricted to firefighting). This is considered to be within the general scope of the contract. An equitable adjustment for any such redirection of employees and equipment will be made under the FAR clause at 52.243–4, Changes.

(e) *Performance by the Contractor*. Where the Contractor's employees, agents, contractors, subcontractors, or their employees or agents perform the Contractor's operations in connection with fire responsibilities, the Contractor's obligations shall be the same as if performance was by Contractor.

(f) *State Law*. The Contractor shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recovered in an action based on State law, except for such costs resulting from operations fires. Amounts due to the Contractor for firefighting expenditures on operations fires shall not be withheld pending settlement of any such claim or action based on State law.

(End of Clause)

[81 FR 7480, Feb. 12, 2016]

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, except that use of the OF 347 and OF 348 is authorized when utilizing the USDA Integrated Acquisition System (See 413.307).

[70 FR 50, Jan. 3, 2005]

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).

SUBCHAPTER I—FOOD ASSISTANCE PROGRAMS

PART 470—COMMODITY ACQUISITIONS

Sec.
470.000 Scope of part.
470.101 Definitions.
470.102 Policy.
470.103 United States origin of agricultural products.
470.200 [Reserved]
470.201 Acquisition of commodities and freight shipment for Foreign Agricultural Service programs.
470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.
470.203 Cargo preference.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1691 through 1726b; 1731 through 1736g–3; 1736o; 1736o–1; 40 U.S.C. 121(c); 46 U.S.C. 53305, 55314 and 55316.

SOURCE: 74 FR 13079, Mar. 26, 2009, unless otherwise noted.

470.000 Scope of part.

This part sets forth the policies, procedures and requirements governing the procurement of agricultural commodities by the Department of Agriculture for use:

(a) Under any domestic feeding and assistance program administered by the Food and Nutrition Service; and

(b) Under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*); the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other international food assistance program.

470.101 Definitions.

The following definitions are applicable to this part:

Commingled product means grains, oilseeds, rice, pulses, other similar commodities and the products of such commodities, when such commodity or product is normally stored on a commingled basis in such a manner that the commodity or product produced in the United States cannot be readily distinguished from a commodity or product not produced in the United States.

Department means the Department of Agriculture.

Food and Nutrition Service means such agency located within the Department of Agriculture.

Foreign Agriculture Service means such agency located within the Department of Agriculture.

*Free alongside ship (f.a.s.) (* * named port of shipment)* means a term of sale which means the seller fulfills its obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. The buyer bears all costs and risks of loss of or damage to the goods from that moment.

*Free carrier (FCA) (* * named place)* means a term of sale which means the seller fulfills its obligation when the seller has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose, within the place or range stipulated, where the carrier should take the goods into their charge.

Grantee organization means an organization which will receive commodities from the United States Agency for International Development under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*) or from the Foreign Agricultural Service under the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other international food assistance program.

Ingredient means spices, vitamins, micronutrients, desiccants, and preservatives when added to an agricultural commodity product.

Last contract lay day means the last day specified in an ocean freight contract by which the carriage of goods must start for contract performance.

Lowest landed cost means, as authorized by 46 U.S.C. 55314(c), with respect to an agricultural product acquired under this part the lowest aggregate cost for the acquisition of such product and the shipment of such product to a foreign destination.

Multi-port voyage charter means the charter of an ocean carrier in which

the carrier will stop at two or more ports to discharge cargo.

470.102 Policy.

(a) *Policy*. It is the policy of the Department to follow the policies and procedures set forth in the Federal Acquisition Regulation (FAR) as supplemented by the Agriculture Acquisition Regulation, including this part, in the procurement of agricultural commodities and products of agricultural commodities that are used in domestic feeding and international feeding and development programs.

(b) *Electronic submission*. To the maximum extent possible, the use of electronic submission of solicitation-related documents shall be used with respect to the acquisition of agricultural commodities and related freight; however, to the extent that a solicitation allows for the submission of written information in addition to information in an electronic format and there is a discrepancy in such submissions, the information submitted in a written format shall prevail unless the electronic submission states that a specific existing written term is superseded by the electronic submission.

(c) *Freight*. With respect to the acquisition of freight for the shipment of agricultural commodities and products of agricultural commodities, the provisions of the FAR, including part 47, shall be utilized and various types of services to be obtained may include multi-trip voyage charters.

470.103 United States origin of agricultural products.

(a) *Products of United States origin*. As provided by 7 U.S.C. 1732(2) and 1736o–1(a) commodities and the products of agricultural commodities acquired for use in international feeding and development programs shall be products of United States origin. A product shall not be considered to be a product of the United States if it contains any ingredient that is not produced in the United States if that ingredient is:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(b) *Use by the Food and Nutrition Service*. Commodities and the products of agricultural commodities acquired for use by the Food and Nutrition Service shall be a product of the United States, except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to ingredients. Ingredients from non-domestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(c) *Commingled product*. (1) Except as provided in paragraph (c)(2) of this section, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States.

(2) To the extent the Department has determined a commodity is one that is generally commingled, but is also one which can be readily stored on an identity preserved basis with respect to its country of origin, the Department may require that the commodity procured by the Department shall be of 100 percent United States origin.

(d) *Product derived from animals*. With respect to the procurement of products derived from animals, the solicitation will set forth any specific requirement that is applicable to the country in which the animal was bred, raised, slaughtered or further processed.

470.200 [Reserved]

470.201 Acquisition of commodities and freight shipment for Foreign Agricultural Service programs.

(a) *Lowest landed cost and delivery considerations.* (1) Except as provided in paragraphs (a)(3) and (4) of this section, in contracts for the Foreign Agricultural Service for commodities and related freight shipment for delivery to foreign destinations, the contracting officer shall consider the lowest landed cost of delivering the commodity to the intended destination. This lowest landed cost determination will be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet 46 U.S.C. 55314(c)(3) and cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement or a related freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or related freight, when combined with other offers for commodities or related freight, results in a lower landed cost to the Department.

(2) The Department may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors considered in this determination may include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. The Department may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of the Department to have the commodity delivered in a safe and timely manner. Such situations include:

(i) A port is congested;

(ii) Port facilities are overloaded;

(iii) A vessel would not be able to dock and load cargo without delay;

(iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or

(v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) *Use of other than lowest landed cost.* In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the contracting officer may award an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors may adversely affect the delivery of such commodities through damage or untimely delivery. Such similar factors include, but are not limited to: port congestion; overloaded facilities at the port; vessels not being able to dock and load cargo without delay due to conditions at the port; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the timely delivery of the commodity;

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured; or

(E) The contracting officer determines that extenuating circumstances preclude awards on the basis of lowest-landed cost, or that efficiency and cost-savings justify use of types of ocean

service that would not involve an analysis of freight. However, in all such cases, commodities would be transported in compliance with cargo preference requirements. Examples of extenuating circumstances are events such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery cost and freight (C & F), delivery cost insurance and freight (CIF), and indexed ocean freight costs.

(4) If a contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer will provide to the Head of Contracting Activity Designee a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis consistent with Title 48 Code of Federal Regulations. This request shall include a statement of the reasons for not using lowest landed cost basis. The Head of the Contracting Activity Designee, or the designee one level above the contracting officer, may either accept or reject this request and shall document this determination.

(b) *Multiple offers or delivery points.* If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(c) *Freight shipping and rates.* (1) In determining the lowest-landed cost, the Department shall use the freight rates offered in response to solicitations issued by the Department or, if applicable, the grantee organization.

(2) Freight rates offered must be submitted as specified in the solicitation issued by the Department or, if applicable, the grantee organization. Any such solicitation issued by a grantee organization must contain the following elements:

(i) If directed by the Department, include a closing time for the receipt of written freight offers and state that late written freight offers will not be considered;

(ii) Provide that freight offers are required to have a canceling date no later than the last contract lay day specified in the solicitation;

(iii) Provide the same deadline for receipt of written freight offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Be received and opened prior to any related offer for acquisition of commodities to be shipped.

(3) The Department may require organizations that will receive commodities from the Department to submit information relating to the capacity of a U.S. port, or, if applicable, a terminal, prior to the acquisition of such commodities or freight.

(d) *Freight rate notification.* If the Department is not the party procuring freight with respect to a shipment of an agricultural commodity for delivery to a foreign destination, the organization that will receive commodities from the Department, or its shipping agent, shall be notified by the Department of the vessel freight rate used in determining the commodity contract award and the organization will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate.

470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.

(a) *Lowest landed cost and delivery considerations.* (1) Except as provided in paragraphs (a)(3) and (e)(2) of this section, with respect to the acquisition of agricultural commodities for delivery to foreign destinations and related freight to transport such commodities under Title II of Public Law 480, contracts will be entered into in a manner that will result in the lowest landed cost of such commodity delivery to the

intended destination. This lowest landed cost determination shall be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet 46 U.S.C. 55314(c)(3) and cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement or a freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or freight, when combined with other offers for commodities or freight, results in a lower landed cost to USAID.

(2) The Department may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. The Department may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of the Department to have the commodity delivered in a safe and/or timely manner. Such situations include:

(i) A port is congested;

(ii) Port facilities are overloaded;

(iii) A vessel would not be able to dock and load cargo without delay;

(iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or

(v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) *Use of other than lowest landed cost.* In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the Department may complete an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section, if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors will adversely affect the delivery of such commodities without damage or in a timely manner. Such similar factors include, but are not limited to: port congestion; overloaded facilities at the port; vessels would not be able to dock and load cargo without delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the ability of the Department to achieve timely delivery of the commodity; or

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured.

(4) If the contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer shall provide to the head of contracting activity designee and to USAID, a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis. This request shall include a statement of the reasons for not using lowest landed cost basis. The head of contracting authority designee, or one level above the contracting officer, with the concurrence of USAID, shall, on an expedited basis, either accept or reject this request and shall document this determination in writing and provide a copy to USAID.

(b) *Freight shipping and rates.* (1) In determining lowest-landed cost as specified in paragraph (a) of this section, the Department shall use vessel rates offered in response to solicitations issued by USAID or grantee organizations receiving commodities under 7 U.S.C. 1731 *et seq.*

(2) USAID may require, or direct a grantee organization to require, an ocean carrier to submit offers electronically through a Web-based system maintained by the Department. If electronic submissions are required, the Department may, at its discretion, accept corrections to such submissions that are submitted in a written form other than by use of such Web-based system.

(c) *Delivery date.* The contracting officer shall consider total transit time, as it relates to a final delivery date, in order to satisfy Public Law 480 Title II program requirements.

(d) *Delivery points.* (1) Commodities offered for delivery free alongside ship Great Lakes port range or intermodal bridge-point Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on a lowest landed cost basis. Tonnage allocated on this basis will not be reevaluated on a lowest landed cost U.S.-flag basis unless the contracting officer determines that 25 percent of the total annual tonnage of bagged, processed, or fortified commodities furnished under 7 U.S.C. 1731 *et seq.* has been, or will be, transported from the Great Lakes port range during that fiscal year.

(2) The contracting officer shall consider commodity offers as offers for delivery ''intermodal bridge-point Great Lakes port range'' only if:

(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

(ii) The commodities will be moved from one transportation conveyance to another at such a facility.

(e) *Multiple awards or delivery points.* (1) If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(2) The contracting officer may determine that extenuating circumstances preclude awards on the basis of lowest landed cost. However, in all such cases, commodities may be transported in compliance with cargo preference requirements as determined by USAID.

(3) The contracting officer shall notify USAID or, if applicable, the grantee organization, that its shipping agent will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or USAID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

470.203 Cargo preference.

An agency having responsibility under this subpart shall administer its programs, with respect to this subpart, in accordance with regulations prescribed by the Secretary of Transportation.

PARTS 471–499 [RESERVED]

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

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SUBCHAPTER A—GENERAL

PART 500 [RESERVED]

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Subpart 501.1—Purpose, Authority, Issuance

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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.

AUTHORITY: 40 U.S.C. 121(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.

[64 FR 37203, July 9, 1999, as amended at 84 FR 33859, July 16, 2019]

501.105 Issuance.

501.105–1 Publication and code arrangement.

The GSAR is published in the following sources:

(a) The FEDERAL REGISTER at *https://www.federalregister.gov/*.

(b) Annual Code of Federal Regulations (CFR), as Chapter 5 of Title 48.

[64 FR 37203, July 9, 1999, as amended at 84 FR 33860, July 16, 2019]

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.

Copies of the GSAR may be purchased from the Government Printing Office at *https://www.gpo.gov/*. The GSAR is also available electronically at *https://www.ecfr.gov/* or at *https://www.acquisition.gov* under the agency supplements tab.

[84 FR 33860, July 16, 2019]

501.106 OMB approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.
509.105–1(a)	3090–0007
511.140–70	3090–0203
511.204(c)	3090–0246
514.201–1(a)	3090–0163
515.408	3090–0235
516.203–4(a)(1)	3090–0243
516.506	3090–0248

GSAR Reference	OMB Control No.
522.406–6	1215–0149
523.370	3090–0205
532.905–70	3090–0080
537.110(a)	3090–0197
537.110(b)	3090–0006
538.273	3090–0250 3090–0262 3090–0121 3090–0303 3090–0306
542.1107	3090–0027
546.307–70	3090–0027
546.302–71	3090–0027
552.211–13(a)	9000–0026
552.211–70(b)	9000–0058
552.211–77	3090–0246
552.215–73	3090–0163
552.216–70	3090–0243
552.216–72	3090–0248
552.216–73	3090–0248
552.216–75	3090–0306
552.223–72	3090–0205
552.232–5	3090–0080, 9000–0070, and 9000–0102
552.232–72	3090–0080
552.236–15	9000–0058
552.236–72	3090–0308
552.236–79	3090–0320
552.236–80	9000–0034
552.237–71	3090–0006
552.238–73	3090–0250
552.238–78	3090–0262
552.238–80	3090–0121, 3090–0306
552.238–82	3090–0302
552.238–84	3090–0303
552.238–85	3090–0121 3090–0306
552.238–87	3090–0303
552.238–95	3090–0303
552.238–96	3090–0303
552.238–97	3090–0303
552.238–99	3090–0303
552.238–111	3090–0303
552.239–71	3090–0294
552.242–70	3090–0027
552.246–70	3090–0027
552.246–71	3090–0027
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
570.802(c)	3090–0086
570.802(d)	3090–0086

[64 FR 37203, July 9, 1999, as amended at 65 FR 41378, July 5, 2000; 68 FR 41288, July 11, 2003; 74 FR 21273, May 7, 2009; 74 FR 41063, Aug. 14, 2009; 74 FR 47738, Sept. 17, 2009; 74 FR 66253, Dec. 15, 2009; 76 FR 30845, May 27, 2011; 77 FR 750, Jan. 6, 2012; 79 FR 14184, Mar. 13, 2014; 79 FR 62884, Oct. 21, 2014; 79 FR 63057, Oct. 22, 2014; 81 FR 36425, June 6, 2016; 81 FR 41136, June 23, 2016; 84 FR 1411, Feb. 4, 2019; 84 FR 3716, Feb. 13, 2019; 84 FR 17039, Apr. 23, 2019; 84 FR 69632, Dec. 19, 2019]

EFFECTIVE DATE NOTE: At 85 FR 50958, Aug. 19, 2020, §501.106 was amended by removing from the table, GSAR references ''GSA–72–A'' and ''GSA–618–D'' and their corresponding OMB control numbers ''3090–0121'' and ''1215–0149''; and by adding to the table, in numerical order, GSAR reference ''GSA–1217'' to read as follows, effective Oct. 19, 2020.

501.106 OMB approval under the Paperwork Reduction Act.

GSAR reference	OMB control No.
* * * * *	
GSA–1217	3090–0086
* * * * *	

PART 502—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 121(c).

Subpart 502.1—Definitions

502.101 Definitions.

Commercial supplier agreements means terms and conditions customarily offered to the public by vendors of supplies or services that meet the definition of ''commercial item'' set forth in FAR 2.101 and intended to create a binding legal obligation on the end user. Commercial supplier agreements are particularly common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, but they may apply to any supply or service. The term applies—

(a) Regardless of the format or style of the document. For example, a commercial supplier agreement may be styled as standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), or another similar legal instrument or agreement, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order;

(b) Regardless of the media or delivery mechanism used. For example, a commercial supplier agreement may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a

purchase, software installation, other product delivery, registration for a service, or another transaction.

[83 FR 7633, Feb. 22, 2018]

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 503.1—Safeguards

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503.104 Procurement integrity.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.204 Treatment of violations.

Subpart 503.4—Contingent Fees [Reserved]

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

503.703 Authority.

Subpart 503.10—Contractor Code of Business Ethics and Conduct

503.1004 Contract clauses.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37204, July 9, 1999, unless otherwise noted.

Subpart 503.1—Safeguards

503.104 Procurement integrity.

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; and

(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 Suspension and Debarment Official, in accordance with GSAR 509.403. 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; and

(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, in accordance with FAR 3.204(b) either orally or in writing, consistent 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.

[64 FR 37204, July 9, 1999, as amended at 74 FR 51511, Oct. 7, 2009]

Subpart 503.4—Contingent Fees [Reserved]

Subpart 503.5—Other Improper Business Practices

503.570 Advertising.

503.570–1 Policy.

GSA policy precludes contractors from making references 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.

[64 FR 37204, July 9, 1999, as amended at 74 FR 51511, Oct. 7, 2009]

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

503.703 Authority.

Pursuant to FAR 3.703 and 3.705(b), the authority to void or rescind contracts resides with the Senior Procurement Executive.

[74 FR 51512, Oct. 7, 2009]

Subpart 503.10—Contractor Code of Business Ethics and Conduct

503.1004 Contract clauses.

(a) GSA has exercised the authority provided at FAR 3.1004(b)(1)(i) to establish a lower threshold for inclusion of clause 52.203–14, Display of Hotline Poster(s). When the contract or order is funded with disaster assistance funds, the threshold is $1,000,000.

(b) The information required to be inserted in the clause at FAR 52.203–14, Display of Hotline Poster(s), is as follows:

(1) Poster: GSA Office of Inspector General ''FRAUDNET HOTLINE''; and

(2) Obtain from: Contracting Officer.

[74 FR 51512, Oct. 7, 2009, as amended at 81 FR 68335, Oct. 4, 2016]

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.4—Safeguarding Classified Information Within Industry

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504.402 General.
504.475 Return of classified information.

Subpart 504.5—Electronic Commerce in Contracting

504.500 [Reserved]
504.502 Policy.
504.570 [Reserved]

Subpart 504.6—Contract Reporting

504.605–70 Federal Procurement Data System—Public access to data.

Subpart 504.11—System for Award Management

504.1103 Procedures.

Subpart 504.13—Personal Identity Verification of Contractor Personnel

504.1301 Policy.
504.1303 Contract clause.

AUTHORITY: 40 U.S.C. 121(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 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.

(b) As used in this subpart, the term ''Contractor(s)'' means prospective contractors, subcontractors, vendors, and suppliers.

[77 FR 59792, Oct. 1, 2012]

504.475 Return of classified information.

(a) Contracting officers must recover classified information, unless it has been destroyed as provided in Section 7 of Chapter 5 of the National Industrial Security Program Operating Manual (NISPOM). Information on NISPOM can be found at *http://www.fas.org/sgp/library/nispom.htm*.

(b) Contracting officers must ensure that classified information provided by the government is returned immediately after any of the following events:

(1) Bid opening or closing date for receipt of proposals by non-responding offerors.

(2) Contract award by unsuccessful offerors.

(3) Termination or completion of the contract.

(4) Notification that authorization to release classified information has been withdrawn.

(5) Notification that a facility:

(i) Does not have adequate means to safeguard classified information; or

(ii) Has had its security clearance revoked or inactivated.

(6) Whenever otherwise instructed by the authority responsible for the security classification.

(c) The Government agency that provided classified information to a GSA contractor is responsible for the return of the information.

[77 FR 59792, Oct. 1, 2012]

Subpart 504.5—Electronic Commerce in Contracting

504.500 [Reserved]

504.502 Policy.

Use of electronic signatures is encouraged and can be used to sign and route documents in GSA's IT systems to contractually obligate funds. The method of authentication used for electronic signatures shall be consistent with the level (1–4) determined from the e-authentication risk assessment in accordance with OMB M–04–04, E-authentication Guidance for Federal Agencies, and the respective technology safeguards applicable to that level or risk from National Institute of Standards and Technology 800–63, Electronic Authentication Guideline.

[77 FR 59792, Oct. 1, 2012]

504.570 [Reserved]

Subpart 504.6—Contract Reporting

504.605–70 Federal Procurement Data System—Public access to data.

(a) *The FPDS database*. The General Services Administration awarded a contract for creation and operation of the Federal Procurement Data System (FPDS) database. That database includes information reported by departments and agencies as required by FAR subpart 4.6. One of the primary purposes of the FPDS database is to provide information on Government procurement to the public.

(b) *Fee for direct hook-up*. To the extent that a member of the public requests establishment of real-time integration of reporting services to run reports from another application, a one-time charge of $2,500 for the original integration must be paid by the requestor. This one-time charge covers the setup and certification required for an integrator to access the FPDS database and for technical assistance to help integrators use the web services. The fee will be paid to the FPDS contractor and credited to invoices submitted to GSA by the FPDS contractor.

[69 FR 77662, Dec. 28, 2004. Redesignated and amended at 77 FR 59792, Oct. 1, 2012]

Subpart 504.11—System for Award Management

504.1103 Procedures.

In addition to the requirements found in FAR 4.1103, prior to awarding a contractual instrument the contracting officer must—

(a) Verify that the prospective contractor's legal business name, Doing-Business-As (DBA) name (if any), physical street address, andunique entity identifier, as found in the System for Award Management (SAM), match the information that will be included in the contract, order, or agreement resulting from the vendor's quote or proposal. Correct any mismatches by having the vendor amend the information in the SAM and/or the quote or proposal.

(b) Ensure that the contractor's address code exists in Pegasys and that it is SAM enabled with the contractor's DUNS or DUNS+4 number. This can be done by searching Pegasys records using the contractor's Taxpayer Identification Number (TIN). If no code exists, request that a new address code be established by the Finance Center for SAM compliance.

(c) Ensure that the contractor's identifying information is correctly placed on the contractual instrument, using special care to ensure that the legal name and ''remit to'' name match exactly. (Note: Lockbox names or numbers should not be used to replace the contractor's name in the remittance block on the contractual instrument.)

(d) Unless one of the exceptions to registration in SAM applies (see FAR 4.1102(a)), the contracting officer must not award a contract to a prospective contractor who is not registered in SAM. If no exceptions are applicable, and the needs of the requiring activity allows for a delay in award, see FAR 4.1103(b)(1).

[77 FR 59792, Oct. 1, 2012, as amended at 81 FR 1532, Jan. 13, 2016; 85 FR 38337, June 26, 2020]

Subpart 504.13—Personal Identity Verification of Contractor Personnel

SOURCE: 77 FR 59793, Oct. 1, 2012, unless otherwise noted.

504.1301 Policy.

Contracting officers must follow the procedures contained in CIO P2181.1—GSA HSPD–12 Personal Identity Verification and Credentialing Handbook, which may be obtained from the CIO Office of Enterprise Solutions, to ensure compliance with Homeland Security Presidential Directive-12 (HSPD–12) ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' Office of Management and Budget Memorandum M–05–24, and Department of Commerce FIPS PUB 201.

504.1303 Contract clause.

Insert the clause at 552.204–9, Personal Identity Verification Requirements, in solicitations and contracts when it is determined that contractor employees will require access to federally controlled facilities or information systems to perform contract requirements.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 505 [RESERVED]

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.
509.106–2 Requests for preaward surveys.

Subpart 509.2 [Reserved]

Subpart 509.3—First Article Testing and Approval

509.306 Solicitation requirements.
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. 121(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.

FAR 9.105–1 lists a number of sources of information that a contracting officer may utilize before making a determination of responsibility. The contracting officer may request information directly from a prospective contractor using GSA Form 527, Contractor's Qualifications and Financial Information, but only after exhausting other available sources of information.

[83 FR 56740, Nov. 14, 2018]

509.105–2 Determinations and documentation.

(a) The contracting officer shall provide written notification to a prospective contractor determined not responsible. Include the basis for the determination. Notification provides the prospective contractor with the opportunity to correct any problem for future solicitations.

(b) Due to the potential for de facto debarment, the contracting officer shall avoid making repeated determinations of nonresponsibility based on the same past performance information.

(c) To provide for timely consideration of the need to institute action to debar a contractor, the contracting officer shall submit a copy of each nonresponsibility determination, other than those based on capacity or financial capability, to the Suspension and Debarment Official in the Office of Acquisition Policy.

[74 FR 12732, Mar. 25, 2009, as amended at 81 FR 1532, Jan. 13, 2016]

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 [Reserved]

Subpart 509.3—First Article Testing and Approval

509.306 Solicitation requirements.

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, the contracting officer must address the requirements in FAR 9.306(d) and (f) through (j) in the solicitation's Section H, special contract requirements.

[74 FR 12732, Mar. 25, 2009]

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, construction, and space in buildings.

(b) Acquisition of transportation services (Federal Management Regulation (FMR) Parts 102–117 and 102–118 (41 CFR parts 102–117 and 102–118)).

(c) Contracts for disposal of personal property (FMR Parts 102–36 through 102–38 (41 CFR parts 102–36 through 102–38)).

(d) Covered transactions as defined by 41 CFR part 105–68.

[74 FR 12732, Mar. 25, 2009]

509.403 Definitions.

Fact-finding official, means the Suspension and Debarment Official 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.

[64 FR 37207, July 9, 1999, as amended at 74 FR 12732, Mar. 25, 2009; 81 FR 1532, Jan. 13, 2016]

509.405 Effect of listing.

509.405–1 Continuation of current contracts.

(a) When a contractor appears as a current exclusion in the System for Award Management (SAM), consider terminating a contract under any of the following circumstances:

(1) Any 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) Before terminating a contract when a contractor appears as a current exclusion in the SAM, consider the following 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.)

(c) The responsibilities of the agency head under FAR 9.405–1 are delegated to the Senior Procurement Executive.

[74 FR 12732, Mar. 25, 2009, as amended at 81 FR 1532, Jan. 13, 2016]

509.405–2 Restrictions on subcontracting.

The responsibilities of the agency head under FAR 9.405–2(a) are delegated to the Senior Procurement Official.

[74 FR 12732, Mar. 25, 2009, as amended at 81 FR 1532, Jan. 13, 2016]

509.406 Debarment.

509.406–1 General.

The Suspension and Debarment Official is the designee under FAR 9.406–1(c).

[74 FR 12733, Mar. 25, 2009]

509.406–3 Procedures.

(a) *Investigation and referral.* (1) Refer to the Suspension and Debarment 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 Suspension and Debarment Official for consideration of debarment action.

(b) *Reports.* Include in referrals to the Suspension and Debarment 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 Numbers.

(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 Suspension and Debarment 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.

(c) *Review.* The Suspension and Debarment Official will review the report, and after coordinating with assigned legal counsel—

(1) Initiate debarment action;

(2) Decline debarment action;

(3) Request additional information; or

(4) Refer the matter to the OIG for further investigation and development of a case file.

(d) *Decisionmaking process.* (1) The Suspension and Debarment 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 Suspension and Debarment 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 Suspension and Debarment Official. The Suspension and Debarment 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 Suspension and Debarment 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) Following a review of the record and, if needed, a presentation by the contractor in opposition to the proposed action, the Suspension and Debarment Official will determine whether there is a genuine dispute of material fact. If so, the Suspension and Debarment Official will initiate the fact-finding process. The fact-finding official will:

(i) Establish a date for a fact-finding proceeding, normally to be held within 45 days of the determination of who will function as the fact-finding official.

(ii) Grant extensions for good cause.

(iii) Provide notice of the scheduled hearing.

(iv) Provide the parties with a schedule for exchange of documents and witness lists.

(v) Develop an official transcript of the fact-finding proceeding.

(vi) Provide the Government's representative and the contractor with an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative.

(vii) Conduct hearings under rules consistent with FAR 9.406–3 pertaining to fact finding. Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finding official.

(viii) Provide for witness testimony. Witnesses may testify in person. Witnesses are subject to cross examination.

(ix) Prepare written findings of fact based on a preponderance of the evidence and submit them to both the Suspension and Debarment Official and the contractor within 20 calendar days following the conclusion of the fact-finding proceeding.

[64 FR 37207, July 9, 1999, as amended at 74 FR 12733, Mar. 25, 2009]

509.407 Suspension.

509.407–1 General.

The Suspension and Debarment Official is the designee under FAR 9.407–1(d).

[64 FR 37207, July 9, 1999, as amended at 74 FR 12733, Mar. 25, 2009]

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 Suspension and Debarment Official finds no genuine dispute of material facts.

(2) If the action is not based on an indictment, the Suspension and Debarment Official must coordinate with the Department of Justice or state prosecutorial authority through OIG. Based on the advice received, the Suspension and Debarment 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 Suspension and Debarment 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).

[64 FR 37207, July 9, 1999, as amended at 74 FR 12733, Mar. 25, 2009]

PART 511—DESCRIBING AGENCY NEEDS

Subpart 511.2—Using and Maintaining Requirements Documents

Sec.
511.204 Solicitation provisions and contract clauses.

Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses.

Subpart 511.5—Liquidated Damages

511.504 Contract clauses.

Subpart 511.6—Priorities and Allocations

511.600 Scope of subpart.
511.601 [Reserved]
511.602 General.
511.603 Procedures.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37209, July 9, 1999, unless otherwise noted.

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

(a) *Federal specifications.* The contracting officer shall insert the clause at 552.211–72, Reference to Specifications in Drawings, in solicitations and contracts citing Federal or agency specifications that contain drawings.

(b) *Supply contracts that exceed the simplified acquisition threshold.* (1) The contracting officer shall 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) The contracting officer shall include the clause at 552.211–75, Preservation, Packaging, and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. The contracting officer shall use Alternate I in solicitations and contracts for all Federal Supply Schedule Contracts.

(3) The contracting officer shall insert a clause substantially the same as the clause at 552.211–76, Charges for Packaging, Packing, and Marking, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(4) The contracting officer shall include the clause 552.211–85, Consistent Pack and Package Requirements, 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.

(5) The contracting officer shall include the clause 552.211–86, Maximum Weight Per Shipping Container, 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.

(6) The contracting officer shall include the clause 552.211–87, Export Packing, 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.

(7) The contracting officer shall include the clause 552.211–88, Vehicle Export Preparation, 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.

(8) The contracting officer shall include the clause at 552.211–89, Non-Manufactured Wood Packaging Material for Export, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities overseas and the contract amount is expected to exceed the simplified acquisition threshold.

(9) The contracting officer shall include the clause 552.211–90, Small Parts, 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.

(10) The contracting officer shall include the clause 552.211–91, Vehicle Decals, Stickers, and Data Plates, 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.

(11) The contracting officer shall include the clause 552.211–92, Radio Frequency Identification (RFID) using Passive Tags, in solicitations and contracts for supplies when deliveries may be made to military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(c) *Supply contracts.* The contracting officer shall include the clause at

552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for all Federal Supply Schedule Contracts.

[74 FR 66253, Dec. 15, 2009, as amended by 80 FR 28849, May 20, 2015; 81 FR 36429, June 6, 2016]

Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses.

(a) *Supplies or services*—(1) *Shelf-life items*. The contracting officer shall 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:

(i) The contracting officer shall 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 program director.

(ii) The contracting officer shall 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.

(2) *Stock replenishment contracts*. The contracting officer shall 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, the contracting officer shall use Alternate I of 552.211–81.

(3) *Indeterminate testing time*. The contracting officer shall 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, the contracting officer shall use Alternate I of 552.211–83.

(4) *Stock program supply delivery time*. The contracting officer shall insert the clause at 552.211–94, Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither of the FAR delivery clauses (FAR 52.211–8 or 52.211–9) is suitable.

(b) *Construction*. (1) The contracting officer shall insert the clause at 552.211–10, Commencement, Prosecution, and Completion of Work, in solicitations and contracts when a fixed-price construction contract is contemplated.

(2) The contracting officer shall insert the clause at 552.211–70, Substantial Completion in solicitations and contracts when a fixed-price construction contract is contemplated.

[84 FR 3716, Feb. 13, 2019]

Subpart 511.5—Liquidated Damages

SOURCE: 84 FR 3716, Feb. 13, 2019, unless otherwise noted.

511.504 Contract clauses.

(a) The contracting officer shall insert the clause at 552.211–12, Liquidated Damages-Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see FAR 11.501(a)).

(b) The contracting officer shall insert the clause at 552.211–13, Time Extensions, in solicitations and contracts for construction that use the clause at 552.211–12, Liquidated Damages-Construction.

Subpart 511.6—Priorities and Allocations

SOURCE: 69 FR 55934, Sept. 16, 2004, unless otherwise noted.

511.600 Scope of subpart.

Pursuant to the Defense Priorities and Allocations System (DPAS) Delegation 3, the Department of Commerce (DOC) has delegated to GSA the authority to use the DPAS under certain conditions. DPAS Delegation 3 restricts use of DPAS authority to GSA supply system procurement in support

of the Department of Defense (DoD), Department of Energy (DoE), and Federal Emergency Management Agency (FEMA) approved programs.

[74 FR 66254, Dec. 15, 2009]

511.601 [Reserved]

511.602 General.

(a) The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate to the DOC authority to administer the DPAS. Within the DOC, the Office of Strategic Industries and Economic Security (SIES) is assigned responsibility for DPAS implementation, administration, and compliance.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are ''rated orders.'' Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either ''DX'' or ''DO'' followed by a program identification symbol. All ''DO'' rated orders have equal priority with each other and take preference over unrated orders. All ''DX'' rated orders have equal priority with each other and take preference over ''DO'' rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) The authority delegated to GSA shall not be used to support the procurement of any items that—

(1) Are commonly available in commercial markets for general consumption;

(2) Do not require major modification when purchased for approved program use;

(3) Are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or

(4) Are to be used primarily for administrative purposes (including Federal Supply Classification (FSC) classes, groups, or items), such as for personnel or financial management. The Commissioner, FAS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority.

[74 FR 66254, Dec. 15, 2009]

511.603 Procedures.

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract. FAR 11.604 requires contracting officers to insert the provision at 52.211–14, Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use, in solicitations when the contract or order to be awarded will be a rated order and to insert the clause at 52.211–15, Defense Priority and Allocation Requirements, in contracts that are rated orders.

(b) In addition to the FAR provision and clause referenced in paragraph (a) of this section, the contract or order must include the following (*see* 15 CFR 700.12):

(1) The appropriate priority rating symbol (*i.e.*, either ''DO'' or ''DX'') along with the program identification symbol. When GSA contracting officers place DO rated orders, they must use program identification symbol ''K1''. When placing a DX-rated order for other agencies, GSA contracting officers must use the requesting agency program identification symbol from the DoD Master Urgency List and may only do so when GSA is acting as the procuring agent for DoD or DoE and has received a ''DX'' rated contract or order from either department.

(2) A required delivery date. The words ''as soon as possible'' or ''immediately'' do not constitute a required delivery date. Use of either a specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4) A statement that reads substantially as follows: ''This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)''.

(c) Multiple and Single Award Schedule contracts are not rated at time of award.

[74 FR 66254, Dec. 15, 2009]

PART 512—ACQUISITION OF COMMERCIAL ITEMS

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

Sec.

512.216 Unenforceability of unauthorized obligations.

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.

AUTHORITY: 40 U.S.C. 121(c).

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

512.216 Unenforceability of unauthorized obligations.

GSA has a deviation to FAR 12.216 for this section. For commercial contracts, supplier license agreements are referred to as commercial supplier agreements (defined in 502.101). Paragraph (u) of clause 552.212–4 prevents violations of the Anti-Deficiency Act (31 U.S.C. 1341) for supplies or services acquired subject to a commercial supplier agreement.

[83 FR 7634, Feb. 22, 2018]

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) 552.212–71, 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.

(2) 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.

(b) *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.

(c) *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.

(d) In solicitations issued in conjunction with the policy and procedures in FAR part 14, Sealed Bidding; or FAR part 15, Contracting by Negotiation, include the two notices in paragraphs (d)(1) and (d)(2) of this section, except that acquisitions of leasehold interests in real property, must include only the notice in paragraph (d)(1) of this section.

(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) The General Services Administration's hours of operation are 8 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.

(e) GSA has a deviation to revise certain paragraphs of FAR clause 52.212–4. Use clause 552.212–4 Contract Terms and Conditions–Commercial Items (FAR DEVIATION), for acquisitions of commercial items in lieu of FAR 52.212–4 or 52.212–4 Alternate I. The contracting officer may tailor this clause in accordance with FAR 12.302 and GSAM 512.302.

[75 FR 5242, Feb. 2, 2010, as amended at 83 FR 7634, Feb. 22, 2018]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 513.2—Actions at or Below the Micro-Purchase Threshold

Sec.
513.202 Unenforceability of unauthorized obligations in micro-purchases.

Subpart 513.3—Simplified Acquisition Methods

513.302 Purchase orders.
513.302–5 Clauses.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 83 FR 7634, Feb. 22, 2018, unless otherwise noted.

Subpart 513.2—Actions at or Below the Micro-Purchase Threshold

513.202 Unenforceability of unauthorized obligations in micro-purchases.

Clause 552.232–39, Unenforceability of Unauthorized Obligations (FAR DEVIATION), will automatically apply to any micro-purchase in lieu of FAR 52.232–39 for supplies and services acquired subject to a commercial supplier agreement (as defined in 502.101).

Subpart 513.3—Simplified Acquisition Methods

513.302–5 Clauses.

Where the supplies or services are offered under a commercial supplier agreement (as defined in 502.101), the purchase order or modification shall incorporate clause 552.232–39, Unenforceability of Unauthorized Obligations (FAR DEVIATION), in lieu of FAR 52.232–39, and clause 552.232–78, Commercial Supplier Agreements–Unenforceable Clauses.

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 [Reserved]
514.202 General rules for solicitation of bids.
514.202–4 Bid samples.
514.202–5 Descriptive literature.
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. 121(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 using 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 that requires payment sooner than the time stipulated in the Prompt Payment clause (See FAR 52.232–25, 52.232–26, or 52.232–27, as applicable). EXAMPLE: If you insert ''NET 20'' in Item 13, GSA will reject your bid as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.''

(b) When using other authorized forms (e.g., Standard Form 1447, Solicitation/Contract; Standard Form 1449, Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

[74 FR 47738, Sept. 17, 2009]

514.201–6 Solicitation provisions.

When considering all or none bids, insert the provision at 552.214–70, ''All or None'' Bids, in the solicitation.

[74 FR 47739, Sept. 17, 2009]

514.201–7 [Reserved]

514.202 General rules for solicitation of bids.

514.202–4 Bid samples.

(a) *Requirements for samples in invitations for bids.* (1) When bid samples are required, the contracting officer shall 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 the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics. The contracting officer may determine that there is a need to examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list ''Subjective Characteristics'' and ''Objective Characteristics''.

(3) A provision appears at 552.214–72, Bid Sample Requirements. This provision may be modified to fit the circumstances of a procurement.

(b) *Handling bid samples.* (1) Samples from accepted bids must be retained for the period of contract performance. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the end of the contract term following the bidder's instructions.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of following the bidder's instructions.

[74 FR 47739, Sept. 17, 2009]

514.202–5 Descriptive literature.

Requirements for Invitations for bids. When using brand name or equal purchase descriptions, the provision at FAR 52.211–6 satisfies the requirement for descriptive literature.

[74 FR 47739, Sept. 17, 2009]

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) Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

(5) One location (delivery point) has a large requirement, and another location has a requirement too small to individually attract competitive bids.

(6) Awarding and administering numerous small contracts for similar articles or services is impractical.

(b) Before deciding to combine items for aggregate award, the contracting officer should 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) The contracting officer should not use an aggregate award if it will significantly restrict the number of eligible bidders.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

514.270–3 Evaluation factors for award.

The solicitation should clearly state 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, and advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

[74 FR 47739, Sept. 17, 2009]

514.270–4 Grouping line items for aggregate award.

(a) *Supplies and services.* This subsection applies to acquisitions of supplies and services.

(b) *Effect on compeition.* Provide for full and open competition when grouping 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 responded 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 the loss of ''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.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

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 there are 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) Estimated quantities may be reduced to smaller numbers by a common denominator. This may help facilitate the computations involved in evaluating bids.

(e) Consider all price-related factors 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.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

514.270–7 Guidelines for using the price list method.

(a) *General.* The price list method helps avoid unbalanced bidding when making 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 using the price list method, 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.* Price lists may be developed 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 the contracting officer uses 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. This information may be provided 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. Prices may be used 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 the Government's needs cannot be estimated, 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 providing 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) When the solicitation further groups unit prices by trade or business category, multiple percentages may be required.

(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.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

Subpart 514.4—Opening of Bids and Award of Contract

514.407 Mistakes in bids.

514.407–3 Other mistakes disclosed before award.

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:

(a) The determinations regarding corrections and withdrawals under FAR 14.407–3(a), (b), and (c); and

(b) The corollary determinations not to permit withdrawal or correction under FAR 14.407–3(d).

[74 FR 47740, Sept. 17, 2009]

514.407–4 Mistakes after award.

The contracting director and assigned counsel are required to review and approve the contracting officer's determinations under FAR 14.407–4(b) and (c).

[74 FR 47740, Sept. 17, 2009]

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.2—Solicitation and Receipt of Proposals and Information

Sec.
515.204 Contract format.
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.

AUTHORITY: 40 U.S.C. 121(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.

(a) The uniform contract format is not required for leases of real property (See GSAM 570.116).

(b) The Senior Procurement Executive is the agency head's designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e)).

[81 FR 36425, June 6, 2016]

515.209 Solicitation provisions and contract clauses.

515.209–70 Examination of records by GSA clause.

Clause for Other Than Multiple Award Schedules

(a) *Examination of records by GSA clause for other than multiple award schedule (MAS) contracts.* Insert the clause at 552.215–70, Examination of Records by GSA, in all solicitations and contracts above the simplified acquisition threshold, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

(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.

(9) The contracting officer 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). Office of General Counsel or the Office of Regional Counsel and the Assistant Inspector General for Auditing or Regional Inspector General for Auditing, as appropriate, must concur in any modifications to the clause.

(b) Insert the clause at 552.215–73, Notice, in all solicitations for negotiated procurements above the simplified acquisition threshold in accordance with FAR part 15.

[64 FR 37214, July 9, 1999, as amended at 81 FR 36425, June 6, 2016; 84 FR 17039, Apr. 23, 2019]

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) Use Alternate 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 solicitations to provide the format for submission of information other than cost or pricing data for MAS solicitations. To provide uniformity in requests under the MAS program, 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.* When the solicitation contains the basic clause 552.238–80 Industrial Funding Fee and Sales Reporting, the Offeror must submit information in the format provided in this solicitation in accordance with the instructions at Figure 515.4–2 of the GSA Acquisition Regulation (48 CFR 515.4–2), 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) When the contract contains the basic clause 552.238–80 Industrial Funding Fee and Sales Reporting, 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 mostrecent 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/SINoffered, 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) When the contract contains the basic clause 552.238–80 Industrial Funding Fee and Sales Reporting, include the instructions for completing the commercial sales practices format in Figure 515.4–2 in solicitations issued under the MAS program. Offerors are not required to complete the commercial sales practices disclosure for order-level materials (See subpart 538.72).

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 552.238–81. 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 calendar 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) When the contract contains the basic clause 552.238–80 Industrial Funding Fee and Sales Reporting, insert the clause at 552.215–72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts under the MAS program.

(e) 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, insert the following in paragraph (b) of the clause:

(1) Information required by the clause at 552.238–81, 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; 81 FR 41136, June 23, 2016; 83 FR 3279, Jan. 24, 2018; 84 FR 17039, Apr. 23, 2019]

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.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37218, July 9, 1999, unless otherwise noted.

Subpart 516.2—Fixed Price Contracts

516.203–4 Contract clauses.

(a) *Special Order Program Contracts.* In multiyear solicitations and contracts, after making the determination required by FAR 16.203–3, use 552.216–71, Economic Price Adjustment Special Order Program Contracts, or a clause prepared as authorized in paragraph (a)(3) 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 Alternate 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.

(b) *Adjustments based on cost indexes of labor or material.* (1) If the contracting officer decides 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; and

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

[75 FR 41095, July 15, 2010]

Subpart 516.5—Indefinite-Delivery Contracts

516.506 Solicitation provisions and contract clauses.

(a) In solicitations and contracts for Special Order Program items, when the contract authorizes FAS and other activities to issue delivery or task orders, insert the clause at 552.216–72, Placement of Orders. If only FAS will issue delivery or task orders, insert the clause with its Alternate I.

(b) In solicitations and contracts for multiple-award contracts where GSA is the only ordering activity, or for GSA orders placed against a GSA multiple-award contract, insert clause 552.216–74, GSA Task-Order and Delivery-Order Ombudsman. This clause shall not be included in GSA-awarded contracts available for multiple agency use (*i.e.*, Governmentwide Acquisition Contracts, Multi-Agency Contracts); instead, see paragraph (d) of this section.

(c) If the clause at 552.216–72 is prescribed, insert the provision at 552.216–73, Ordering Information, in solicitations for Special Order Program items and in other FAS Program solicitations.

(d) Insert clause 552.216–76, Ordering Agency Task-Order and Delivery-Order Ombudsman in all GSA-awarded contracts available for multiple agency use (*i.e.*, Governmentwide Acquisition Contracts, Multi-Agency Contracts).

(e) The Contracting Officer may insert clause 552.216–75 in solicitations and GSA-awarded IDIQ contracts, not including Federal Supply Schedule (FSS) contracts. This clause should be included in all GSA-awarded Governmentwide acquisition contracts and multi-agency contracts. See 538.273 for clauses applicable to FSS contracts.

[75 FR 41096, July 15, 2010, as amended at 81 FR 41136, June 23, 2016; 82 FR 2250, Jan. 9, 2017]

EFFECTIVE DATE NOTE: At 85 FR 50959, Aug. 19, 2020, § 516.506 was amended by:

a. Removing from paragraph (a), ''authorizes FAS'' and adding ''authorizes the Federal Acquisition Service (FAS)'' in its place.

b. Removing paragraphs (b) and (d); and

c. Redesignating paragraphs (c) and (e) as paragraphs (b) and (c) respectively; effective Oct. 19, 2020.

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.1—Multi-year Contracting

Sec.
517.109 Contract clauses.

Subpart 517.2—Options

517.200 Scope of subpart.
517.202 Use of options.
517.203 [Reserved]
517.207 Exercise of options.
517.208 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37218, July 9, 1999, unless otherwise noted.

Subpart 517.1—Multi-year Contracting

517.109 Contract clauses.

Use of FAR 52.217–2, Cancellation Under Multi-year Contracts, is optional in multi-year contracts authorized by 40 U.S.C. 581(c)6 for maintenance and repair of fixed equipment in federally-owned buildings and services and 40 U.S.C. 501(b)(1)(B) for public utility services.

[64 FR 37218, July 9, 1999, as amended at 81 FR 36422, June 6, 2016]

Subpart 517.2—Options

517.200 Scope of subpart.

(a) Except as provided in paragraph (b) of this section, this subpart applies to contracts for supplies and services, including architect-engineer services.

(b) Policies and procedures for the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property are prescribed in 536.270. FAR subpart 17.2 and this subpart do not apply to the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

[84 FR 3717, Feb. 13, 2019]

517.202 Use of options.

(a) Options may be used when they meet one or more of the following objectives:

(1) Reduce procurement lead time and associated costs.

(2) Ensure continuity of contract support.

(3) Improve overall contractor performance.

(4) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(b) An option is normally in the Government's interest in the following circumstances:

(1) There is an anticipated need for additional supplies or services during the contract term.

(2) When there is both a need for additional supplies or services beyond the basic contract period and the use of multi-year contracting authority is inappropriate.

(3) There is a need for continuity of supply or service support.

(c) An option shall not be used if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

[84 FR 3716, Feb. 13, 2019]

517.203 [Reserved]

517.207 Exercise of options.

In addition to the requirements of FAR 17.207, the Contracting Officer must also:

(a) Document the contract file with the rationale for an extended contractual relationship if the contractor's performance rating under the contract is less than satisfactory.

(b) Determine that the option price is fair and reasonable.

[81 FR 36423, June 6, 2016]

517.208 Solicitation provisions and contract clauses.

(a) For solicitations under the Federal Acquisition Service's 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.

[64 FR 37218, July 9, 1999, as amended at 81 FR 36422, June 6, 2016]

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

519.708–70 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. 121(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

519.708–70 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.

[64 FR 37219, July 9, 1999, as amended at 77 FR 10666, Feb. 23, 2012]

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

Subpart 522.1—Basic Labor Policies

Sec.
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.
522.804–2 Construction.
522.805 Procedures.
522.807 Exemptions.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37220, July 9, 1999, unless otherwise noted.

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.

522.101–1 General.

The Office of General Counsel (OGC) and the agency labor advisor shall—

(a) Serve as the GSA points of contact on all contractor labor relations matters;

(b) Initiate contact on contractor labor relations matters with national offices of labor organizations, Government departments, agencies or other governmental organizations. Contracting offices shall notify OGC and the agency labor advisor when they are contacted by such external organizations;

(c) Serve as a clearinghouse for information on labor laws applicable to Government acquisitions; and

(d) Respond to questions involving FAR Part 22, Application of Labor Laws to Government Acquisitions, or other contractor labor relations matters concerning GSA acquisition programs. OGC determines the agency's legal position.

[73 FR 46203, Aug. 8, 2008]

522.103–5 Contract clauses.

Insert FAR 52.222–1, Notice to the Government of Labor Disputes, in solicitations and contracts for DX rated orders under the Defense Priorities and Allocations System (DPAS). Information on the DPAS can be found at FAR Subpart 11.6, Priorities and Allocations.

[73 FR 46203, Aug. 8, 2008]

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.406 Administration and enforcement.

522.406–6 Payrolls and statements.

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.

[73 FR 46203, Aug. 8, 2008]

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.

Contracting officers should submit questions on the applicability of E.O. 11246 and implementing regulations to assigned legal counsel.

[64 FR 37220, July 9, 1999, as amended at 73 FR 46203, Aug. 8, 2008]

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 that either:

(1) Serves as a depository of Government funds; or

(2) Is a financial institution serving as an issuing and paying agent for U.S. savings bonds and savings notes.

(b) The contractors, subcontractors, and financial institutions described in 522.804–1(a) must develop a written affirmative action compliance program for each of its establishments regardless of the contract or holding value, in accordance with 41 CFR 60–1.40.

[64 FR 37220, July 9, 1999, as amended at 73 FR 46203, Aug. 8, 2008]

522.804–2 Construction.

Construction contractors and subcontractors are required to set trade participation goals for minorities and women based on percentages established by the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor. The goals can be found on OFCCP's website at *https://www.dol.gov/agencies/ofccp/construction*.

[85 FR 38337, June 26, 2020]

522.805 Procedures.

(a) To determine whether the contract meets the threshold in FAR 22.805(a), contracting officers shall 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) Contracting officers shall submit preaward clearance requests directly to the appropriate OFCCP regional office. A list of OFCCP regional offices can be found on OFCCP's website at *https://ofccp.dol-esa.gov/preaward/pa_reg.html*.

(c) The EEO poster required by FAR 22.805(b) can be found at: *https://www.dol.gov/agencies/ofccp/posters*.

[64 FR 37220, July 9, 1999, as amended at 73 FR 46203, Aug. 8, 2008; 81 FR 1532, Jan. 13, 2016; 85 FR 38337, June 26, 2020]

522.807 Exemptions.

The agency labor advisor submits a request for exemption.

PART 523—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 523.3—Hazardous Material Identification and Material Safety Data

Sec.
523.303 Contract clauses.
523.370 Solicitation provision.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37220, July 9, 1999, unless otherwise noted.

Subpart 523.3—Hazardous Material Identification and Material Safety Data

523.303 Contract clauses.

(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.

(c) Insert 552.223–73, Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments, in solicitations and contracts for packaged items containing hazardous materials.

[64 FR 37220, July 9, 1999, as amended at 80 FR 36248, June 24, 2015]

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]

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37221, July 9, 1999, unless otherwise noted.

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.
528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
528.311–1 Contract clause.

AUTHORITY: 40 U.S.C. 121(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. The contracting officer 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.)

[74 FR 17099, Apr. 14, 2009]

Subpart 528.3—Insurance

528.310 Contract clause for work on a Government installation.

Insert the clause at 552.228–5, Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

(a) The contract amount is expected to exceed the simplified acquisition threshold; and

(b) The contract will require work to be performed on Government property.

[74 FR 17099, Apr. 14, 2009]

528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

528.311–1 Contract clause.

Use the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

[74 FR 17099, Apr. 14, 2009]

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 micropurchase 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 532.7—Contract Funding

532.705 Unenforceability of unauthorized obligations.
532.706–3 Clause for unenforceability of unauthorized obligations.

Subpart 532.8—Assignment of Claims

532.806 Contract clauses.

Subpart 532.9—Prompt Payment

532.904 Determining payment due dates.
532.905 Payment documentation and process.
532.905–70 Final payment—construction and building service contracts.
532.908 Contract clauses.

Subpart 532.70—Authorizing Payment by Government Charge Card

532.7002 Solicitation requirements.
532.7003 Contract clause.

AUTHORITY: 40 U.S.C. 121(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.

Insert the clause at 552.232–5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

[84 FR 3717, Feb. 13, 2019]

Subpart 532.7—Contract Funding

532.705 Unenforceability of unauthorized obligations.

Supplier license agreements defined in FAR 32.705 are equivalent to commercial supplier agreements defined in 502.101.

532.706–3 Clause for unenforceability of unauthorized obligations.

(a) The contracting officer shall utilize the clause at 552.232–39, Unenforceability of Unauthorized Obligations (FAR DEVIATION) in all solicitations and contracts in lieu of FAR 52.232–39.

(b) The contracting officer shall utilize the clause at 552.232–78, Commercial Supplier Agreements—Unenforceable Clauses, in all solicitations and contracts (including orders) when not using FAR part 12.

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

532.904 Determining payment due dates.

Payment due dates for construction contracts are addressed at FAR 32.904(d). The following procedures apply to construction and building service contracts:

(a) 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.

(5) The agreed-upon dollar amount in a Deficiency Report, which is included in all applicable Operation and Maintenance (O&M) service contracts.

(b) When the contract is for the performance of building services, the contracting officer shall include the clause at 552.232–72, Final Payment Under Building Services Contracts.

[74 FR 54917, Oct. 26, 2009]

532.905 Payment documentation and process.

For contracts of the type shown in 532.7201(a)(1) through (4):

(a) Contractors are to submit invoices or vouchers to the contracting officer for approval. Invoices must be annotated with the date of receipt, as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The contracting officer or designee must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer must make the required deduction, except as provided in 532.7203. Subject to 532.7201, the contracting officer must note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor and forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

(b) See GSAM 532.7203 for the handling of audit findings.

[74 FR 54917, Oct. 26, 2009]

EFFECTIVE DATE NOTE: At 85 FR 61872, Oct. 1, 2020, 532.905 was amended by removing from paragraph (a) ''amount due the Contractor'' and adding ''amount due to the contractor'' in its place; revising paragraph (b); and removing paragraphs (c) and (d), effective Nov. 30, 2020. For the convenience of the user, the revised text is set forth as follows:

532.905–70 Final payment—construction and building service contracts.

* * * * *

(b) A contracting officer may only process the final payment for a construction or building service contract once:

(1) The contractor submits a properly executed GSA Form 1142, Release of Claims; or

(2) The contracting officer documents in the contract file:

(i) That the contracting officer requested a release of claims from the contractor and did not receive a response within 60 calendar days; and,

(ii) Approval to process the final payment from one level above the contracting officer.

532.905–70 Final payment—construction and building service contracts.

The following procedures apply to construction and building service contracts:

(a) The Government shall pay the final amount due the Contractor under this contract after the documentation in the payment clauses of the contract is submitted. This includes the final release prescribed for construction at FAR 52.232–5, and for building services at GSAR 552.232–72.

(b) Contracting officers may not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims, except as provided in paragraph (c) of this section.

(c) In cases where, after 60 days from the initial attempt, the contracting officer is unable to obtain a release of claims from the contractor, the final payment may be processed with the approval of assigned legal counsel.

(d) 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) Amount withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

[77 FR 6987, Feb. 10, 2012]

532.908 Contract clauses.

(a) GSA has a FAR deviation that allows this agency to use the clause at 552.232–1, Payments, in lieu of the clause at FAR 52.232–1, Payments.

(b) *General*. Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in paragraph (a)(5)(i) of the clause at FAR 52.232–25, Prompt Payment, the contracting officer must prepare a written justification explaining why a longer period is necessary. An official one level above the contracting officer must approve the justification. The time needed should be determined on a case-by-case basis, but the specified constructive acceptance period shall not exceed 30 days.

(c) *Stock, Special Order, and Schedules Programs*. (1) GSA has obtained a FAR Deviation to authorize payment within 10 days of receipt of a proper invoice. The authority applies only to:

(i) Orders placed by GSA under the referenced programs;

(ii) That include FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment; and

(iii) For which the order is placed, and the contractor submits invoices, using EDI in accordance with the Trading Partner Agreement.

(2) If the contract is for commercial items and will include FAR 52.212–4, use the clause with its Alternate II. If the contract is not for commercial items, use the clause at 552.232–25, Prompt Payment, instead of FAR 52.232–25.

[74 FR 54918, Oct. 26, 2009]

Subpart 532.70—Authorizing Payment by Government Charge Card

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.

For indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Schedules, insert the clause at 552.232–77, Payment By Government Charge Card, if the contract will provide for payment by Government charge card as an alternative method of payment for orders. For Schedule contracts that provide for payment using the Government charge card, use the clause(s) prescribed at part 538.

[74 FR 54918, Oct. 26, 2009]

PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1—Protests

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533.103 Protests to the agency.
533.103–1 Filing a protest.

Subpart 533.2—Disputes and Appeals

533.209 Suspected fraudulent claims.
533.211 Contracting officer's decision.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37224, July 9, 1999, unless otherwise noted.

Subpart 533.1—Protests

533.103 Protests to the agency.

533.103–1 Filing a protest.

(a) Any protester filing an agency protest has the choice of requesting either that the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest. If a party requests a review at a level above the contracting officer, the Agency Protest Official will decide the protest. The decision by the Agency Protest Official for GSA is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official for GSA will not consider an appeal of the contracting officer's decision on an agency protest.

(b) If an agency protest is filed, the deciding official uses the procedures in FAR 33.103 and this section to resolve the protest. The deciding official will provide a fair and quick review of any protest filed with the agency.

(c) The filing timeframes in FAR 33.103(e) apply. An agency protest is filed when the complete protest is received at the location the solicitation designates for serving protests. GSA's hours of operation are 8 a.m. to 4:30 p.m. Protests delivered after 4:30 p.m. will be considered received and filed the following business day.

(d) The protest must meet all the following conditions:

(1) Include the information required by FAR 33.103(d)(2).

(2) Indicate that it is a protest to the agency.

(3) Be filed in writing with the contracting officer.

(4) State whether the protester chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest does not include the protester's choice, then the contracting officer will decide the protest (see paragraph (a) of this subsection).

(e) The following procedures apply to information submitted in support of or in response to an agency protest:

(1) GSA procedures do not provide for any discovery.

(2) The deciding official has discretion to request additional information from either the agency or the protester, orally or in writing, as may be necessary to render a timely decision on the protest. However, protests are normally decided on the basis of information initially provided by the protester and the agency.

(3) To the extent permitted by law and regulations, the parties may exchange relevant information.

(4) The agency must make a written response to the protest within ten days unless another date is set by the deciding official.

(5) The agency must also provide the protester with a copy of the response on the same day it files the protest response with the deciding official. If the agency believes it needs to redact or withhold any information in the response from the protester, it should identify and provide the information to the deciding official for *in camera* review.

(f) A protester may represent itself or be represented by legal counsel. GSA will not reimburse the protester for any legal fees related to the agency protest.

(g) 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.

[73 FR 74614, Dec. 9, 2008]

Subpart 533.2—Disputes and Appeals

533.209 Suspected fraudulent claims.

In GSA, the agency official responsible for investigating fraud is the Office of Inspector General.

[73 FR 74614, Dec. 9, 2008]

533.211 Contracting officer's decision.

The contracting officer's written decision must include the paragraph at FAR 33.211(a)(4)(v). The contracting officer shall state in the decision that a contractor's notice of appeal to the Civilian Board of Contract Appeals

(CBCA) should include a copy of the contracting officer's decision.

[73 FR 74614, Dec. 9, 2008]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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536.7105–8 Conversion to firm-fixed-price.
536.7106 Construction contract closeout.
536.7107 Contract clauses.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37224, July 9, 1999, unless otherwise noted.

Subpart 536.1—General

536.101 Applicability.

This part supplements FAR Part 36 policies and procedures applicable to contracting for construction and architect-engineer services. Contracts for construction management services are covered by FAR Part 37 and GSAM Part 537. Part 536 shall take precedence when the acquisition involves (1) construction or architect-engineer services, and (2) when the requirement is inconsistent with another part of the GSAR.

[81 FR 4594, Jan. 27, 2016]

536.102 Definitions.

Construction-Manager-as-Constructor (CMc) means the project delivery method where design and construction are contracted concurrently through two separate contracts and two separate contractors. Unlike the traditional design-bid-build delivery method, under the CMc delivery method, the Government awards a separate contract to a designer (*i.e.*, architect-engineer contractor) and to a construction contractor (*i.e.*, CMc contractor) prior to the completion of the design documents. The Government retains the CMc contractor during design to work with the architect-engineer contractor to provide constructability reviews and cost estimating validation. The CMc contract includes design phase services at a firm-fixed-price and an option for construction at a guaranteed maximum price.

[84 FR 69632, Dec. 19, 2019]

Subpart 536.2—Special Aspects of Contracting for Construction

SOURCE: 84 FR 3717, Feb. 13, 2019, unless otherwise noted.

536.270 Options in construction contracting.

536.270–1 Use of options.

(a) Subject to the limitations in this section, contracting officers may include options in contracts when it is in the Government's interest.

(b) The scope of work in the base contract at award shall require the contractor to provide a discrete and fully functional deliverable. Options shall not be used to incrementally deliver work required to fulfill the requirements of the scope of work for the base contract.

(c) Contracting officers shall justify in writing the use of options.

(d) Including an option may be in the Government's interest when, in the judgment of the contracting officer:

(1) Additional work beyond the base contract is reasonably foreseeable;

(2) It would not be advantageous to award a separate contract;

(3) It would not be advantageous to permit an additional contractor to work on the same site;

(4) Services arising out of or relating to the underlying construction contract may be required during or after substantial completion of the scope of work. For instance, if building equipment (e.g., mechanical and electrical equipment) will be installed under the construction contract, it may be advantageous to have the construction contractor maintain and service the equipment. In such an instance, the services performed may be included as an option to the underlying construction contract. Contracting officers shall ensure that the applicable clauses are included in any such option (e.g., Service Contract Act); or

(5) It is otherwise justified.

(e) Options for construction work may provide for an economic price adjustment based on cost or price indexes of labor or materials (see FAR 16.203–4(d)). Subject to the approval of the Head of the Contracting Activity (HCA), the contracting officer may develop and insert a project-specific price adjustment clause into the solicitation.

536.270–2 Solicitations.

Solicitations containing options shall:

(a) Include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 536.270–5);

(b) State the period within which the options may be exercised; and

(c) State whether the basis of evaluation is inclusive or exclusive of the options (if exclusive, see 536.270–4(c)).

536.270–3 Evaluation.

For sealed bidding that includes options:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and all options designated to be evaluated.

(b) Before opening bids that include options, the contracting officer must 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. This amount may be increased later when determining the items to be awarded to the low bidder if the following condition is met: The award amount of the base bid and evaluated options does not exceed the amount offered for the base bid, the evaluated options, and the same combination of items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the options to be used.

536.270–4 Exercise of options.

(a) The contracting officer shall exercise options in writing within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining, in writing, 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.

(4) The contractor is not listed in the System for Award Management Exclusions (see FAR 9.405–1).

(5) 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.

(6) Exercising the option is in accordance with the terms of the option.

(7) The option price is fair and reasonable, unless already determined as such (e.g., at time of award).

(c) 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).

(d) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

536.270–5 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 552.236–74, Evaluation of Options, in solicitations for fixed-price construction contracts when the solicitation contains an option clause and options will be included in the evaluation for award purposes.

(b) Insert a provision substantially the same as the provision at 552.236–75, Evaluation Exclusive of Options, in solicitations for fixed-price construction contracts when the solicitation includes an option clause and options will not be included in the evaluation for award purposes.

(c) Insert a provision substantially the same as the provision at 552.236–76, Basis of Award-Sealed Bidding Construction, in solicitations for fixed-price construction contracts when contracting by sealed bidding. Use the provision with its Alternate I when the solicitation contains an option clause.

(d) Insert a clause substantially the same as the clause at 552.236–77, Government's Right to Exercise Options, in solicitations and contracts for construction that include options.

Subpart 536.5—Contract Clauses

SOURCE: 84 FR 3717, Feb. 13, 2019, unless otherwise noted.

536.506 Superintendence by the contractor.

Insert the clause at 552.236–6, Superintendence by the Contractor, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.511 Use and possession prior to completion.

Insert the clause at 552.236–11, Use and Possession Prior to Completion, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.515 Schedules for construction contracts.

Insert the clause at 552.236–15, Schedules for Construction Contracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause:

(a) With its Alternate I when the contract amount is expected to be above the simplified acquisition threshold and a design-bid-build project delivery method will be followed.

(b) With its Alternate II when the contract amount is expected to be above the simplified acquisition threshold and a design-build project delivery method will be followed.

(c) With its Alternate III when the contract amount is expected to be above the simplified acquisition threshold and a construction-manager-as-constructor project delivery method will be followed.

[84 FR 3717, Feb. 13, 2019, as amended at 84 FR 69632, Dec. 19, 2019]

536.521 Specifications and drawings for construction.

Insert the clause at 552.236–21, Specifications and Drawings for Construction, in solicitations and contracts if construction, dismantling, demolition,

or removal of improvements is contemplated. Use the clause:

(a) With its Alternate I when a design-build project delivery method will be followed.

(b) With its Alternate II when a construction-manager-as-constructor project delivery method will be followed.

[84 FR 69632, Dec. 19, 2019]

536.570 Authorities and limitations.

Insert the clause at 552.236–70, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.571 Contractor responsibilities.

Insert the clause at 552.236–71, Contractor Responsibilities, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause:

(a) With its Alternate I when a design-build project delivery method will be followed.

(b) With its Alternate II when a construction-manager-as-constructor project delivery method will be followed.

[84 FR 69633, Dec. 19, 2019]

536.572 Submittals.

Insert the clause at 552.236–72, Submittals, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.573 Subcontracts.

Insert the clause at 552.236–73, Subcontracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

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 (FedBizOpps 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 (FedBizOpps 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, as amended at 81 FR 1532, Jan. 13, 2016]

SUBPART 536.70 [Reserved]

Subpart 536.71—Construction-Manager-as-Constructor Contracting

SOURCE: 84 FR 69633, Dec. 19, 2019, unless otherwise noted.

536.7101 Scope of subpart.

This subpart describes policies and procedures for the use of the CMc project delivery method.

536.7102 Definitions.

As used in this subpart—

CMc Contingency Allowance (CCA) means an allowance for the exclusive use of the construction contractor to cover reimbursable costs during construction that are not the basis of a change order. These costs could include estimating, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

Cost means allowable costs in accordance with FAR Part 31.

Cost of Performance means the final sum of cost of the construction work and fee for the construction work.

Early Work Package means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

Estimated Cost of the Work (ECW) means the estimated cost of the construction work, not including home office overhead.

Fee for the Construction Work means the amount established in the construction contract for the contractor's profit and home office overhead costs, as described in FAR part 31, for the construction work.

Guaranteed Maximum Price (GMP) means the sum of the ECW, CCA, and the fee for the construction work.

536.7103 Construction contract solicitation procedures.

(a) *Procurement Timing.* The request for proposals should be issued only when the project design requirements have been developed to a sufficient degree of specificity to permit competition with meaningful pricing for the ECW. The contracting officer should obtain written documentation for the contract file from the project manager that the project design requirements satisfy the condition stated in this section.

(b) *Proposal Evaluation.*

(1) *Evaluation Factors.*

(i) Except as provided in paragraph (ii) of this section, the solicitation shall provide that the technical evaluation factors, when combined, shall be considered significantly more important than cost or price.

(ii) Subject to the approval of the HCA, the weighting of the technical evaluation factors and cost or price may be different than that required under paragraph (i) of this section. Any such written approval shall be documented in the contract file.

(2) *Price Realism.* The contracting officer shall provide for a price realism analysis in the solicitation for the purpose of assessing, among others, whether an offeror's price reflects a lack of understanding of the contract requirements or risk inherent in an offeror's proposal. The solicitation shall provide offerors with notice that the agency intends to perform a price realism analysis.

(3) *Total Evaluated Price.* For purposes of evaluation, the total evaluated price shall include the firm-fixed-price for design phase services, the construction work GMP option(s), and any other fixed-priced line items. If advance pricing elements such as extended overhead rates and daily delay rates are proposed, those shall also be evaluated as part of the total evaluated price.

(c) *Government Budget (e.g., Prospectus) Information.* Subject to the approval of the contracting director, the solicitation may include information contained or referenced within a prospectus submission to Congress for a project.

536.7104 Construction contract award.

In accordance with FAR 4.1001, the contracting officer shall use the SF 1442 to identify the services or items to be acquired as separately identified line items on a unit price or lump sum

basis including the design phase services, the construction work GMP option(s), and any other work not included in the previously identified items.

536.7105 Construction contract administration.

536.7105–1 Responsibilities.

(a) During all phases of the project, the architect-engineer contractor that is providing design services under a separate contract with GSA is contractually responsible for the design in the same manner as under a traditional, design-bid-build project delivery method.

(b) The design phase services provided by the construction contractor can include, but are not limited to, scheduling, systems analysis, subcontractor involvement, cost-estimating, constructability reviews, cost-reconciliation services, and market analysis.

(c) The scope of work should task the construction contractor with reviewing the design documents and providing pricing information at various defined milestones during the design phase.

(d) During the design phase, the architect-engineer contractor and the construction contractor shall collaborate on the design and constructability issues. The goal of this collaboration is to establish a final ECW that does not exceed the original target ECW.

(e) No discussions between the architect-engineer contractor and the construction contractor shall be considered as a change to the construction contract or design contract unless incorporated by the contracting officer through a modification.

536.7105–2 Guaranteed Maximum Price.

(a) *General.*

(1) *GMP.*

(i) The GMP is the ceiling price described by FAR 16.403–2.

(ii) The GMP is established at contract award. The GMP may be established as one option or as multiple options through separate line items, with a separate GMP amount for each line item.

(iii) The GMP is subject to adjustment under various standard contract clauses, including the changes clause, differing site conditions clause, and suspensions clause.

(iv) The contract file shall contain all documents to support any scope changes including a separate analysis to document the rationale for any upward or downward adjustment to the GMP.

(2) *ECW.*

(i) The proposed ECW incorporated at construction contract award is the target ECW.

(ii) The final ECW should be established prior to completion of the design (*i.e.* 100 percent construction documents), generally no earlier than completion of 75 percent construction documents.

(iii) The contracting officer shall negotiate the final ECW and incorporate it into the construction contract through a bilateral modification prior to exercising the GMP option.

(3) *CCA.*

(i) The CCA type of allowance may only be used as part of the CMc project delivery method and should not be confused with other types of allowances that may be used with other construction project delivery methods.

(ii) The CCA provides for a contingency relative to a fixed percentage of the ECW, except for the requirements at paragraph (c)(3) of this section. The CCA at time of GMP option exercise is subject to negotiation between the contractor and the contracting officer and may be different than the amount at time of contract award.

(iii) The amount of the CCA will depend on the status of design and construction, as well as the complexity and uncertainties of the project. Early phase designs usually include less defined scope and, accordingly, may require a higher initial CCA at time of contract award. Later phase designs may remove uncertainties and reduce risk, allowing for a lower CCA at time of GMP option exercise.

(iv) The CCA shall not exceed 3 percent of the ECW, unless approved in writing by the HCA for a higher amount not to exceed 5 percent of the ECW.

(4) *Fee for the Construction Work.*

(i) The fee may be proposed per phase of construction if each phase is a separate option.

(ii) At time of proposal submission, the offeror shall submit a list of the items included within the offeror's home office overhead.

(iii) At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.

(iv) The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. The fee may, however be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays.

(v) Any fee for the construction work associated with a change order shall not be driven by a fixed percentage. The contracting officer should determine whether the profit included, if any, in a contractor's proposal is reasonable, see FAR 15.404–4 for additional guidance. The limitations of GSAR 552.243–71, especially markups, still apply for any changes.

(b) *Design Phase*.

(1) The GMP may be bilaterally modified upward during the design phase only for approved additions to the scope of work.

(2) The GMP may be bilaterally modified downward during the design phase for deletions to the scope of work.

(c) *Exercising the GMP Option*.

(1) The GMP option shall not be exercised until the final ECW is established.

(2) If the sum of the final ECW, CCA, and fee for construction work is less than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the contracting officer shall adjust the GMP downward accordingly through a bilateral modification to exercise the GMP option.

(3) If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the contracting officer should work with the contractor to identify measures to reduce the overall GMP. Such measures may include reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project.

(4) The GMP option shall not be exercised if the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43.

(d) *Construction Phase*.

(1) After award of the GMP option, changes in scope may be issued as an adjustment to the GMP or as a standalone firm-fixed-price line item.

(2) Any changes in scope after award of the GMP option shall be reflected by a written modification to the construction contract in accordance with FAR Part 43.

(e) *Early Work Package*. (1) Early work packages (see 536.7105–7) may be used in the procurement that are priced separately or included in the GMP option.

(2) If any early work package exercised reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

(f) *GMP Adjustment*. (1) Any changes to the total GMP or individual parts of the GMP must be incorporated in the contract through a modification.

(2) Any modification that changes the GMP, including modifications for early work packages and fixed price conversions, must clearly state that it includes a change to the GMP and describe the changes to the individual parts of the GMP components in the modification.

(3) Any modification that changes the total GMP, or individual parts of the GMP, is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(4) The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify any adjustments to the total GMP, or individual parts of the GMP.

536.7105–3 Accounting and auditing requirements.

(a) *Cost Accounting Standards.* (1) Except as provided in paragraph (a)(2) of this section or through an exemption at FAR 30.201–1, construction contracts under the CMc project delivery method are subject to the cost accounting standards (CAS) identified in FAR Part 30.

(2) The contracting officer may request a CAS waiver in accordance with the requirements at FAR 30.201–5 and 530.201–5.

(3) If CAS applies, the contract clauses identified at FAR 30.201–4 shall be included in the contract.

(4) If a CAS waiver is granted or if CAS does not apply, the contract clause identified at 536.7107(b) shall be included in the contract.

(b) *GMP Option Accounting.* (1) *Open Book Accounting.* Open book accounting shall be followed for financial tracking of all contract line items that are awarded on a GMP basis. Such financial tracking may be accomplished through an audit in accordance with paragraph (c) of this section.

(2) *Payments and Reconciliation.* All payments shall be reconciled with the open book accounting records and the schedule of values adjusted, as appropriate. Reconciliation shall occur each month and should be coordinated with monthly progress payments. The reconciliation shall be documented in the contract file.

(c) *Auditing Requirements.* In accordance with GSAM 542.102(a), for any audit services required by this Subpart 536.71, the contracting officer shall first request such services be performed by or through the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing. If the Office of Inspector General declines to perform such an audit, the contracting officer may obtain audit services from a certified public accountant.

536.7105–4 Value engineering.

In accordance with FAR 48.202, the clause at FAR 52.248–3 Value Engineering-Construction does not apply to incentive contracts. Accordingly, value engineering, as that term is used and described in FAR Part 48, shall not apply to the CMc project delivery method described in this subpart.

536.7105–5 Shared savings incentive.

(a) *General.* The incentive is a shared portion of the difference between the final GMP and the final cost of performance. Cost reductions may be realized by the construction contractor as a result of innovations and efficiencies during the construction phase, such as increased labor productivity or strong material subcontract negotiations.

(b) *Share Ratio.* (1) Except as provided in paragraph (2) of this section, the share ratio for the construction contractor shall range from 30 percent to 50 percent. The share ratio for the construction contractor shall not exceed 50 percent. The complexity of the project and the amount of risk to the construction contractor should be considered when determining the ratio. A project with greater risk to the construction contractor should reflect a greater share ratio for the construction contractor.

(2) Subject to the approval of the HCA, the share ratio may be different than that required under paragraph (b)(1) of this section. Any such written approval shall be documented in the contract file.

(c) *Incentive calculation.* The incentive amount is calculated in accordance with the clause at 552.236–79 Construction-Manager-As-Constructor.

536.7105–6 Allowances.

(a) Establishing a separate allowance in addition to the CCA is only permitted pursuant to a written determination approved by the contracting director supporting the use of any such allowance.

(b) The written determination for a separate allowance in addition to the CCA shall consider the following:

(1) Alternative contracting structures, such as a separate GMP line item or performing the work as part of the GMP option, and

(2) Ensuring conformance with all applicable rules and procedures relating to allowances, including FAR 11.702.

536.7105–7 Early work packages.

(a) Construction services for an early work package must be within the scope of the overall contract.

(b) Early work packages may be part of the initial procurement as a separately priced line item, or the Government and the construction contractor may agree to develop an early work package after award, typically identified toward the beginning of the project.

(c) *Early Work Packages Developed After Award.*

(1) The parties shall bilaterally agree to the scope, schedule, and pricing for any such early work package, and the contract shall be modified in accordance with FAR Part 43.

(2) If any such early work package reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

(3) Any modification to the contract for an early work package is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(d) Early work packages that are firm-fixed-price are not subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

536.7105–8 Conversion to Firm-Fixed-Price.

(a) At any time after completion of 100 percent construction documents, the Government and the construction contractor may bilaterally convert the whole contract to firm-fixed-price.

(b) Conversion to firm-fixed-price may occur after the contingency risks, to be covered by the CCA, have been sufficiently reduced in the best interest of the Government. See FAR 16.103(b) for additional guidance for assessing risk management, profit motive, and timing considerations.

(c) Conversion to firm-fixed-price is only permitted pursuant to a written determination from the contracting officer to the contract file supporting the conversion. The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify the conversion.

(d) The contracting officer shall not agree to a firm-fixed-price in excess of the GMP.

(e) In accordance with 536.7105–3(c), the contracting officer shall obtain an independent audit of the construction contractor's costs incurred in the performance of the contract to date.

(f) When evaluating the construction contractor's proposal for firm-fixed-price definitization, the contracting officer should compare the anticipated final cost to the firm-fixed-price being proposed. It may be reasonable for the construction contractor to include a contingency for assuming the risk associated with agreeing to the firm-fixed-price. The contracting officer should evaluate this contingency to ensure that the proposed amount reasonably reflects the remaining risks being assumed by the construction contractor. This evaluation may be informed by the history of the project, the balance of the CCA, and other factors.

(g) The modification to convert to a firm-fixed-price is subject to the requirement to obtain cost and pricing data unless one of the exceptions in FAR 15.403–1 applies.

(h) The modification to convert to a firm-fixed-price is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(i) Upon converting to a firm-fixed-price, the contract is no longer subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

536.7106 Construction contract closeout.

Unless the contract has been converted to a standard firm-fixed-price contract (see 536.7105–8)—

(a) The contracting officer shall ensure that the construction contractor's proposal for final settlement is accurate and reliable in accordance with the open book accounting practices of the contract.

(b) In accordance with 536.7105–3(c), the contracting officer shall obtain an

independent audit of the construction contractor's costs.

536.7107 Contract clauses.

(a) Insert a clause substantially the same as the clause at 552.236–79, Construction-Manager-As-Constructor, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed. This clause is in lieu of the clause at FAR 52.216–17 Incentive Price Revision—Successive Targets.

(b) Insert a clause substantially the same as the clause at 552.236–80, Accounting Records and Progress Payments, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed and cost accounting standards do not apply. This clause is used when the clauses at FAR 52.230–2 Cost Accounting Standards, FAR 52.230–3 Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230–6 Administration of Cost Accounting Standards do not apply.

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.
537.110 Solicitation provisions and contract clauses.

Subpart 537.2—Advisory and Assistance Services

537.201 Definitions.
537.270 Contract clause.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37226, July 9, 1999, unless otherwise noted.

Subpart 537.1—Service Contracts—General

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 with AbilityOne under the Javits-Wagner-O'Day Act 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, as amended at 74 FR 20606, May 5, 2009; 79 FR 62884, Oct. 21, 2014; 81 FR 1532, Jan. 13, 2016]

Subpart 537.2—Advisory and Assistance Services

537.201 Definitions.

As used in this subpart—

Evaluation or analysis of a proposal means proposal evaluation as described in FAR 15.305. It includes: Cost or price evaluation using cost or price analysis, as defined in FAR 15.404.

Proposal means a proposal submitted for an initial contract award. (See FAR 37.203(d)). It does not include proposals submitted after contract award, such as value engineering proposals, proposals related to contract modifications, claims, or other contract administration actions.

Readily available means that employees with the requisite training and capability are employed by the agency, capable of handling additional work relating to other duties as assigned by management, and that the travel and other costs associated with using covered personnel does not exceed the projected cost of a contract for evaluation and analysis services.

Requisite training and capability means training and capability necessary to successfully perform the task or contract at issue in the time and in the manner required. It may include relevant experience, recent performance of work of similar size and scope, specific training and other factors that the contracting officer determines are necessary to the successful performance of the task or contract at issue.

[74 FR 20606, May 5, 2009]

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 Federal Supply Schedule (FSS) offers.
538.271 FSS contract awards.
538.272 FSS price reductions.
538.273 FSS solicitation provisions and contract clauses.

Subpart 538.70—Purchasing by Non-Federal Entities

538.7000 Scope of subpart.
538.7001 Definitions.
538.7002 General.
538.7003 Policy.
538.7004 Solicitation provisions and contract clauses.

Subpart 538.71 [Reserved]

Subpart 538.72—Order-Level Materials

538.7200 Definitions.
538.7201 Applicability.
538.7202 [Reserved]
538.7204 Contract clauses.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37227, July 9, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 538 appear at 69 FR 28065, May 18, 2004.

Subpart 538.2—Establishing and Administering Federal Supply Schedules

538.270 Evaluation of Federal Supply Schedule (FSS) offers.

538.270–1 Evaluation of offers without access to transactional data.

(a) *Applicability*. Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is included in the solicitation (see 515.408).

(b) When offerors have commercial catalogs, negotiate concessions from established catalogs, including price and non-price terms and conditions.

(c) 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.

(d) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(e) 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.

(f) 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.

(g) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) upon which the award is based.

[81 FR 41136, June 23, 2016]

538.271 FSS contract awards.

(a) FSS awards will be for commercial items as defined in FAR 2.101.

(b) Before awarding any FSS 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.

[64 FR 37227, July 9, 1999, as amended at 81 FR 41137, June 23, 2016; 84 FR 17039, Apr. 23, 2019]

538.272 FSS price reductions.

(a) *Applicability*. This section applies when the contract contains the basic clause 552.238–80 Industrial Funding Fee and Sales Reporting.

(b) The basic clause and Alternate I of 552.238–81, Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the eligible ordering activities 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 eligible ordering activities and this customer or category of customers, the change constitutes a ''price reduction.''

(c) Ensure that the contractor understands the requirements of section 552.238–75 and agrees to report all price reductions to the Contracting Officer as provided for in the clause.

[81 FR 41137, June 23, 2016, as amended by 84 FR 17039, Apr. 23, 2019]

538.273 FSS solicitation provisions and contract clauses.

(a) As prescribed in this paragraph, insert the following provisions in the beginning of FSS solicitations:

(1) 552.238–70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations. Use Alternate I for single award Federal Supply Schedules.

(2) 552.238–71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.

(3) 552.238–72, Information Collection Requirements. Use in all FSS solicitations.

(b) As prescribed in this paragraph, insert the following clause and provision as an addendum to 52.212–1, Instructions to Offerors—Commercial Items:

(1) 552.238–73, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped. Use only in FSS solicitations for electronic office equipment.

(2) 552.238–74, Introduction of New Supplies/Services (INSS). Use only in FSS solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) As prescribed in this paragraph, insert the following provisions as an addendum to 52.212–2, Evaluation—Commercial Items:

(1) 552.238–75, Evaluation—Commercial Items (Federal Supply Schedules). Use in FSS standing solicitations.

(2) 552.238–76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) As prescribed in this paragraph, insert the following clauses as an addendum to Clause 52.212–4, Contract Terms and Conditions–Commercial Items:

(1) 552.238–77, Submission and Distribution of Authorized FSS Price Lists. Use in all FSS solicitations and contracts.

(2) 552.238–78, Identification of Products that have Environmental Attributes. Use only in FSS solicitations and contracts that contemplate items with environmental attributes.

(3) 552.238–79, Cancellation. Use in all FSS solicitations and contracts.

(4) 552.238–80, Industrial Funding Fee and Sales Reporting. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. Clause 552.238–81 Alternate I should also be used when vendors agree to include clause 552.238–80 Alternate I in the contract.

(5) 552.238–81, Price Reductions. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–80 Alternate I in the contract.

(6) 552.238–82, Modifications (Federal Supply Schedules). Use in all FSS solicitations and contracts.

(i) Use Alternate I for Federal Supply Schedules that only accept eMod.

(ii) Use Alternate II for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–80 Alternate I in the contract.

(7) 552.238–83, Examination of Records by GSA (Federal Supply Schedules). Use in all FSS solicitations and contracts. With the Senior Procurement's Executive approval, the contracting officer may modify this clause 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:

(i) Such a modification of the clause must provide for the right of access to expire 2 years after award or modification.

(ii) Before modifying the clause, the contracting officer 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.

(iii) The determinations under paragraph (9)(ii) must be made on a schedule-by-schedule basis.

(8) 552.238–84, Discounts for Prompt Payment. Use in all FSS solicitations and contracts.

(9) 552.238–85, Contractor's Billing Responsibilities. Use in all FSS solicitations and contracts.

(10) 552.238–86, Delivery Schedule. Use only in FSS solicitations and contracts for supplies.

(11) 552.238–87, Delivery Prices. Use in all FSS solicitations and contracts.

(12) 552.238–88, GSA *Advantage*!®. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238–89, Deliveries to the U.S. Postal Service. Use only in FSS solicitations and contracts for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.

(14) 552.238–90, Characteristics of Electric Current. Use only in FSS solicitations and contracts when the supply of equipment which uses electrical current is contemplated.

(15) 552.238–91, Marking and Documentation Requirements for Shipping. Use only in FSS solicitations and contracts for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.

(16) 552.238–92, Vendor Managed Inventory (VMI) Program. Use only in FSS solicitations and contracts for supplies when a VMI Program is contemplated.

(17) 552.238–93, Order Acknowledgement. Use only in FSS solicitations and contracts for supplies.

(18) 552.238–94, Accelerated Delivery Requirements. Use only in FSS solicitations and contracts for supplies.

(19) 552.238–95, Separate Charge for Performance Oriented Packaging (POP). Use only in FSS solicitations

and contracts for items defined as hazardous under Federal Standard No. 313.

(20) 552.238–96, Separate Charge for Delivery within Consignee's Premises. Use only in FSS solicitations and contracts for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.

(21) 552.238–97, Parts and Service. Use in all FSS solicitations and contracts.

(22) 552.238–98, Clauses for Overseas Coverage. Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The following clauses and provisions shall also be inserted in full text, when applicable.

(i) 52.214–34 Submission of Offers in the English Language.

(ii) 52.214–35 Submission of Offers in U.S. Currency.

(iii) 552.238–90 Characteristics of Electric Current.

(iv) 552.238–91 Marking and Documentation Requirements Per Shipment.

(v) 552.238–97 Parts and Service.

(vi) 552.238–99 Delivery Prices Overseas.

(vii) 552.238–100 Transshipments.

(viii) 552.238–101 Foreign Taxes and Duties.

(ix) 52.247–34 FOB Destination.

(x) 52.247–38 FOB Inland Carrier, Country of Exportation.

(xi) 52.247–39 FOB Inland Point, Country of Importation.

(23) 552.238–99, Delivery Prices Overseas. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(24) 552.238–100, Transshipments. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(25) 552.238–101, Foreign Taxes and Duties. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(26) 552.238–102, English Language and U.S. Dollar Requirements. Use in all FSS solicitations and contracts.

(27) 552.238–103, Electronic Commerce. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238–104, Dissemination of Information by Contractor. Use in all FSS solicitations and contracts.

(29) 552.238–105, Deliveries Beyond the Contractual Period—Placing of Orders. Use only in FSS solicitations and contracts for supplies.

(30) 552.238–106, Interpretation of Contract Requirements. Use in all FSS solicitations and contracts.

(31) 552.238–107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies, except vehicles.

(32) 552.238–108, Spare Parts Kit. Use only in FSS solicitations and contracts for items requiring spare part kits. This information is to be specified at the order level.

(33) 552.238–109, Authentication Supplies and Services. Use in Federal Supply Schedule 70 solicitations only, and only contracts awarded Special Item Numbers (SINs) associated with the Homeland Security Presidential Directive 12 (HSPD–12).

(34) 552.238–110, Commercial Satellite Communication (COMSATCOM) Services. Use only in FSS solicitations and contracts for COMSATCOM services.

(35) 552.238–111, Environmental Protection Agency Registration Requirement. Use only in FSS solicitations and contracts for supplies when items may require registration with the Environmental Protection Agency.

[84 FR 17039, Apr. 23, 2019; 84 FR 22382, May 17, 2019]

Subpart 538.70—Purchasing by Non-Federal Entities

SOURCE: 68 FR 24378, May 7, 2003, unless otherwise noted.

538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use—

(a) Federal Supply Schedule 70;

(b) The Consolidated Schedule contracts containing information technology Special Item Numbers (SINs); and

(c) Federal Supply Schedule 84.

(d) Other Federal Supply Schedules as authorized in this subpart.

[73 FR 54338, Sept. 19, 2008, as amended at 81 FR 36429, June 6, 2016]

538.7001 Definitions.

Ordering activity (also called ''ordering agency'' and ''ordering office'') means an eligible ordering activity (see 552.238–113) authorized to place orders under Federal supply schedule contracts.

Preparedness means actions that may include, but are not limited to planning, resourcing, training, exercising, and organizing to build, sustain, and improve operational disaster response capabilities. Preparedness also includes the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction–specific plans for delivering capabilities when needed for an incident.

Recovery means actions including, but not limited to, the development, coordination, and execution of service- and site-restoration plans; the reconstitution of Government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post-incident reporting; and development of initiatives to mitigate the effects of future incidents.

Relief means disaster ''response'' and ''recovery.'' Please see the full definitions for these terms in this section.

Response means immediate actions taken during a disaster, or in its immediate aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery.

Schedule 70, as used in this subpart, means Schedule 70 information technology contracts, and Consolidated Products and Services Schedule contracts containing information technology SINs. The Consolidated Products and Services Schedule is a compilation of multiple individual Federal Supply Schedules; therefore, only the SINs that fall under Schedule 70 of the Consolidated Products and Services Schedule will apply to Cooperative Purchasing. No other Schedules, or SINs, containing information technology outside of Schedule 70 SINs, and Consolidated Products and Services Schedule contracts containing Schedule 70 SINs, will apply.

Schedule 84 means the Federal Supply Schedule for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal Supply Classification Code Group 84 or any amended or subsequent version of that Federal supply classification group).

State and local government entities, as used in this subpart, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) *Tribal government* means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008; 81 FR 36429, June 6, 2016; 84 FR 17041, Apr. 23, 2019]

538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal supply schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) Pub.L. 110–248, The Local Preparedness Acquisition Act, authorizes the Administrator of General Services to provide for the use by state or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Schedule 84).

(d) Public Law 109–364, the John Warner National Defense Authorization Act for Fiscal Year 2007 authorizing state and local governments, to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate for recovery from terrorism or nuclear, biological, chemical, or radiological attack. Public Law 111–263, the Federal Supply Schedules Usage Act of 2010 authorizing state and local governments to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate disaster preparedness or response.

(e) Public Law 111–263, the Federal Supply Schedules Usage Act of 2010, authorizes the American National Red Cross to use Federal Supply Schedule contracts to purchase goods or services to be used in furtherance of its purposes as set forth in its federal charter (36 U.S.C. 300102).

(f) Public Law 111–263, the Federal Supply Schedules Usage Act of 2010, authorizes other qualified organizations to use Federal Supply Schedule contracts to purchase products and services in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency. Other qualified organizations must meet the requirements of 42 U.S.C. 5152.

(g) A listing of the participating contractors and SINs for the goods and services that are available under these authorized Federal Supply Schedules, is available in GSA's e-Library at *www.gsa.gov/elibrary*.

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008; 81 FR 36429, June 6, 2016]

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening authorized Federal Supply Schedules for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts

and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete ''Government'' or similar language referring to the U.S. Government and substitute ''ordering activity'' or similar language when preparing solicitations and contracts to be awarded under authorized Federal Supply Schedules. When such changes are made, the word ''(DEVIATION)'' shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

(a) 52.212–4, Contract Terms and Conditions—Commercial Items.

(b) 52.216–18, Ordering.

(c) 52.216–19, Order Limitations.

(d) 52.229–1, State and Local Taxes.

(e) 52.229–3, Federal, State, and Local Taxes.

(f) 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts.

(g) 52.232–17, Interest.

(h) 52.232–19, Availability of Funds for the Next Fiscal Year.

(i) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration

(j) 52.232–36, Payment by Third Party.

(k) 52.237–3, Continuity of Services.

(l) 52.246–4, Inspection of Services-Fixed Price.

(m) 52.246–6, Inspection-Time-and-Material and Labor-Hour.

(n) 52.247–34, F.O.B. Destination.

(o) 52.247–38, F.O.B. Inland Carrier Point of Exportation.

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008; 81 FR 36430, June 6, 2016]

538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–112, Definition (Federal Supply Schedules)–Non-Federal Entity in solicitations and contracts for all Federal Supply Schedules.

(b) The contracting officer shall insert the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.

(c) The contracting officer shall insert the clause at 552.238–114, Use of Federal Supply Schedule Contracts by Non-Federal Entities, in solicitations and contracts for all Federal Supply Schedules.

(d) See 552.101–70 for authorized FAR deviations.

[81 FR 36430, June 6, 2016, as amended at 84 FR 17041, Apr. 23, 2019]

Subpart 538.71 [Reserved]

Subpart 538.72—Order-Level Materials

SOURCE: 83 FR 3280, Jan. 24, 2018, unless otherwise noted.

538.7200 Definitions.

As used in this subpart:

Order-level materials means supplies and/or services acquired in direct support of an individual task or delivery order placed against an authorized (see GSAR 538.7201(b) Federal Supply Schedule (FSS) contract or FSS Blanket Purchase Agreement (BPA)), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. However, order-level materials are purchased under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).

538.7201 Applicability.

(a) The GSA Senior Procurement Executive authorizes the use of order-level materials on Federal Supply Schedules.

(b) The list of Federal Supply Schedules authorized to allow for order-level materials is available at *https://www.gsa.gov/olm*.

538.7202 [Reserved]

538.7204 Contract clauses.

(a) Use FAR clause 52.212–4 Alternate I in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7201(b)). Use the

following language for the clause fill-in:

(1) Insert ''Each order must list separately subcontracts for services excluded from the FSS Hourly Rates'' in paragraph (e)(1)(iii)(D).

(2) Insert ''Each order must list separately the elements of other direct costs for that order'' in paragraph (i)(1)(ii)(D)(*1*).

(3) Insert ''Each order must list separately the fixed amount for the indirect costs and payment schedule; if no indirect costs are approved, insert 'None' '' in (i)(1)(ii)(D)(*2*).

(b) Use 552.238–82, Special Ordering Procedures for the Acquisition of Order-Level Materials, in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7201).

PART 539—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 539.70—Additional Requirements for Purchases Not in Support of National Security Systems

Sec.
539.7000 Scope of subpart.
539.7001 Policy.
539.7002 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 76 FR 34888, June 15, 2011, unless otherwise noted.

Subpart 539.70—Additional Requirements for Purchases Not in Support of National Security Systems

539.7000 Scope of subpart.

This subpart prescribes acquisition policies and procedures for use in acquiring information technology supplies, services and systems not in support of national security systems, as defined by FAR part 39.

539.7001 Policy.

(a) GSA must provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act (FISMA) describes Federal agency security responsibilities as including ''information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency.''

(b) Employees responsible for or procuring information technology supplies, services and systems shall possess the appropriate security clearance associated with the level of security classification related to the acquisition. They include, but are not limited to contracting officers, contract specialists, project/program managers, and contracting officer representatives.

(c) Contracting activities shall coordinate with requiring activities and program officials to ensure that the solicitation documents include the appropriate information security requirements. The information security requirements must be sufficiently detailed to enable service providers to fully understand the information security regulations, mandates, and requirements that they will be subject to under the contract or task order.

(d) GSA's Office of the Senior Agency Information Security Officer issued CIO IT Security Procedural Guide 09–48, ''Security Language for Information Technology Acquisitions Efforts,'' to provide IT security standards, policies and reporting requirements that shall be inserted in all solicitations and contracts or task orders where an information system is contractor owned and operated on behalf of the Federal Government. The guide can be accessed at *http://www.gsa.gov/portal/category/25690*.

539.7002 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.239–70, Information Technology Security Plan and Security Authorization, in solicitations that include information technology supplies, services or systems in which the contractor will have physical or electronic access to government information that directly supports the mission of GSA.

(b) The contracting officer shall insert the clause at 552.239–71, Security

Requirements for Unclassified Information Technology Resources, in solicitations and contracts containing the provision at 552.239–70. The provision and clause shall not be inserted in solicitations and contracts for personal services with individuals.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 541—ACQUISITION OF UTILITY SERVICES

Subpart 541.5—Solicitation Provisions and Contract Clauses

Sec.
541.501 Solicitation provision and contract clauses.

AUTHORITY: 40 U.S.C. 121(c).

Subpart 541.5—Solicitation Provisions and Contract Clauses

541.501 Solicitation provisions and contract clauses.

In addition to the solicitation terms, provisions and contract clauses at FAR 41.501(c), the contracting officer shall include the following clauses—

(a) *552.241–70, Availability of Funds for the Next Fiscal Year or Quarter*. As prescribed in 541.501, insert the clause 552.241–70, Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232–19, in all utility acquisitions; and

(b) *552.241–71, Disputes (Utility Contracts)*. As prescribed in 541.501, insert clause 552.241–71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

[75 FR 48873, Aug. 12, 2010]

PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 542.11—Production Surveillance and Reporting

Sec.
542.1107 Contract clause.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37228, July 9, 1999, unless otherwise noted.

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clause.

The contracting officer shall 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. The clause may be used in indefinite-delivery definite-quantity contracts for Stock or Special Order Program items when close monitoring is necessary because numerous shipments are involved.

[74 FR 863, Jan. 9, 2009]

PART 543—CONTRACT MODIFICATIONS

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37228, July 9, 1999, unless otherwise noted.

Subpart 543.2—Change Orders

543.205 Contract clauses.

The contracting officer shall insert 552.243–71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243–4, Changes, FAR 52.243–5, Changes and Changed Conditions, or FAR 52.236–2, Differing Site Conditions.

[84 FR 3718, Feb. 13, 2019]

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 for fixed-price supply contracts.
546.302–71 Source inspection.
546.302–72 Destination inspection.
546.312 Construction contracts.

Subpart 546.7—Warranties

546.704 Authority for use of warranties.
546.708 Warranties of data.
546.710 Contract clause.

AUTHORITY: 40 U.S.C. 121(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 fixed-price supply contracts.

(a) For solicitations issued and contracts awarded by FAS that will exceed the simplified acquisition threshold and include the clause at 52.246–2, Inspection of Supplies—Fixed-Price:

(1) The contracting officer shall insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection for the Stock and Special Order Programs.

(2) The contracting officer may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the U.S. Virgin Islands, under paragraph (a)(1) of the clause at 552.246–70 under any of the circumstances listed below after coordinating the authorization with QVOC and documenting the authorization in the file.

(i) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(ii) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(iii) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

(b) When the estimated value of the acquisition is below the simplified acquisition threshold and will include the clause at 52.246–2, Inspection of Supplies—Fixed-Price, insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer only:

(1) In solicitations and contracts that support the Wildfire program.

(2) In contracts when a pattern of acquisitions demonstrates an ongoing relationship with the contractor.

[74 FR 26108, June 1, 2009]

546.302–71 Source inspection.

For solicitations and contracts issued by FAS, if Government personnel at the source will perform inspection, insert 552.246–71, Source Inspection by Government.

[64 FR 37228, July 9, 1999, as amended at 74 FR 26108, June 1, 2009]

546.302–72 Destination inspection.

The contracting officer shall include the clause at 552.246–78, Inspection at Destination (JUL 09)in supply contracts that require inspection at destination.

[74 FR 26108, June 1, 2009]

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 546.7—Warranties

546.704 Authority for use of warranties.

FAR clause 52.246–21, Warranty of Construction, is approved by the agency for use in solicitations and contracts when a fixed-price construction contract is contemplated.

[84 FR 3718, Feb. 13, 2019]

546.708 Warranties of data.

(a) The contracting officer shall use warranties of data only when both of the following conditions are applicable:

(1) Use of a warranty is in the Government's interest and is documented; and

(2) The contracting director concurs with the decision.

(b) The contracting officer shall consult with the technical or specification manager responsible for developing any warranties of data.

[74 FR 26108, June 1, 2009]

546.710 Contract clause.

The Contracting officer shall insert the clause at 552.246–77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, when using the clause at 52.246–17 in solicitations and contracts.

[74 FR 26108, June 1, 2009]

PART 547 [RESERVED]

PART 549—TERMINATION OF CONTRACTS

AUTHORITY: 40 U.S.C. 121(c).

Subpart 549.5 [Reserved]

SUBCHAPTER H—CLAUSES AND FORMS

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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552.238–114 Use of Federal Supply Schedule Contracts by Non-Federal Entities.
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552.270–30 Price Adjustment for Illegal or Improper Activity.
552.270–31 Prompt Payment.
552.270–32 Covenant Against Contingent Fees.

AUTHORITY: 40 U.S.C. 121(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.

552.203–71 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)

552.204–9 Personal Identity Verification requirements.

As prescribed in 504.1303, insert the following clause:

PERSONAL IDENTITY VERIFICATION REQUIREMENTS (JUL 2020)

(a) The Contractor shall comply with GSA personal identity verification requirements, available at *https://www.gsa.gov/hspd12*, if Contractor employees require access to GSA controlled facilities or information systems to perform contract requirements.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have access to a GSA-controlled facility or access to a GSA-controlled information system.

(End of clause)

[77 FR 59793, Oct. 1, 2012, as amended at 85 FR 38337, June 26, 2020]

552.211–10 Commencement, Prosecution, and Completion of Work.

As prescribed in 511.404, insert the following clause:

COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (MAR 2019)

FAR 52.211–10, Commencement, Prosecution, and Completion of Work, is supplemented as follows:

(a) The Contractor shall not commence work until the Contracting Officer issues a notice to proceed.

(b) Notwithstanding paragraph (a) of this clause, the Contractor must submit any required safety plans before commencing any construction work.

(c) The Contractor shall diligently prosecute the work so as to achieve substantial completion of the work within the time specified in the contract. If the contract specifies different completion dates for different phases or portions of the work, the Contractor shall diligently prosecute the work so as to achieve substantial completion of such phases or portions of the work within the times specified.

(End of clause)

[84 FR 3718, Feb. 13, 2019]

552.211–12 Liquidated Damages-Construction.

As prescribed in 511.504, insert the following clause:

LIQUIDATED DAMAGES (MAR 2019)

FAR 52.211–12, Liquidated Damages-Construction, is supplemented as follows:

(a) If the Contractor fails to achieve substantial completion of the work within the time specified in the contract, the Contractor shall be liable to the Government for liquidated damages at the rate specified for each calendar day following the required completion date that the work is not substantially complete.

(b) If the contract requires different completion dates for different phases or portions of the work, the Contractor shall be liable for liquidated damages at the specified rate for each calendar day following the required completion date that the phase or portion of work is not substantially complete. If a single rate is specified, the specified rate shall be apportioned between the different phases or portions of the work.

(c) If the Government elects to accept any portion of the work not specifically designated as a phase or portion of work with its own required completion date, the liquidated damage rate shall be apportioned between accepted work and uncompleted work, and the Contractor's liability for liquidated damages shall be computed accordingly.

(End of clause)

[84 FR 3718, Feb. 13, 2019]

552.211–13 Time Extensions.

As prescribed in 511.504, insert the following clause:

TIME EXTENSIONS (MAR 2019)

FAR 52.211–13, Time Extensions, is supplemented as follows:

(a) If the Contractor requests an extension of the time for substantial completion, the Contractor shall base its request on an analysis of time impact using the project schedule as its baseline, and shall propose as a new substantial completion date to account for the impact. The Contractor shall submit a written request to the Contracting Officer setting forth facts and analysis in sufficient detail to enable the Contracting Officer to evaluate the Contractor's entitlement to an extension of time.

(b) The Contractor shall only be entitled to an extension of time to the extent that—

(1) Substantial completion of the work is delayed by causes for which the Contractor is not responsible under this contract; and

(2) The actual or projected substantial completion date is later than the date required by this contract for substantial completion.

(c) The Contractor shall not be entitled to an extension of time if the Contractor has not updated the project schedule in accordance with the contract.

(d) The Government shall not be liable for any costs to mitigate time impacts incurred by the Contractor that occur less than 30 calendar days after the date the Contractor submits a request for extension of time in compliance with this clause.

(End of clause)

[84 FR 3718, Feb. 13, 2019]

552.211–70 Substantial Completion.

As prescribed in 511.404, insert the following clause:

SUBSTANTIAL COMPLETION (MAR 2019)

(a) *General.* (1) For the purposes of FAR 52.211–10, Commencement, Prosecution and Completion of Work, and FAR 52.211–12, Liquidated Damages-Construction, the work shall be deemed complete when it is ''substantially complete.''

(2) There may be different completion dates required for different phases or portions of the work, as established in the contract. However, the work shall be deemed ''substantially complete'' if and only if the Contractor has completed the work and related contract obligations in accordance with the contract documents, such that the Government may enjoy the intended access, occupancy, possession, and use of the entire work without impairment due to incomplete or deficient work, and without interference from the Contractor's completion of remaining work or correction of deficiencies in completed work.

(3) In no event shall the work be deemed ''substantially complete'' if all fire and life safety systems are not tested and accepted by the authority having jurisdiction, where such acceptance is required under the contract.

(4) Unless otherwise specifically noted, or otherwise clear from context, all references in the contract to ''acceptance'' shall refer to issuance of a written determination of substantial completion by the Contracting Officer.

(b) *Notice of Substantial Completion.* (1) With reasonable advance notice, the Contractor shall submit to the Contracting Officer a written proposal recommending a substantial completion date.

(2) If the Contracting Officer takes exception to the notice of substantial completion, the Contractor shall be entitled to a written notice of conditions precluding determination of substantial completion. The Contractor shall only be entitled to an extension of time to address such conditions if, and to the extent that, the Contracting Officer provides notice of such conditions more than 30 calendar days after receipt of the notice of substantial completion.

(c) *Acceptance of Substantial Completion.* (1) The Contracting Officer shall conduct inspections and make a determination of substantial completion within a reasonable time.

(2) Substantial Completion shall be established by the Contracting Officer's issuance of a written determination specifying the date upon which the work is substantially complete.

(d) *Contract Completion.* (1) The Contract is complete if and only if the Contractor has completed all work and related contract obligations, corrected all deficiencies and all punch list items, and complied with all conditions for final payment.

(2) The Contractor shall not be entitled to final payment or release of any retainage held by the Government until after contract completion. If the Contractor does not achieve contract completion within the time required by this contract, the Government

shall be entitled, after providing notice to the Contractor, to complete any work remaining unfinished. The Contractor shall be liable to the Government for all costs incurred by the Government to complete such work.

(End of clause)

[84 FR 3718, Feb. 13, 2019]

552.211–71 [Reserved]

552.211–72 Reference to Specifications in Drawings.

As prescribed in 511.204(a), 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)

[64 FR 37229, July 9, 1999, as amended at 74 FR 66255, Dec. 15, 2009]

552.211–73 Marking.

As prescribed in 511.204(b)(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)

[64 FR 37229, July 9, 1999, as amended at 74 FR 66255, Dec. 15, 2009]

552.211–74 [Reserved]

552.211–75 Preservation, Packaging and Packing.

As prescribed in 511.204(b)(2), 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)

Alternate I (MAY 2003). As prescribed at 511.204(b)(2), insert the following sentence in place of the last sentence of the clause:

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 activity and the Contractor.

[64 FR 37229, July 9, 1999, as amended at 68 FR 24379, May 7, 2003; 74 FR 66255, Dec. 15, 2009]

552.211–76 Charges for packaging, packing, and marking.

As prescribed in 511.204(b)(3), insert a clause substantially as follows:

CHARGES FOR PACKAGING, PACKING, AND MARKING (JAN 2010)

If supplies shipped to a GSA wholesale distribution center are not packaged, packed

and marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking/remarking, 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 Acquisition Service, or a designee.

[74 FR 66255, Dec. 15, 2009]

552.211–77 Packing List.

As prescribed in 511.204(c), 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)

Alternate I (MAY 2003). As prescribed at 511.204(d), substitute the following paragraphs (a)(3) and (b) for (a)(3) and (b) of the basic clause:

(a)(3) Ordering activity order or requisition number;

(b) When payment will be made by Ordering activity 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.''

[64 FR 37229, July 9, 1999, as amended at 68 FR 24379, May 7, 2003; 74 FR 66255, Dec. 15, 2009]

552.211–78 [Reserved]

552.211–79 Acceptable Age of Supplies.

As prescribed in 511.404(a)(1), 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.

[64 FR 37229, July 9, 1999, as amended at 74 FR 66255, Dec. 15, 2009]

552.211–80 Age on Delivery.

As prescribed in 511.404(a)(2) 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)

[64 FR 37229, July 9, 1999, as amended at 74 FR 66255, Dec. 15, 2009]

552.211–81 Time of Shipment.

As prescribed in 511.404(b), 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.*)

[64 FR 37229, July 9, 1999, as amended at 74 FR 66255, Dec. 15, 2009]

552.211–82 [Reserved]

552.211–83 Availability for Inspection, Testing, and Shipment/Delivery.

As prescribed in 511.404(c), 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.

[64 FR 37229, July 9, 1999, as amended at 74 FR 66255, Dec. 15, 2009]

552.211–84 [Reserved]

552.211–85 Consistent pack and package requirements.

As prescribed in 511.204(b)(4), insert the following clause:

CONSISTENT PACK AND PACKAGE REQUIREMENTS (JAN 2010)

The Contractor is advised that the Government will, where possible, order in full shipping containers and/or unitized loads. If volume warrants, the Government may also order in truckload or carload quantities provided such quantities do not exceed the maximum order limitation of this contract.

When the number of items per unit container, intermediate container and/or shipping container is not specified for an item, the offeror will state, in the spaces provided in the schedule of items, the number of items to be provided in each container. The quantities which are accepted at the time of award shall remain in effect throughout the term of the contract unless the Contracting Officer approves in writing a request by the Contractor to change the package quantities. Requests for changes shall be directed to the Contracting Officer or Administrative Contracting Officer, whichever is applicable.

(End of clause)

[74 FR 66255, Dec. 15, 2009, as amended at 81 FR 36430, June 6, 2016]

552.211–86 Maximum weight per shipping container.

As prescribed in 511.204(b)(5), insert the following clause:

MAXIMUM WEIGHT PER SHIPPING CONTAINER (JAN 2010)

In no instance shall the weight of a shipping container and its contents exceed 23 kilograms (51 pounds), except when caused by—

(1) The weight of a single item within the shipping container;

(2) A prescribed quantity per pack for an item per shipping container; or

(3) A definite weight limitation set forth in the purchase description.

(End of clause)

[74 FR 66255, Dec. 15, 2009, as amended at 81 FR 36430, June 6, 2016]

552.211–87 Export packing.

As prescribed in 511.204(b)(6), insert the following clause:

EXPORT PACKING (JAN 2010)

(a) Offerors are requested to quote, in the pricelist accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial or military export packing. Military export packing, if offered, shall be in accordance with Mil-Std-2073–1 Level A or B as specified. If commercial export packing is offered, the offer or pricelist shall include detailed specifications describing the packing to be furnished at the price quoted.

(b) Ordering activities will not be obligated to utilize the Contractor's services for export packing accepted under this solicitation, and they may obtain such services elsewhere if desired. However, the Contractor shall furnish items export packed when such packing is specified on the purchase order.

(End of clause)

[74 FR 66255, Dec. 15, 2009, as amended at 81 FR 36430, June 6, 2016]

552.211–88 Vehicle export preparation.

As prescribed in 511.204(b)(7), insert the following clause:

VEHICLE EXPORT PREPARATION (JAN 2010)

Vehicles shall be prepared for export on wheels, unboxed, unless otherwise specified in the Schedule of Items. All parts and equipment easily removable (subject to pilferage) shall be enclosed in a box substantially secured to the vehicle (inside body if feasible) in such a manner as to minimize the possibility of loss or damage while in transit to ultimate destination.

(End of clause)

[74 FR 66255, Dec. 15, 2009, as amended at 81 FR 36430, June 6, 2016]

552.211–89 Non-manufactured wood packaging material for export.

As prescribed in 511.204(b)(8), insert the following clause:

NON-MANUFACTURED WOOD PACKAGING MATERIAL FOR EXPORT (JUL 2016)

(a) *Definitions:*

IPPC Country: Countries of the European Union (EU) or any other country endorsing the International Plant Protection Convention (IPPC) ''Guidelines for Regulating Wood Packaging Material in International Trade,'' approved March 15, 2002. A listing of countries participating in the IPPC is found at *http://www.aphis.usda.gov/import_export/plants/plant_exports/wpm/country/index.shtml.*

Non-manufactured wood, is also called solid wood and defined as wood packing other than that comprised wholly of wood-based products such as plywood, particle board, oriented strand board, veneer, wood wool, and similar materials, which has been created using glue, heat and pressure or a combination thereof.

Packaged material, and solid wood packing material (SWPM), for purposes of this clause, is defined as each separate and distinct material that by itself or in combination with other materials forms the container providing a means of protecting and handling a product. This includes, but is not limited to, pallets, dunnage, crating, packing blocks, drums, load boards, pallet collars, and skids.

(b) Non-manufactured wood pallets and other non-manufactured wood packaging material used to pack items for delivery to or through IPPC countries must be marked and properly treated in accordance with IPPC guidelines.

(c) This requirement applies whether the shipment is direct to the end user or through a Government designated consolidation point. Packaging that does not conform to IPPC guidelines will be refused entry, destroyed or treated prior to entry.

(d) For Department of Defense distribution facilities or freight consolidation points, all non-manufactured wood pallets or packaging material with a probability of entering countries endorsing the IPPC Guidelines must be treated and marked in accordance with DLAD 47.305–1 (available at *http://farsite.hill.af.mil/archive/Dlad/Rev5/*

PART47.htm''), and MIL–STD–2073–1, Standard Practice for Military Packaging (and any future revision).

(e) Pallets and packing material shipped to FAS distribution facilities designated for possible delivery to the countries endorsing the IPPC Guidelines will comply with DLAD 47.305–1, and MIL–STD–2073–1.

(f) Delays in delivery caused by non-complying pallets or wood package material will not be considered as beyond the control of the Contractor. Any applicable Government expense incurred as a result of the Contractor's failure to provide appropriate pallets or package material shall be reimbursed by the Contractor. Expenses may include the applicable cost for repackaging, handling and return shipping, or the destruction of solid wood packaging material.

(End of clause)

[74 FR 66255, Dec. 15, 2009, as amended at 81 FR 36430, June 6, 2016]

552.211–90 Small parts.

As prescribed in 511.204(b)(9), insert the following clause:

SMALL PARTS (JAN 2010)

All small parts required to be furnished with machines covered by contracts resulting from this solicitation shall be packed in envelopes, sealed, identified with part numbers and quantity on outside of envelopes. Larger parts must be individually tagged and identified with part number on face of tag.

(End of clause)

[74 FR 66255, Dec. 15, 2009]

552.211–91 Vehicle decals, stickers, and data plates.

As prescribed in 511.204(b)(10), insert the following clause:

VEHICLE DECALS, STICKERS, AND DATA PLATES (JAN 2010)

Unless otherwise specified, caution plates/decals shall be conspicuously installed for all equipment requiring such notices. Vehicles for civil agencies shall be provided with the manufacturer's current warranty legend imprinted on decalcomania, and applied in a visible area of the engine compartment. In addition, a decal or sticker shall provide at least the following information: contract number; purchase order number; date of delivery, month and year; and the warranty time, in month and miles.

(End of clause)

[74 FR 66255, Dec. 15, 2009]

552.211–92 Radio Frequency Identification (RFID) using passive tags.

As prescribed in 511.204(b)(11), insert the following clause:

RADIO FREQUENCY IDENTIFICATION (RFID) USING PASSIVE TAGS (JAN 2010)

Radio Frequency Identification shall be required on all non-bulk shipments to the Defense Logistics Agency (DLA) or Department of Defense (DoD) destinations. Shipments shall be tagged in accordance with 48 CFR clause 252.211–7006. Shipments to GSA Distribution Centers with final destinations to DLA and DoD shall be in compliance to 48 CFR 252.211–7006. Copies may be obtained from *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

(End of clause)

[74 FR 66255, Dec. 15, 2009]

552.211–93 [Reserved]

552.211–94 Time of delivery.

As prescribed at 511.404(d), insert the following clause:

TIME OF DELIVERY (JAN 2010)

An ''X'' mark in the left hand block shall be considered a mandatory requirement to be fulfilled by the contractor.

The Contractor will ship contract item(s) to the Federal Acquisition Service (FAS) stocking points identified in the delivery order at its discretion in order to maintain the required stock levels within the minimum and maximum requirements provided in the weekly status report.

Delivery is required to be made at destination within *_____* calendar days after receipt of order for deliveries to a GSA facility.

Orders under this contract may require direct delivery to other agencies. Orders for direct delivery must be shipped and delivered within the time specified in blocks below.

Shipment must be made with *_____* days after receipt of order.

	In addition to block above the Contractor must also ensure that delivery will be made within *_____* days after receipt of order.

(End of clause)

[74 FR 66255, Dec. 15, 2009]

552.212–4 Contract Terms and Conditions-Commercial Items (FAR DEVIATION).

As prescribed in 512.301(e), replace subparagraph (g)(2), paragraph (s), and paragraph (u) of FAR clause 52.212–4. Also, add paragraph (w) to FAR clause 52.212–4.

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (FAR DEVIATION) (FEB 2018)

Alternate II (FAR Deviation) (NOV 2009). When a commercial item contract is contemplated and the contract will include the clause at FAR 52.212–4, insert this Alternate II instead of subparagraph (g)(2) of the FAR clause.

(g)(2) The due date for making invoice payments by the designated payment office is 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.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements–Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212–5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements—Unenforceable Clauses provision.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(u) *Unauthorized Obligations.* (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an ''I agree'' click box or other comparable mechanism (e.g., ''click-wrap'' or ''browse-wrap'' agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(w) *Commercial supplier agreements—unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, ''this agreement'' means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or

person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) *Updating terms.* (A) After award, the contractor may unilaterally revise terms if they are not material. A material change is defined as:

(*1*) Terms that change Government rights or obligations;

(*2*) Terms that increase Government prices;

(*3*) Terms that decrease overall level of service; or

(*4*) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed ''confidential information.'' Issues regarding release of ''unit pricing'' will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

(End of clause)

[74 FR 54918, Oct. 26, 2009, as amended at 83 FR 7634, Feb. 22, 2018]

552.212–70 [Reserved]

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 (MAY 2019)

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The clauses in paragraph (b) of this section are incorporated by reference:

[*The Contracting Officer should check the clauses that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity.*]

(b) *Clauses.*

552.203–71 Restriction on Advertising
552.211–73 Marking
552.215–70 Examination of Records by GSA
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
552.232–23 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
552.242–70 Status Report of Orders and Shipments
552.246–76 Warranty of Pesticides

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 41379, July 5, 2000; 68 FR 41288, July 11, 2003; 79 FR 62884, Oct. 21, 2014; 81 FR 41137, June 23, 2016; 84 FR 17041, Apr. 23, 2019]

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 (MAY 2019)

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.
__552.223–73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments.
__552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.
__552.238–78 Identification of Products That Have Environmental Attributes.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 65 FR 41379, July 5, 2000; 68 FR 41288, July 11, 2003; 68 FR 52128, Sept. 2, 2003; 80 FR 36248, June 24, 2015; 84 FR 17041, Apr. 23, 2019]

552.212–73 [Reserved]

552.214–70 "All or None" Bids.

As prescribed in 514.201–6, insert the following provision:

"ALL OR NONE" BIDS (OCT 2009)

(a) The Government reserves the right to evaluate bids and make awards on an "all or none" basis as provided below.

(b) A bid submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable bid exclusive of the

''all or none'' bid 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'' bid. Award will be made to result in the lowest total cost to the Government.

(End of provision)

[64 FR 37229, July 9, 1999, as amended at 74 FR 47740, Sept. 17, 2009]

552.214–71 [Reserved]

552.214–72 Bid Sample Requirements.

As prescribed in 514.202–4(a)(3), insert the following provision:

BID SAMPLE REQUIREMENTS (OCT 2009)

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: Bidders that 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)

(e) Contracting Officer insert address.

_____

_____

(End of provision)

[64 FR 37229, July 9, 1999, as amended at 74 FR 47740, Sept. 17, 2009]

552.215–70 Examination of Records by GSA.

As prescribed in 515.209–70(a), insert the following clause:

EXAMINATION OF RECORDS BY GSA (JUN 2016)

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 the simplified adquisition threshold and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 81 FR 1533, Jan. 13, 2016; 81 FR 36425, June 6, 2016]

552.215–71 [Reserved]

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—Special Order Program Contracts.

As prescribed in 516.203–4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—SPECIAL ORDER PROGRAM CONTRACTS (AUG 2010)

(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 during each 12–month period upward or downward. However, if an upward adjustment, a maximum of _____*_____ percent shall apply. 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 (AUG 2010). As prescribed in 516.203–4(a)(1) and (2), substitute the following paragraphs (b), (e), and (f) for

paragraphs (b), (e), and (f) of the basic clause:

(b) Once during each 12–month 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 (AUG 2010). As prescribed in 516.203–4(a)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage change in the PPI is at least _____*_____ percent.

**The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

**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.*

[64 FR 37229, July 9, 1999, as amended at 75 FR 41096, July 15, 2010]

552.216–72 Placement of Orders.

As prescribed in 516.506(a), insert the following clause:

PLACEMENT OF ORDERS (JAN 2016)

(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, General Services Administration's Federal Acquisition Service (FAS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS 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, Office of the Chief Information Officer (I). Contact information can be found at: *http://www.gsa.gov/portal/category/21404*.

(End of clause)

Alternate I (AUG 2010). As prescribed in 516.506(a), 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 Acquisition Service (FAS). 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, FAS 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 FAS 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.

[64 FR 37229, July 9, 1999, as amended at 68 FR 24380, May 7, 2003; 69 FR 28065, May 18, 2004; 72 FR 4654, Feb. 1, 2007; 75 FR 41096, July 15, 2010; 81 FR 1533, Jan. 13, 2016]

552.216–73 Ordering Information.

As prescribed in 516.506(c), insert the following provision:

ORDERING INFORMATION (AUG 2010)

(a) In accordance with the Placement of Orders clause of this solicitation, the offeror elects to receive orders placed by GSA's Federal Acquisition Service (FAS) 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.

_____

_____

_____

(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.

(End of provision)

Alternate I (SEP 1999). As prescribed in 516.506(c), delete paragraph (d) of the basic provision.

[64 FR 37229, July 9, 1999, as amended at 72 FR 4654, Feb. 1, 2007; 75 FR 41096, July 15, 2010]

EFFECTIVE DATE NOTE: At 85 FR 50909, Aug. 19, 2020, § 552.216–73 was amended by

a. Removing from the introductory text ''As prescribed in 516.506(c)'' and adding ''As prescribed in 516.506(b)'' in its place;

b. Removing from the introductory text of Alternate I, ''As prescribed in 516.506(c)'' and adding ''As prescribed in 516.506(b)'' in its place, effective Oct. 19, 2020.

552.216–74 Task-Order and Delivery-Order Ombudsman.

As prescribed in 516.506(b), insert the following clause:

TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (JAN 2017)

(a) GSA has designated a Task-Order and Delivery-Order Ombudsman who will review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders under Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract. Written complaints shall be submitted to the Ombudsman, with a copy to the Contracting Officer.

(b) In the case that the contractor is not satisfied with the resolution of the complaint by the GSA Task-Order and Delivery-Order Ombudsman, the contractor may follow the procedures outlined in subpart 33.1.

(c) The GSA Task-Order and Delivery-Order Ombudsman is located at the General Services Administration (GSA), Office of Government-wide Policy (OGP), Office of Acquisition Policy (MV). Contact information for the GSA Task-Order and Delivery-Order Ombudsman can be found at: *http://www.gsa.gov/ombudsman*.

(End of clause)

[75 FR 41096, July 15, 2010, as amended at 81 FR 1533, Jan. 13, 2016; 82 FR 2250, Jan. 9, 2017]

EFFECTIVE DATE NOTE: At 85 FR 50959, Aug. 19, 2020, § 552.216–74 was removed and reserved, effective Oct. 19, 2020.

552.216–75 Transactional Data Reporting.

As prescribed in 516.506(d), insert the following provision:

TRANSACTIONAL DATA REPORTING (JUN 2016)

(a) *Definition. Transactional data* encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) *Reporting of Transactional Data*. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an Internet Web site designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center Web site, *https://vsc.gsa.gov*. The reporting system Web site address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.

(vii) Unit Measure (each, hour, case, lot).

(viii) Quantity of Item Sold.

(ix) Universal Product Code.

(x) Price Paid per Unit.

(xi) Total Price.

NOTE TO PARAGRAPH (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(c)(3).

(3) The Contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(6) *Reporting Points*. (i) The acceptable points at which transactional data may be reported include—

(A) Issuance of an invoice; or

(B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(7) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order issued against the contract.

(8) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other information that would compromise national security are exempt from this reporting requirement.

(9) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(10) GSA reserves the unilateral right to change reporting instructions following 60

calendar days' advance notification to the Contractor.

(c) *Contract Access Fee (CAF).* (1) GSA's operating costs are reimbursed through a CAF charged on orders placed against this contract. The CAF is paid by the ordering activity but remitted to GSA by the Contractor. GSA has the unilateral right to change the fee structure at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change.

(2) Within 60 calendar days of award or inclusion of this clause in the contract, a GSA representative will provide the Contractor with specific written procedural instructions on remitting the CAF, including the deadline by which the Contractor must remit the CAF. The deadline specified in the written procedural instructions will be no less than 30 calendar days after the last calendar day of the month. GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(3) The Contractor must remit the CAF to GSA in U.S. dollars.

(4) The Contractor's failure to remit the full amount of the CAF within the specified deadline constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232–17, Interest). If the Contractor fails to submit the required sales reports, falsifies them, or fails to timely pay the CAF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

(End of Provision)

[81 FR 41137, June 23, 2016]

EFFECTIVE DATE NOTE: At 85 FR 50959, Aug. 19, 2020, § 556.21–75 was amended by removing from the introductory text ''As prescribed in 516.506(d)'' and adding ''As prescribed in 516.506(c)'' in its place, effective Oct. 19, 2020.

552.216–76 Ordering Agency Task-Order and Delivery-Order Ombudsman.

As prescribed in 516.506(d), insert the following provision:

ORDERING AGENCY TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (JAN 2017)

(a) *Ordering Agency Task-Order and Delivery-Order Ombudsman.* The Ordering Agency shall designate a Task-Order and Delivery-Order Ombudsman to review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders placed against GSA Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract. The contact information for the Ordering Agency Task-Order and Delivery-Order Ombudsman shall be made available to contractors.

(b) *Submission of Complaints.* When a contractor submits a complaint to the Ordering Agency's designated Task-Order and Delivery-Order Ombudsman, the contractor shall also send a copy of the complaint to the GSA Procurement Ombudsman, for informational purposes. The GSA Procurement Ombudsman is located at the General Services Administration, Office of Governmentwide Policy (OGP), Office of Acquisition Policy (MV). Contact information for the GSA Procurement Ombudsman can be found at: *http://www.gsa.gov/ombudsman.*

(c) If the contractor is not satisfied with the resolution of its complaint by the Ordering Agency Task-Order and Delivery-Order Ombudsman, the contractor may follow the procedures outlined in FAR subpart 33.1, as applicable (e.g., FAR 16.505(a)(10).

(End of clause)

[82 FR 2250, Jan. 9, 2017]

EFFECTIVE DATE NOTE: At 85 FR 50959, Aug. 19, 2020, § 552.216–76 was removed and reserved, effective Oct. 19, 2020.

552.217–70 Evaluation of Options.

As prescribed in 517.208(a), insert the following provision:

EVALUATION OF OPTIONS (JUL 2016)

(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.

[64 FR 37218, July 9, 1999, as amended at 81 FR 36422, June 6, 2016]

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)

552.217–73 Notice Regarding Information Collection Requirements.

As prescribed in 515.209–70(b), insert the following clause:

NOTICE (JUN 2016)

(a) 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.

(b) GSA's hours of operation are 8:00 a.m. to 4:30 p.m. EST. Requests for pre-award debriefings postmarked or otherwise submitted after 4:30 p.m. EST will be considered submitted the following business day. Requests for post-award debriefings delivered after 4:30 p.m. EST will be considered received and filed the following business day.

(End of clause)

[81 FR 36425, June 6, 2016]

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)

552.219–74 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)

552.223–73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) For Shipments.

As prescribed in 523.303(c), insert the following clause:

PRESERVATION, PACKAGING, PACKING, MARKING AND LABELING OF HAZARDOUS MATERIALS (HAZMAT) FOR SHIPMENTS (JUN 2015)

(a) *Definition. United States,* as used in this clause, means the 48 adjoining U.S. States, Alaska, Hawaii, and U.S. territories and possessions, such as Puerto Rico.

(b) Preservation, packaging, packing, marking and labeling of hazardous materials for export shipment outside the United States in all transport modes shall comply with the following, as applicable:

(1) International Maritime Dangerous Goods (IMDG) Code as established by the International Maritime Organization (IMO).

(2) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180. (Note: Classifications permitted by the HMR, but not permitted by the IMDG code, such as Consumer Commodities classed as ORM–D, shall be packaged in accordance with the IMDG Code and dual-marked with both Consumer Commodity and IMDG marking and labeling.)

(3) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.

(4) International Air Transport Association (IATA), Dangerous Goods Regulation and/or International Civil Aviation Organization (ICAO), Technical Instructions.

(5) AFMAN 24–204, Air Force Inter-Service Manual, Preparing Hazardous Materials For Military Air Shipments.

(6) Any preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation and contract.

(c) Preservation, packaging, packing, marking and labeling of hazardous materials for domestic shipments within the United States in all transport modes shall comply with the following; as applicable:

(1) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180.

(2) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.

(3) Any preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation and contract.

(d) Hazardous Material Packages designated for outside the United States destinations through Forwarding Points, Distribution Centers, or Container Consolidation Points (CCPs) shall comply with the IMDG, IATA, ICAO or AFMAN 24–204 codes, as applicable.

(e) The test certification data showing compliance with performance-oriented packaging or UN-approved packaging requirements shall be made available to GSA contract administration/management representatives or regulatory inspectors upon request.

(End of clause)

[80 FR 36249, June 24, 2015]

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)

552.228–5 Government as Additional Insured.

As prescribed in 528.310, insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (JAN 2016)

(a) This clause supplements the requirements set forth in FAR clause 52.228–5, Insurance—Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

(End of clause)

[74 FR 17099, Apr. 14, 2009, as amended at 81 FR 1533, Jan. 13, 2016]

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 532.908(a), insert the following clause:

PAYMENTS (NOV 2009) (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 PDN assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 2007). The PDN appears on the contract award document.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 74 FR 54918, Oct. 26, 2009; 81 FR 1533, Jan. 13, 2016]

552.232–5 Payments under Fixed-Price Construction Contracts.

As prescribed in 532.111, insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAR 2019)

FAR 52.232–5, Payments under Fixed-Price Construction Contracts, is supplemented as follows:

(a) Before submitting a request for payment, the Contractor shall, unless directed otherwise by the Contracting Officer, attend pre-invoice payment meetings, as scheduled, with the designated Government representative for the purpose of facilitating review and approval of payment requests. Payment meetings will be conducted and may be in person. The Contractor shall provide documentation to support the prospective payment request.

(b) The Contractor shall submit its invoices to the Contracting Officer, unless directed otherwise by the Contracting Officer. Separate payment requests shall be submitted for progress payments, payments of retainage, and partial or final payments.

(c) The Contractor shall use GSA Form 2419 *Certification of Progress Payments Under Fixed-Price Construction Contracts* to provide the certification required under FAR 52.232–5(c).

(d) The Contractor shall use GSA Form 1142 *Release of Claims* to provide the certification required under FAR 52.232–5(h).

(e) If an invoice does not meet the requirements of FAR 52.232–27 and GSAM 552.232–27, the Contracting Officer may return the invoice to the Contractor without payment for correction. If the Contracting Officer disputes the requested payment amount, the Government may pay the portion of the requested payment that is undisputed.

(f) GSA will not be obligated to issue final payment unless the Contractor has furnished to the Contracting Officer a release of claims against the Government relating to the contract, and submitted all required product warranties, as-built drawings, operating manuals, and other items as specified in the contract. The Contractor may reserve from the release specific claims only if such claims are explicitly identified with stated claim amounts.

(End of clause)

[84 FR 3719, Feb. 13, 2019]

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(c)(2), insert the following clause:

PROMPT PAYMENT (NOV 2009) (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 Acquisition Service (FAS), 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)

[64 FR 37229, July 9, 1999, as amended at 74 FR 54918, Oct. 26, 2009]

552.232–39 Unenforceability of Unauthorized Obligations (FAR DEVIATION).

As prescribed in 513.302–5 and 532.706–3, insert the following clause:

UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS. (FAR DEVIATION) (FEB. 2018)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such language, provision, or clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such language, provision, or clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an ''I agree'' click box or other comparable mechanism (e.g., ''click-wrap'' or ''browse-wrap'' agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(b) Paragraph (a) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

[83 FR 7635, Feb. 22, 2018]

552.232–72 Final Payment Under Building Services Contracts.

As prescribed in 532.904(c), insert the following clause:

FINAL PAYMENT UNDER BUILDING SERVICES CONTRACTS (MAR 2012)

Before final payment is made, the Contractor shall complete and furnish the Contracting Officer with GSA Form 1142, Release of Claims, releasing 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 the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

[77 FR 6988, Feb. 10, 2012]

552.232–77 Payment By Government Charge Card.

As prescribed in 532.7003, insert the following clause:

PAYMENT BY GOVERNMENT CHARGE CARD (NOV 2009)

(a) *Definitions.* ''Governmentwide commercial purchase card'' means a uniquely numbered charge card issued by a contractor under the GSA SmartPay® program 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 using the charge card 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.*

[65 FR 11248, Mar. 2, 2000, as amended at 74 FR 54918, Oct. 26, 2009]

552.232–78 Commercial Supplier Agreements—Unenforceable Clauses.

As prescribed in 513.302–5 and 532.706–3 insert the following clause:

COMMERCIAL SUPPLIER AGREEMENTS–UNENFORCEABLE CLAUSES (FEB. 2018)

When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, ''this agreement'' means the commercial supplier agreement:

(a) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(1) *Applicability.* This agreement is part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR Parts 13, 14 or 15).

(2) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(3) *Law and disputes.* This agreement is governed by Federal law.

(i) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(ii) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(iii) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(4) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in FAR 52.233–1, Disputes.

(5) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest,

may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(6) *Updating terms.* (i) After award, the contractor may unilaterally revise terms if they are not material. A material change is defined as:

(A) Terms that significantly change Government rights or obligations; and

(B) Terms that increase Government prices;

(C) Terms that decrease overall level of service; or

(D) Terms that limit any other Government right addressed elsewhere in this contract.

(ii) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(iii) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(7) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(8) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(9) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(i) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(ii) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at FAR 52.233–1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(iii) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(10) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(11) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under the clause at FAR 52.232–23, Assignment of Claims.

(12) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed ''confidential information.'' Issues regarding release of ''unit pricing'' will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(b) If any language, provision or clause of this agreement conflicts or is inconsistent with the preceding paragraph (a), the language, provisions, or clause of paragraph (a) shall prevail to the extent of such inconsistency.

(End of clause)

[83 FR 7635, Feb. 22, 2018]

552.236–6 Superintendence by the Contractor.

As prescribed in 536.506, insert the following clause:

SUPERINTENDENCE BY THE CONTRACTOR (MAR 2019)

The requirements of the clause entitled ''Superintendence by the Contractor'' at FAR 52.236–6, are supplemented as follows:

(a) The Contractor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, change order administration, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the contract. The Contractor shall designate a principal of the firm or other senior management official to provide executive oversight and problem resolution resources to the project for the life of the contract.

(b) The Contractor shall employ, and require its subcontractors to employ, qualified personnel to perform the contract. The Government reserves the right to exclude, or remove from the site or building, any personnel for reasons of incompetence, carelessness, or insubordination, who violate rules and regulations concerning conduct on federal property, or whose continued employment on the site is otherwise deemed by the Government to be contrary to the public interest.

(c) The Contractor shall be responsible for coordinating all activities of subcontractors, including all of the following activities:

(1) Preparation of shop drawings produced by different subcontractors where their work interfaces or may potentially conflict or interfere.

(2) Scheduling of work by subcontractors.

(3) Installation of work by subcontractors.

(4) Use of the project site for staging and logistics.

(d) Repeated failure or excessive delay to meet the superintendence requirements by the Contractor may be deemed a default for the purposes of the termination for default clause.

(End of clause)

[84 FR 3720, Feb. 13, 2019]

552.236–11 Use and Possession Prior to Completion.

As prescribed in 536.511, insert the following clause:

USE AND POSSESSION PRIOR TO COMPLETION (MAR 2019)

Exercise by the Government of the right conferred by FAR 52.236–11 shall not relieve the Contractor of responsibility for completing any unfinished components of the work.

(End of clause)

[84 FR 3720, Feb. 13, 2019]

552.236–15 Schedules for Construction Contracts.

As prescribed in 536.515, insert the following clause:

SCHEDULES FOR CONSTRUCTION CONTRACTS (MAR 2019)

The requirements, of the clause entitled ''Schedules for Construction Contracts'' at FAR 52.236–15, are supplemented as follows:

(a) *Purpose.* The project schedule shall be a rational, reasonable, and realistic plan for completing the work, and conform to the requirements specified in this clause and elsewhere in the contract. The Contractor understands and acknowledges that the preparation and proper management of the project schedule is a material component of the contract.

(b) *Use of the schedule.* The Contracting Officer shall be entitled, but not required, to rely upon the project schedule to evaluate the Contractor's progress, evaluate entitlement to extensions of time, and determine the criticality or float of any activities described in such project schedule.

(c) *Submission.* Prior to notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule.

(d) *Milestones.* The project schedule shall incorporate milestone events specified in the contract, including, as applicable, notice to proceed, substantial completion, and milestones related to specified work phases and site restrictions. The project schedule shall also include Contractor-defined milestones to identify target dates for critical events, based upon the Contractor's chosen sequence of work.

(e) *Activities.* The project schedule shall depict all major activities necessary to complete the work.

(f) *Schedule of values.* (1) The Contractor shall prepare and submit for approval a cost breakdown of the Contract price, to be referred to as the ''schedule of values'', assigning values to each major activity necessary to complete the work.

(2) Values must include all direct and indirect costs, although a separate value for bond costs may be established.

(3) The schedule of values must contain sufficient detail to enable the Contracting Officer to evaluate applications for payment.

(g) *Conflicting terms.* (1) If at any time the Contracting Officer finds that the project schedule does not comply with any contract requirement, the Contracting Officer will provide written notice to the Contractor.

(2) Within 30 calendar days of written notice, or such other time as may be specified, from the Contracting Officer, the Contractor shall take one of the following actions:

(i) Revise the project schedule.

(ii) Adjust activity progress.

(iii) Provide sufficient information demonstrating compliance.

(3) If the Contractor fails to sufficiently address the Contracting Officer's exceptions to the project schedule, the Contracting Officer may—

(i) Withhold retainage until the project is substantially complete or until such time as the Contractor has complied with project schedule requirements; or

(ii) Terminate the contract for default.

(h) *Revisions to the schedule.* If the Contractor revises the project schedule after initial approved submission, the Contractor

shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates*. Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule weekly to reflect actual progress in completing the work, and submit the updated project schedule by the following Monday.

(End of clause)

Alternate I (MAR 2019). As prescribed in 536.515(a), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission*. Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities*. (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) The project schedule shall depict all activities necessary to complete the work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(3) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(4) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule*. (1) The Contractor should anticipate that the initial submittal of the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken to the initial submittal. The Contractor understands and acknowledges that the purpose of the initial review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates*. Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate II (MAR 2019). As prescribed in 536–515(b), substitute the following paragraphs (c), (e), and (i) for paragraphs (c), (e), and (i) of the basic clause:

(c) *Submission*. (1) Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major design and construction activities. The project schedule may indicate construction activities in summary form prior to completion of final design documents.

(2) Within 30 calendar days of completion of final design documents, the Contractor shall submit a revised project schedule depicting all activities necessary to complete construction work activities, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities*. (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(3) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall

validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate III (JAN 2020). As prescribed in 536.515(c), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission.* (1) Within 30 calendar days of contract award, or such other time as may be specified in the contract, the Contractor shall submit the design phase project schedule.

(2) Within 30 calendar days after establishing the final estimated cost of work, the Contractor shall submit the construction phase project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The design phase project schedule shall depict all activities necessary to complete the design work, including, as applicable, all submittal and submittal review activities, cost reconciliation, and establishing the estimated cost of work for the construction phase.

(2) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the construction phase work.

(3) The construction phase project schedule shall depict all activities necessary to complete the construction work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(4) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(5) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule.* (1) The Contractor should anticipate that the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken. The Contractor understands and acknowledges that the purpose of the review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor proposes a revision to the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

[84 FR 3720, Feb. 13, 2019, as amended at 84 FR 69636, Dec. 19, 2019]

552.236–21 Specifications and Drawings for Construction.

As prescribed in 536.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (MAR 2019)

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.

(b) Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing.

(c) 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.

(d) 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.

(e) Standard details or specification drawings are applicable when listed, bound with the specifications, noted on the drawings, or referenced elsewhere in the specifications.

(1) Where notes on the specification drawings indicate alterations, such alterations shall govern.

(2) In case of difference between standard details or specification drawings and the specifications, the specifications shall govern.

(3) In case of difference between the standard details or specification drawings and the drawings prepared specifically for this contract, the drawings prepared specifically for this contract shall govern.

(f) Different requirements within the contract documents shall be deemed inconsistent only if compliance with both cannot be achieved.

(g) Unless otherwise noted, the drawings shall be interpreted to provide for a complete construction, assembly, or installation of the work, without regard to the detail with which material components are shown in the drawings.

(End of clause)

Alternate I (MAR 2019). As prescribed in 536.521, add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to those included among the contract documents, and not to those produced by the Contractor pursuant to its responsibilities under the contract.

Alternate II (JAN 2020). As prescribed in 536.521(b), add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to the construction documents, meaning the 100 percent complete specifications and construction drawings developed during the design phase.

[84 FR 3720, Feb. 13, 2019, as amended at 84 FR 69636, Dec. 19, 2019]

552.236–70 Authorities and Limitations.

As prescribed in 536.570, insert the following clause:

AUTHORITIES AND LIMITATIONS (MAR 2019)

(a) All work shall be performed under the general direction of the Contracting Officer. The Contracting Officer 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. The Contracting Officer may designate contracting officer's representatives (CORs) 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 COR 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 COR additional power and authority to act for him or designate additional CORs, specifying the extent of their authority to act for him. A copy of each document vesting additional authority in a COR or designating an additional COR 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 a COR 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.

(c) If the Contractor receives written notice from the Contracting Officer of noncompliance with any requirement of this contract, the Contractor must initiate action as may be appropriate to comply with the specified requirement as defined in the notice. In the event the Contractor fails to initiate such action within a reasonable period of time as defined in the notice, 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)

[84 FR 3721, Feb. 13, 2019]

552.236–71 Contractor Responsibilities.

As prescribed in 536.571, insert the following clause:

CONTRACTOR RESPONSIBILITIES (MAR 2019)

(a) The Contractor shall be responsible for compliance with applicable codes, standards and regulations pertaining to the health and safety of personnel during performance of the contract.

(b) Unless expressly stated otherwise in the contract, the Contractor shall be responsible for all means and methods employed in the performance of the contract.

(c) The Contractor shall immediately bring to the Contracting Officer's attention any hazardous materials or conditions not disclosed in the contract documents discovered by or made known to the Contractor during the performance of the contract.

(d) The Contractor shall be responsible for providing professional design services in connection with performance of the work or portions of the work only if this responsibility is expressly stated in the contract, and the contract documents provide the performance and design criteria that such services will be required to satisfy. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(f) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(g) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(End of clause)

Alternate I (MAR 2019). As prescribed in 536.571, delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), and (g) as follows:

(d) The Contractor shall be responsible for providing professional design services unless this responsibility is expressly excluded from the contract. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) The Contractor's responsibilities include the responsibilities of the Architect-Engineer Contractor, as specified in FAR 52.236–23.

(f) The Contractor shall include in all subcontracts that require professional design services express terms establishing GSA as a third party beneficiary. No other person shall be deemed a third party beneficiary of the contract.

(g) The Contractor shall determine whether the information contained in the contract documents complies with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

Alternate II (JAN 2020). As prescribed in 536.571(b), delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), (g), (h), (i), and (j) as follows:

(d) The Contractor shall be responsible for performing the design phase services in accordance with the statement of work. The Contractor shall submit all deliverables and reports in accordance with the statement of work.

(e) The Contractor shall be responsible to review all design information (e.g., draft specifications and drawings) provided. The Contractor shall be responsible for determining that the project as described in the design information is constructible using

commercially practicable means and methods; that the construction work is described in the design documents with sufficient completeness to enable pricing of a complete project within the guaranteed maximum price; and that the manner of presentation and organization of information in the design documents enables accurate estimation of the cost of the work.

(f) Prior to establishment of the final estimated cost of work, the Contractor shall bring to the Contracting Officer's attention all instances that it has discovered or has been made aware of where design errors and omissions affect the Contractor's ability to accurately estimate the cost of the work.

(g) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(h) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(i) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(j) The Contractor is responsible to construct the project in accordance with the drawings and specifications. The final Estimated Cost of the Construction Work (ECW) may be determined based upon incomplete design documents. In those instances in which the drawings and specifications are not complete at the time the final ECW is established, the Contractor shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the final ECW on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources.

[84 FR 3722, Feb. 13, 2019, as amended at 84 FR 69636, Dec. 19, 2019]

552.236–72 Submittals.

As prescribed in 536.572, insert the following clause:

SUBMITTALS (MAR 2019)

(a) The Contractor shall prepare and submit all submittals as specified in the contract or requested by the Contracting Officer.

(1) Submittals may include: safety plans, schedules, shop drawings, coordination drawings, samples, calculations, product information, or mockups.

(2) Shop drawings may include fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(b) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, submittals shall be submitted to the Contracting Officer.

(c) The Contractor shall be entitled to receive notice of action on submittals within a reasonable time, given the volume or complexity of the submittals and the criticality of the affected activities to substantial completion as may be indicated in the project schedule.

(d) Review of submittals will be general and shall not be construed as permitting any departure from the contract requirements.

(e) The Contractor shall not proceed with construction work or procure products or materials described or shown in submittals until the submittal is reviewed. Any work or activity undertaken prior to review shall be at the Contractor's risk. Should the Contracting Officer subsequently determine that the work or activity does not comply with the contract, the Contractor shall be responsible for all cost and time required to comply with the Contracting Officer's determination. The Contracting Officer shall have the right to order the Contractor to cease execution of work for which submittals have not been reviewed. The Government shall not be liable for any cost or delay incurred by the Contractor attributable to the proper exercise of this right.

(f) The Contractor shall identify, in writing, all deviations or changes in resubmitted submittals. In the absence of such written notice, review of a resubmission shall not include or apply to such deviations or changes.

(End of clause)

Alternate I (MAR 2019) As prescribed in 536.572, add the following paragraph to the basic clause:

(g) The Contractor shall submit design documents for review in accordance with PBS–P100. The Government shall review submittals for the limited purpose of verifying that the documents conform to the design criteria expressed in the contract documents.

[84 FR 3722, Feb. 13, 2019]

552.236–73 Subcontracts.

As prescribed in 536.573, 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)

[64 FR 37229, July 9, 1999. Redesignated and amended at 84 FR 3722, Feb. 13, 2019]

552.236–74 Evaluation of Options.

As prescribed in 536.270–5(a), insert the following provision:

EVALUATION OF OPTIONS (MAR 2019)

The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

[84 FR 3722, Feb. 13, 2019]

552.236–75 Evaluation Exclusive of Options.

As prescribed in 536.270–5(b), insert the following provision:

EVALUATION EXCLUSIVE OF OPTIONS (MAR 2019)

The Government will evaluate offers for award purposes by including only the price for the basic requirement. Options will not be included in the evaluation for award purposes.

(End of provision)

[84 FR 3722, Feb. 13, 2019]

552.236–76 Basis of Award—Sealed Bidding Construction

As prescribed in 536.270–5(c), insert the following provision:

BASIS OF AWARD—SEALED BIDDING CONSTRUCTION (MAR 2019)

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 (MAR 2019). As prescribed in 536.270–5(c), designate the basic provision as paragraph (a) and add the following paragraph to the basic provision:

(b)(1) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for:

(i) The base requirement; plus

(ii) All options designated to be evaluated.

(2) The evaluation of options will not obligate the Government to exercise the options.

[84 FR 3722, Feb. 13, 2019]

552.236–77 Government's Right to Exercise Options.

As prescribed in 536.270–5(d), insert the following clause:

GOVERNMENT'S RIGHT TO EXERCISE OPTIONS (MAR 2019)

(a) The Government may exercise any option in writing in accordance with the terms and conditions of the contract within _____ [*insert the period of time within which the Contracting Officer may exercise the option*]. Unless otherwise specified, options may be exercised within 90 calendar days of contract award.

(b) If the Government exercises the option, the contract shall be considered to include this option clause.

(End of clause)

[84 FR 3722, Feb. 13, 2019]

552.236–79 Construction-Manager-As-Constructor.

As prescribed in 536.7107(a), insert the following clause:

CONSTRUCTION-MANAGER-AS-CONSTRUCTOR (JAN 2020)

(a) *General*. Pricing for the Guaranteed Maximum Price (GMP) for the option for construction services shall be subject to the requirements below.

(b) *Definitions*. The following definitions shall apply to this clause:

Construction-Manager-as-Constructor (CMc) Contingency Allowance (CCA) means an allowance for the exclusive use of the construction contractor to cover reimbursable costs during construction that are not the basis of a change order. These costs could include estimating, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

Cost means allowable costs in accordance with FAR Part 31.

Cost of Performance means the final sum of cost of the construction work and fee for the construction work.

Early Work Package means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

Estimated Cost of the Work (ECW) means the estimated cost of the construction work, not including home office overhead.

Fee for the Construction Work means the amount established for the contractor's profit and home office overhead costs, as described in FAR Part 31, for the construction work.

Guaranteed Maximum Price (GMP) means the sum of the ECW, CCA, and the fee for the construction work.

(c) *Guaranteed Maximum Price*. This contract at award includes a GMP.

(d) *Estimated Cost of the Work*. The proposed ECW incorporated into the contract at award is a target ECW. A final ECW is negotiated during the design phase and is incorporated into the contract prior to exercise of the GMP option.

(e) *Final Estimated Cost of the Work*.

(1) *Submission Requirements for Final ECW Proposal*. During the design phase, and at a time agreed by the Contracting Officer, the Contractor shall submit the following:

(i) A detailed statement of all construction costs, including early work packages in the performance of the construction work to date;

(ii) A detailed breakdown of home office overhead costs and a statement that the accounting practices used for the allocation of home office overhead on this contract is in accordance with the Contractor's established cost accounting practices;

(iii) A proposed final ECW;

(iv) Sufficient data to support the accuracy and reliability of the estimate;

(v) An explanation of the difference between the proposed final ECW and the target ECW used to establish the GMP; and

(vi) The Contractor's affirmation that:

(A) The Contractor is satisfied that the project as described in the specifications and construction drawings is constructible using commercially practicable means and methods;

(B) The Contractor is satisfied that the construction work has been sufficiently described to enable it to estimate the cost of the work with reasonable accuracy;

(C) The Contractor has disclosed to the Contracting Officer all of its actual knowledge relating to design errors and omissions that may affect the cost of the work; and

(D) The Contractor acknowledges that the final ECW and time established for completion shall not be adjusted on account of cost or time attributable to known design errors and omissions disclosed by the Contractor pursuant to paragraph (e)(1)(v)(C) of this clause. Unknown design errors and omissions that form the basis for a change order may still be settled in accordance with GSAR 552.243–71 Equitable Adjustments.

(2) *Establishment of the Final ECW*. The parties shall negotiate a final ECW based on the data provided under paragraph (e)(1) of this clause. The final ECW shall be established and incorporated into the Contract by bilateral modification. The Contracting Officer will not accept a final ECW proposal that does not include the written affirmation described in this clause. The Contracting Officer will not exercise the GMP option for construction work unless the final ECW has been incorporated into the contract.

(f) *CMc Contingency Allowance*. The CCA shall be __ percent of the ECW [*Contracting Officer insert percentage amount*].

(g) *Shared Savings Incentive*. The Contractor shall be entitled to __percent of the difference between the final GMP and the final cost of performance [*Contracting Officer insert percentage amount*].

(h) *Adjustment of ECW and GMP*. The ECW and GMP shall be subject to adjustment for changes and any other conditions giving rise to entitlement to an adjustment under this contract. The ECW and GMP may be adjusted down for deletions to the scope of the construction services through a bilateral modification.

(i) *Adjustment of CCA*. If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the Contractor

should work with the Contracting Officer to identify measures to reduce the overall GMP, including reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project. At any time, the parties may agree to a different CCA than the amount expressed at time of contract award. Prior to the use of the CCA, the Contractor shall coordinate approval following the procedures identified in the contract. For approved CCA uses, the CCA shall be reduced and the ECW shall be adjusted accordingly.

(j) *Adjustment of the Fee for the Construction Work*. The fee for the construction work may be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays. The fee for the construction work associated with a change order shall not be driven by a fixed percentage. The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.

(k) *Conversion to Firm-Fixed-Price Prior to Final Settlement*.

(1) *Submission Requirements for Conversion to Firm-Fixed Price*. If the parties agree to negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option, or at the request of the Contracting Officer, the Contractor shall submit the following:

(i) A proposed firm-fixed-price proposal for the completion of the construction work, which shall include all markups, including profit.

(ii) A detailed statement of any costs incurred in the performance of the contract work to date.

(2) *Establishment of Firm-Fixed-Price*.

(i) *Prior to Exercise of GMP Option*. The parties may negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option based on the data provided under paragraph (k)(1) of this clause; provided that the firm-fixed-price shall not exceed the GMP. The Contracting Officer shall have the right, but not the obligation, to bilaterally exercise the GMP option at the firm-fixed-price within 120 calendar days of the establishment of such price.

(ii) *After Exercise of the GMP Option*. At any time prior to final settlement, the Contracting Officer may request that the Contractor provide a firm-fixed-price proposal for the completion of construction work in accordance with paragraph (k)(1) of this clause. Within 60 calendar days of such request, the Contractor shall provide such data. Within 60 calendar days of receipt of the Contractor's proposal, the Contracting Officer shall have the right, but not the obligation, to convert the contract to a firm-fixed-price contract through a bilateral modification at the proposed fixed-price or as otherwise negotiated by the parties; provided that the firm-fixed-price, plus any costs incurred in the performance of the construction work, shall not exceed the GMP.

(iii) If any portion of the contract is converted to a firm-fixed-price, then that portion of the contract is no longer subject to open book accounting, a shared savings incentive, or the need for final settlement. If the contract is not converted to a firm-fixed-price contract, then the final settlement of the Contractor's compensation shall be determined in accordance with paragraph (l) of this clause.

(3) *Payments*. If this contract is converted to a firm-fixed-price contract, the Contractor shall submit a revised schedule of values for the construction work allocating the unpaid balance of the fixed price to the itemized work activities remaining uncompleted, which shall be the basis for remaining progress payments.

(l) *Final Settlement*. The final settlement amount shall consist of the cost of performance and the Contractor's shared savings incentive, if any, provided that in no event shall the final settlement exceed the GMP. The final settlement amount shall be the Contractor's total compensation due under the contract.

(1) *Submission Requirements for Final Settlement Proposal*. The Contractor shall submit a final settlement proposal within 120 days of substantial completion to determine the cost of the construction work, which shall include the following:

(i) A detailed statement of all costs incurred by the Contractor in performing the construction work;

(ii) A firm-fixed-price proposal for the performance of the remaining work, if any, that may be necessary to complete performance of the construction work;

(iii) An executed release of claims, which shall describe any and all exceptions, including a description of any outstanding claims; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) *Determination of the Cost of the Work*. The cost of the construction work shall be the sum of all costs incurred by the Contractor in performing the construction work, the proposed fixed price for performance of remaining work, if any, less the residual value of any Contractor retained inventory. In order to determine the cost of the construction work, the Contractor shall be subject to an audit of the Contractor's records and/or the Contractor's proposal. Establishment of the cost of the construction work shall be subject to negotiation between the Government and the Contractor. In the event that the parties are unable to reach

agreement, the Contracting Officer may unilaterally determine the cost of the construction work, and such determination shall be subject to FAR Clause 52.233–1 Disputes.

(3) *Determination of the Shared Savings Incentive.* If the final cost of performance is equal to or greater than the final GMP, the Contractor is not entitled to any additional compensation. If the final cost of performance is less than the final GMP, the Contractor is entitled to the percentage specified in paragraph (g) of this clause, of the difference between the final GMP and the final cost of performance, as the shared savings incentive.

(m) *Subcontracts.* No subcontract placed under this contract may provide for cost-plus-a-percentage of cost. Any costs incurred by the Contractor as a result of such a subcontract shall not be included in the cost of the construction work or the final settlement.

(n) *Open Book Access.* (1) At any time prior to converting to firm-fixed-price, the Government and its representatives, including designated auditors and accountants, shall have the right, but not the obligation, to attend any and all project meetings and shall have access to any and all records maintained by the Contractor relating to the contract. The Contractor shall include this requirement for open book access by the Government in its subcontracts for the contract.

(2) After converting to firm-fixed-price, the Government maintains the right to examine records under GSAR Clause 552.215–70.

(o) *Termination.* If this Contract is terminated, the Contractor shall not be entitled to a shared savings incentive.

(p) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

(End of Clause)

[84 FR 69637, Dec. 19, 2019□]

552.236–80 Accounting Records and Progress Payments.

As prescribed in 536.7107(b), insert the following clause:

ACCOUNTING RECORDS AND PROGRESS PAYMENTS (JAN 2020)

(a) The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this contract. The Contractor's accounting and control systems shall meet Generally Accepted Accounting Principles (GAAP) and provide for the following:

(1) There is proper segregation of direct costs and indirect costs.

(2) There is proper identification and accumulation of direct costs by contract.

(3) There is a labor time distribution system that charges direct and indirect labor appropriately.

(b) The Contractor shall afford access to and shall permit any authorized representatives of the Government to audit, examine and copy any records, documents, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this contract. Records subject to audit, examination, and copying shall include those records necessary to evaluate and verify all direct and indirect costs, including overhead and payroll tax and fringe benefit allocations, as they may apply to costs associated with the contract. The Contractor shall preserve these records for a period of three years after the final payment, or for such longer period as may be required by law.

(c) The records identified in paragraphs (b) of this clause shall be subject to inspection and audit by the Government or its authorized representative for, but not limited to, evaluating and verifying:

(1) Contractor compliance with contract requirements;

(2) Compliance with pricing change orders, invoices, applications for payment, or claims submitted by the contractor or any of its subcontractors at any tier, including vendors and suppliers.

(d) If requested by the Government, the Contractor shall promptly deliver to the Government or its designee copies of all records related to the contract, in a form acceptable to the Government. The Contractor shall provide to the Government or its authorized representative such records maintained in an electronic format in a computer readable format on data disks or suitable alternative computer data exchange formats.

(e) The Government shall have access to the Contractor's facilities, shall be allowed to interview all current and former employees to discuss matters pertinent to the contract, and shall be provided adequate work space, in order to conduct audits and examinations.

(f) If any audit or examination of the Contractor's records discloses total findings resulting in overpricing or overcharges by the Contractor to the Government in excess of one-quarter percent of the total contract billings, the Contractor shall immediately reimburse the Government for the overcharges. The Contractor shall also reimburse the Government for the costs of the audit unless otherwise agreed to by the Government and the Contractor.

(g) The Government shall be entitled to audit all modifications, including lump-sum modifications, to determine whether the proposed costs, as represented by the Contractor and any of its subcontractors, are in compliance with the contract. If it is determined

that the costs proposed under a modification, including lump-sum modifications, are not in compliance with the contract, the Government reserves the right to adjust the amount previously approved and included in the modification.

(h) If the Contractor fails to comply with any conditions in this clause, the Contracting Officer may retain a maximum of 10 percent of the amount of each payment request submitted until such deficiencies are corrected.

(i) These requirements regarding accounting records shall not mitigate, lessen nor change any other requirements in the contract regarding audits, payment submissions, records, or records retention.

(j) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

(End of Clause)

[84 FR 69638, Dec. 19, 2019]

552.237–70 [Reserved]

552.237–71 Qualifications of Employees.

As prescribed in 537.110(a), 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)

[64 FR 37229, July 9, 1999, as amended at 74 FR 20606, May 5, 2009]

552.237–72 Prohibition Regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(b), 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)

[64 FR 37229, July 9, 1999, as amended at 74 FR 20606, May 5, 2009]

552.237–73 Restriction on Disclosure of Information.

As prescribed in 537.270, insert the following clause:

RESTRICTION ON DISCLOSURE OF INFORMATION (MAY 2009)

(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 persons or entity 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)

[64 FR 37229, July 9, 1999, as amended at 74 FR 20606, May 5, 2009]

552.238–70 Cover Page for Worldwide Federal Supply Schedules.

As prescribed in 538.273(a)(1), insert the following provision:

COVER PAGE FOR WORLDWIDE FEDERAL SUPPLY SCHEDULES (MAY 2019)

For All Geographic Areas

Solicitation No. [The contracting officer should insert the solicitation number here]*___*

Federal Supply Schedule Contract for All Geographic Areas [For supplies, the Contracting Officer should complete the information required by paragraph (a) and delete paragraph (b) in its entirety. For services, the Contracting Officer should complete the information required by paragraph (b) and delete (a) in its entirety. For solicitations containing both supplies and services, the Contracting Officer should complete paragraphs (a) and (b).]

(a) Federal Supply Classification (FSC) GROUP *___* PART *___* SECTION *___*

SUPPLY: *___* FSC CLASS(ES)/PRODUCT CODE(S)/NAICS: *___*

(b) STANDARD INDUSTRY GROUP: *___* SERVICE: *___* SERVICE CODE(S)/NAICS: *___*

(End of provision)

Alternate I (MAY 2019): As prescribed at 538.273(a)(1)(i), add the following paragraph (c) to the basic provision.

(c) PERIOD: *___* THROUGH *___*

[84 FR 17041, Apr. 23, 2019]

552.238–71 Notice of Total Small Business Set-Aside.

As prescribed in 538.273(a)(2), insert the following provision:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (MAY 2019)

FAR clause 52.219–6, Notice of Total Small Business Set-Aside applies to the following: [The contracting officer should insert the special item numbers (SINs) set aside for small businesses] *___*.

(End of provision)

[84 FR 17041, Apr. 23, 2019]

552.238–72 Information Collection Requirements.

As prescribed in 538.273(a)(3), insert the following provision:

INFORMATION COLLECTION REQUIREMENTS (MAY 2019)

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.

(End of provision)

[84 FR 17041, Apr. 23, 2019]

552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

As prescribed in 538.273(b)(1), insert the following clause:

IDENTIFICATION OF ELECTRONIC OFFICE EQUIPMENT PROVIDING ACCESSIBILITY FOR THE HANDICAPPED (MAY 2019)

(a) *Definitions.* ''Electronic office equipment accessibility'' 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)

[84 FR 17041, Apr. 23, 2019]

552.238–74 Introduction of New Supplies/Services (INSS).

As prescribed in 538.273(b)(2), insert the following provision:

INTRODUCTION OF NEW SUPPLIES/SERVICES (INSS) (MAY 2019)

(a) *Definition.*

Introduction of New Supplies/Services Special Item Number (INSS SIN) means a new or improved supply or service—within the scope of the Federal Supply Schedule (FSS), but not currently available under any Federal Supply Schedule contract—that provides a new service, function, task, or attribute that may provide a more economical or efficient means for ordering activities to accomplish their missions. It may significantly improve an existing supply or service. It may be a supply or service existing in the commercial market, but not yet introduced to the Federal Government.

(b) Offerors are encouraged to introduce new or improved supplies or services via INSS SIN at any time by clearly identify the INSS SIN item in the offer.

(c) The Contracting Officer has the sole discretion to determine whether a supply or service will be accepted as an INSS SIN item. The Contracting Officer will evaluate and process the offer and may perform a technical review. The INSS SIN provides temporary placement until the Contracting Officer formally categorizes the new supply or service.

(d) If the Contractor has an existing schedule contract, the Government may, at the sole discretion of the Contracting Officer, modify the existing contract to include the INSS SIN item in accordance with 552.238–81, Modifications (Federal Supply Schedules).

(End of provision)

[84 FR 17041, Apr. 23, 2019]

552.238–75 Evaluation—Commercial Items (Federal Supply Schedule).

As prescribed in 538.273(c)(1), insert the following provision:

EVALUATION—COMMERCIAL ITEMS (FEDERAL SUPPLY SCHEDULE) (MAY 2019)

(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)

[84 FR 17041, Apr. 23, 2019]

552.238–76 Use of Non-Government Employees to Review Offers.

As prescribed in 538.273(c)(2), insert the following provision:

USE OF NON-GOVERNMENT EMPLOYEES TO REVIEW OFFERS (MAY 2019)

(a) The Government may employ individual technical consultants/advisors/contractors from the below listed organizations to review limited portions of the technical, management and price proposals to assist the government in both pre-award and post-award functions. [The contracting officer should insert a list of organizations used to review solicitation responses and execute a non-disclosure and organizational conflict of interest statement for all individuals conducting reviews.]

* ___ *

(b) These representatives will be used to advise on specific technical, management, and price matters and shall not, under any circumstances, be used as voting evaluators. However, the Government may consider the advice provided in its evaluation process. In addition, Contractor personnel may be used in specific contract administration tasks (e.g., administrative filing, review of deliverables, etc.).

(c) If individual technical consultants/advisors/contractors are utilized as described in (b) above, they will be required to execute a non-disclosure and organizational conflict of interest statements.

(End of provision)

[84 FR 17042, Apr. 23, 2019]

552.238–77 Submission and Distribution of Authorized Federal Supply Schedule Price Lists.

As prescribed in 538.273(d)(1), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LISTS (FEB 2020)

(a) The Contractor shall submit its Authorized Federal Supply Schedule Price List on a common-use electronic medium as prescribed by GSA. Some structured data entry in a prescribed format may be required.

(b) Eligible ordering activities will utilize GSA's online shopping and ordering system to review a Contractors' price lists.

End of Clause

[85 FR 1128, Jan. 9, 2020]

552.238–78 Identification of Products That Have Environmental Attributes.

As prescribed in 538.273(d)(2), insert the following clause:

IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES (MAY 2019)

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (e.g., publications and electronic formats).

(b) *Definitions.* As used in this clause—

Energy-efficient product means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

GSA Advantage! is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

Other environmental attributes refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

Post-consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of ''recovered material.'' The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and *http://www.epa.gov/cpg/*).

Recovered materials means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and *http://www.epa.gov/cpg/*). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

Remanufactured means factory rebuilt to original specifications.

Renewable energy means energy produced by solar, wind, geothermal, and biomass power.

Renewable energy technology means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) *Identification requirements.* (1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (*http://www.epa.gov/cpg/*);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and *http://www.epa.gov/cpg/*);

(iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at *http://www.energystar.gov/* and FEMP at *http://www.eere.energy.gov/femp/procurement/*);

(iv) Are water-efficient;

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

(i) The offer itself.

(ii) Printed commercial catalogs, brochures, and pricelists.

(iii) Online product website.

(iv) Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can

use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA Advantage!.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). 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., the EPA and DOE ENERGY STAR® product labeling 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)

[84 FR 17042, Apr. 23, 2019]

552.238–79 Cancellation.

As prescribed in 538.273(d)(3), insert the following clause:

CANCELLATION (MAY 2019)

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)

[84 FR 17042, Apr. 23, 2019]

552.238–80 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.273(d)(4) insert the following clause:

INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2020)

(a) Reporting of Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

(i) Receipt of order;

(ii) Shipment or delivery, as applicable;

(iii) Issuance of an invoice; or

(iv) Payment.

(2) Contract sales shall be reported to Federal Acquisition Services (FAS) within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including ''zero'' sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Government-wide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including ''zero'' sales, by utilizing the automated reporting system at an internet website designated by the General Services Administration (GSA)'s Federal Acquisition Service (FAS). Prior to using this automated system, the Contractor shall complete contract registration with the FAS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall 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 shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874–7994, internet: *http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm*.

(b) The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days

after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. 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. FAS will post notice of the current IFF at *https://srp.fas.gsa.gov/* or successor website as appropriate.

(c) Within 60 days of award, an FAS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232–17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

Alternate I (MAY 2019). As prescribed in 538.273(d)(4), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) Definition. ''Transactional data'' encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) Reporting of Transactional Data. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an internet website designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center website, *https://vsc.gsa.gov*. The reporting system website address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.

(vii) Unit Measure (each, hour, case, lot).

(viii) Quantity of Item Sold.

(ix) Universal Product Code.

(x) Price Paid per Unit.

(xi) Total Price.

NOTE TO PARAGRAPH (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(c)(3).

(3) The contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The reported price paid per unit and total price must include the Industrial Funding Fee (IFF).

(6) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(7) Reporting Points.

(i) The acceptable points at which transactional data may be reported include—

(A) Issuance of an invoice; or

(B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(8) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order of the contract.

(9) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other or information that would compromise national security are exempt from this reporting requirement.

(10) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(11) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) *Industrial Funding Fee (IFF).*

(1) This contract includes an IFF charged on orders placed against this contract. The IFF is paid by the authorized ordering activity but remitted to GSA by the Contractor. The IFF reimburses GSA for the costs of operating the Federal Supply Schedule program, as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized GSA programs, in accordance with 40 U.S.C. 321.

(2) GSA has the unilateral right to change the fee amount at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change. GSA will post notice of the current IFF on the Vendor Support Center website at *https://vsc.gsa.gov*.

(3) Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. The fee will not be included in the price of non-contract items purchased pursuant to a separate contracting authority, such as a Government-wide Acquisition Contract (GWAC); a separately awarded Federal Acquisition Regulation (FAR) Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract.

(4) The Contractor must remit the IFF to GSA in U.S. dollars within 30 calendar days after the last calendar day of the reporting quarter; final payment must be remitted within 30 calendar days after physical completion of the last outstanding task order or delivery order issued against the contract.

(5) GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(d) The Contractor's failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232–17, Interest). If the Contractor fails to submit the required transactional data reports, falsifies them, or fails to timely pay the IFF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

[84 FR 17043, Apr. 23, 2019, as amended at 85 FR 38337, June 26, 2020]

552.238–81 Price Reductions.

As prescribed in 538.273(d)(5) insert the following clause:

PRICE REDUCTIONS (MAY 2019)

(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 throughout 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 eligible ordering activity 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;

(3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238–113 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause 552.238–113 is the agreed upon customer or category of customer that is the basis of award); or

(4) 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 contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

Alternate I (MAY 2019). As prescribed in 538.273(d)(5), substitute the following paragraph (a) and (b) for paragraphs (a), (b), (c), (d), (e), (f) and (g) of the basic clause:

(a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.

(b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

[84 FR 17045, Apr. 23, 2019]

552.238–82 Modifications (Federal Supply Schedules).

As prescribed in 538.273(d)(6), insert the following clause:

MODIFICATIONS (FEDERAL SUPPLY SCHEDULES) (MAY 2019)

(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 items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If 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) must be submitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215–6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223–3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 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 Contractors 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 the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238–81. If the Price reduction falls under item (i), the Contractor shall transmit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall transmit 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 552.238–81.

(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 552.238–81.

(e) *Amendments to paper Federal 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 three 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 (MAY 2019). As prescribed in 538.273(d)(6)(i), add the following paragraph (e) to the basic clause:

(e) Electronic submission of modification requests is mandatory via eMod (*http://eOffer.gsa.gov*), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center website (*http://vsc.gsa.gov*). If the electronic submissions standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

Alternate II (MAY 2019). As prescribed in 538.273(d)(6)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *Types of Modifications.*

(1) Additional items/additional SINs. When requesting additions, the Contractor must submit the following information:

(i) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the instructions in the solicitation.

(ii) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iii) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215–6, Place of Performance.

(iv) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223–3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(v) Any information requested by FAR 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 must 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 determines that the higher price is unreasonable compared to the price of the deleted item.

[84 FR 17045, Apr. 23, 2019, as amended at 85 FR 1128, Jan. 9, 2020]

552.238–83 Examination of Records by GSA (Federal Supply Schedules).

As prescribed in 538.273(d)(7) insert the following clause:

EXAMINATION OF RECORDS BY GSA (MAY 2019)

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 contract clauses 552.238–81, Price Reductions and 552.238–80, Industrial Funding Fee and Sales Reporting. 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)

[84 FR 22382, May 17, 2019]

552.238–84 Discounts for Prompt Payment.

As prescribed in 538.273(d)(8), insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (MAY 2019)

(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 and Federal non-

schedule 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) 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 ordering activity if payment is made within the discount period specified.

(e) 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.

(f) 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)

[84 FR 17046, Apr. 23, 2019]

552.238–85 Contractor's Billing Responsibilities.

As prescribed in 538.273(d)(9) insert the following clause:

CONTRACTOR'S BILLING RESPONSIBILITIES (MAY 2019)

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

(1) Comply with the same terms and conditions as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—

(i) The date of sale;

(ii) The ordering activity to which the sale was made;

(iii) The service or supply/model sold;

(iv) The quantity of each service or supply/model sold;

(v) The price at which it was sold, including discounts; and

(vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

(End of clause)]

[84 FR 17046, Apr. 23, 2019]

552.238–86 Delivery Schedule.

As prescribed in 538.273(d)(10) insert the following clause:

DELIVERY SCHEDULE (MAY 2019)

(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 business practice. The Government requires the Contractor's normal 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 [The contracting officer shall insert the solicited items or Special Item Numbers (SIN) as well as a reasonable delivery time that corresponds with each item or SIN, if known]:

Items or group of items (special item no. or nomenclature)	Government's stated delivery time (days ARO)	Contractor's delivery time
*	*	*
*	*	*
*	*	*

(b) *Expedited delivery times.* For those items that can be delivered quicker than the delivery times in paragraph (a) of this clause, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Items or group of items (special item no. 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)]

[84 FR 17046, Apr. 23, 2019]

552.238–87 Delivery Prices.

As prescribed in 538.273(d)(11), insert the following clause:

DELIVERY PRICES (MAY 2019)

(a) Prices offered must cover delivery as provided below to destinations located within the 48 contiguous States and the District of Columbia.

(1) Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. Where store-door delivery is subject to a charge, the Contractor shall place the notation ''Delivery Service Requested'' on bills of lading covering such shipments, and pay such charge and add the actual cost thereof as a separate item to his invoice.

(2) Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this section.

(3) Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) The Offeror shall indicate in the offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

(c) When deliveries are made to destinations outside the contiguous 48 States; *i.e.*, Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by paragraph (b), above, the following conditions will apply:

(1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247–38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.

(2) The right is reserved to ordering agencies to furnish Government bills of lading.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–88 GSA Advantage!®.

As prescribed in 538.273(d)(12), insert the following clause:

GSA ADVANTAGE!® (MAY 2019)

(a) The Contractor shall participate in the GSA Advantage!® online shopping service. Information and instructions regarding Contractor participation are contained in clause 552.238–103, Electronic Commerce.

(b) The Contractor shall refer to contract clauses 552.238–77, Submission and Distribution of Authorized FSS Price Lists (which provides for submission of price lists on a common-use electronic medium), and 552.238–82, Modifications (which addresses electronic file updates).

(End of clause)

[84 FR 17046, Apr. 23, 2019; 84 FR 22383, May 17, 2019]

552.238–89 Deliveries to the U.S. Postal Service.

As prescribed in 538.273(d)(13), insert the following clause:

DELIVERIES TO THE U.S. POSTAL SERVICE (MAY 2019)

(a) *Applicability*. This clause applies to orders placed for the U.S. Postal Service (USPS) and accepted by the Contractor for the delivery of supplies to a USPS facility (consignee).

(b) *Mode/method of transportation*. Unless the Contracting Officer grants a waiver of this requirement, any shipment that meets the USPS requirements for mailability (*i.e.*, 70 pounds or less, combined length and girth not more than 108 inches, etc.) delivery shall be accomplished via the use of the USPS. Other commercial services shall not be used, but this does not preclude the Contractor from making delivery by the use of the Contractor's own vehicles.

(c) *Time of delivery*. Notwithstanding the required time for delivery to destination as may be specified elsewhere in this contract, if shipments under this clause are mailed not later than five (5) calendar days before the required delivery date, delivery shall be deemed to have been made timely.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–90 Characteristics of Electric Current.

As prescribed in 538.273(d)(14), insert the following clause:

CHARACTERISTICS OF ELECTRIC CURRENT (MAY 2019)

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–91 Marking and Documentation Requirements for Shipping.

As prescribed in 538.273(d)(15), insert the following clause:

MARKING AND DOCUMENTATION REQUIREMENTS FOR SHIPPING (MAY 2019)

(a) *Responsibility*. It shall be the responsibility of the ordering activity to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract.

(b) *Documentation*. In the event the ordering activity fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering activity and advise them accordingly. The Contractor shall not proceed with any shipment requiring transshipment via U.S. Government facilities without the prerequisites stated in paragraph (c) of this section.

(c) *Direct shipments*. The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

(1) Traffic Management or Transportation Officer at FINAL destination.

(2) Ordering Supply Account Number.

(3) Account number.

(4) Delivery Order or Purchase Order Number.

(5) National Stock Number, if applicable; or Contractor's item number.

(6) Box ____of ____Boxes.

(7) Nomenclature (brief description of items).

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–92 Vendor Managed Inventory (VMI) Program.

As prescribed in 538.273(d)(16), insert the following clause:

VENDOR MANAGED INVENTORY (VMI) PROGRAM (MAY 2019)

(a) The term ''Vendor Managed Inventory'' describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b) Contractors that commercially provide a VMI-type system may enter into similar partnerships with ordering agencies under a Blanket Purchase Agreement.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–93 Order Acknowledgement.

As prescribed in 538.273(d)(17), insert the following clause:

ORDER ACKNOWLEDGEMENT (MAY 2019)

Contractors shall acknowledge only those orders which state ''Order Acknowledgement Required.'' These orders shall be acknowledged within 10 calendar days after receipt. Such acknowledgement shall be sent to the ordering activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–94 Accelerated Delivery Requirements.

As prescribed in 538.273(d)(18), insert the following clause:

ACCELERATED DELIVERY REQUIREMENTS (MAY 2019)

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, the ordering activity is encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within three (3) business days after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–95 Separate Charge for Performance Oriented Packaging (POP).

As prescribed in 538.273(d)(19), insert the following clause:

SEPARATE CHARGE FOR PERFORMANCE ORIENTED PACKAGING (POP) (MAY 2019)

(a) Offerors are requested to list the hazardous material item to which the separate charge applies in the spaces provided in this paragraph or on a separate attachment. The final price shall be quoted separately at the order level and, if considered reasonable, will be accepted as part of the order.

ITEMS	
SINS or Descriptive Name of Articles (as appropriate).	Charge for Performance Oriented

(b) Ordering activities will not be obligated to utilize the Contractor's services for Performance Oriented Packaging, and they may obtain such services elsewhere if desired. However, the Contractor shall provide items in Performance Oriented Packaging when such packing is specified on the delivery order. The Contractor's contract price and the charge for Performance Oriented Packaging will be shown as separate entries on the delivery order.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–96 Separate Charge for Delivery Within Consignee's Premises.

As prescribed in 538.273(d)(20), insert the following clause:

SEPARATE CHARGE FOR DELIVERY WITHIN CONSIGNEE'S PREMISES (MAY 2019)

(a) Offerors are requested to insert, in the spaces provided below or by attachment hereto, a separate charge for ''Delivery Within Consignee's Premises'' applicable to each shipping container to be shipped. (Articles which are comparable in size and weight, and for which the same charge is applicable, should be grouped under an appropriate item description.) These additional charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor's published catalog and/or price list.

(b) Ordering activities are not obligated to issue orders on the basis of ''Delivery Within Consignee's Premises,'' and Contractors may refuse delivery on that basis provided such refusal is communicated in writing to the ordering activity issuing such orders within 5 days of the receipt of such order by the Contractor and provided further, that delivery is made in accordance with the other delivery requirements of the contract. Failure of the Contractor to submit this notification within the time specified shall constitute acceptance to furnish ''Delivery Within Consignee's Premises'' at the additional charge awarded. When an ordering activity issues an order on the basis of ''Delivery Within Consignee's

Premises'' at the accepted additional charge awarded and the Contractor accepts such orders on that basis, the Contractor will be obligated to provide delivery ''F.o.b. Destination, Within Consignee's Premises'' in accordance with FAR 52.247–35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for such services. Unless otherwise stipulated by the Offeror, the additional charges awarded hereunder may be applied to any delivery within the 48 contiguous States and the District of Columbia.

(c) When exercising their option to issue orders on the basis of delivery service as provided herein, ordering activities will specify ''Delivery Within Consignee's Premises'' on the order, and will indicate the exact location to which delivery is to be made. The Contractor's delivery price and the additional charge(s) for ''Delivery Within Consignee's Premises'' will be shown as separate entries on the order.

ITEMS	
(NSNs or Special Item Numbers or Descriptive Name of Articles).	Additional Charge (Per shipping container) FOR "DELIVERY WITHIN CONSIGNEE'S PREMISES"

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–97 Parts and Service.

As prescribed in 538.273(d)(21), insert the following clause:

PARTS AND SERVICE (MAY 2019)

(a) For equipment under items listed in the schedule of items or services on which offers are submitted, the Contractor represents by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b) Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c) Contractors are requested to provide the Ordering Activity, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–98 Clauses for Overseas Coverage.

As prescribed in 538.273(d)(22), insert the following clause:

CLAUSES FOR OVERSEAS COVERAGE (MAY 2019)

The following clauses apply to overseas coverage.

(a) 52.214–34 Submission of Offers in the English Language
(b) 52.214–35 Submission of Offers in U.S. Currency
(c) 552.238–90 Characteristics of Electric Current
(d) 552.238–91 Marking and Documentation Requirements Per Shipment
(e) 552.238–97 Parts and Service
(f) 552.238–99 Delivery Prices Overseas
(g) 552.238–100 Transshipments
(h) 552.238–101 Foreign Taxes and Duties
(i) 52.247–34 FOB Destination
(j) 52.247–38 FOB Inland Carrier, Point of Exportation
(k) 52.247–39 FOB Inland Point, Country of Importation

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–99 Delivery Prices Overseas.

As prescribed in 538.273(d)(23), insert the following clause:

DELIVERY PRICES OVERSEAS (MAY 2019)

(a) Prices offered must cover delivery to destinations as provided as follows:

(1) Direct delivery to consignee. F.O.B. Inland Point, Country of Importation (FAR 52.247–39). (Offeror should indicate countries where direct delivery will be provided.)

(2) Delivery to overseas assembly point for transshipment when specified by the ordering activity, if delivery is not covered under paragraph (1), above.

(3) Delivery to the overseas port of entry when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) Geographic area(s)/countries/zones which are intended to be covered must be identified in the offer.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–100 Transshipments.

As prescribed in 538.273(d)(24), insert the following clause:

TRANSSHIPMENTS (MAY 2019)

(a) The Contractor shall complete two (2) DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387–2, Special Handling/Data Certification—used when shipping chemicals, dangerous cargo, etc.

(1) Two copies of the DD Form 1387 will be attached to each shipping container delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract.

(2) These forms will be attached to one end and one side, not on the top or bottom, of the container.

(3) The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.)

(b) In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387–2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading.

(c) Dangerous cargo will not be intermingled with non-dangerous cargo in the same container.

(d) Copies of the above forms and preparation instructions will be obtained from the ordering activity issuing the Delivery Order. Reproduced copies of the forms are acceptable.

(e) Failure to include DD Form 1387, and DD Form 1387–2, if applicable, on each shipping container will result in rejection of shipment by the port Transportation Officer.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–101 Foreign Taxes and Duties.

As prescribed in 538.273(d)(25), insert the following clause:

FOREIGN TAXES AND DUTIES (MAY 2019)

Prices offered must be net, delivered, f.o.b. to the destinations accepted by the Government.

(a) The Contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt.

(b) Standard commercial export packaging, including containerization, if necessary, packaging, preservation, and/or marking are included in the pricing offered and accepted by the Government.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–102 English Language and U.S. Dollar Requirements.

As prescribed in 538.273(d)(26), insert the following clause:

ENGLISH LANGUAGE AND U.S. DOLLAR REQUIREMENTS (MAY 2019)

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and price lists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the ''Treasury Reporting Rates of Exchange'' in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–103 Electronic Commerce.

As prescribed in 538.273(d)(27), insert the following clause:

ELECTRONIC COMMERCE (MAY 2019)

(a) *General background.* The Federal Acquisition Streamlining Act (FASA) of 1994 requires the Government to evolve its acquisition process from one driven by paper to an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI encompasses more than merely automating manual processes and eliminating paper transactions. EC/EDI improves business processes (e.g. procurement, finance, logistics) into a fully electronic environment

and fundamentally changes the way organizations operate.

(b) *Trading partners and Value-Added Networks (VAN's).*

(1) Within the electronic commerce architecture, electronic documents (e.g., orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as ''trading partners''). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2) EDI can be performed using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If the VAN only provides communications services, you may also need a software translation package.

(c) *Registration instructions.* To perform EDI with the Government, Contractors shall register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners is the Systems for Award Management (SAM) *http://www.sam.gov.* Contractors shall follow the instructions on the SAM website regarding how to register for EDI.

(d) *Implementation conventions.* All EDI transactions must comply with the Federal Implementation Conventions (ICs). The ICs are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at *http://www.nist.gov/itl.* ICs are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) *Additional information.* GSA has additional information available for Contractors who are interested in using EC/EDI on its website, *www.gsa.gov.*

(f) *GSA Advantage!®.* (1) GSA Advantage!® uses electronic commerce to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. GSA Advantage!® enables customers to:

(i) Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories.

(ii) Generate EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders.

(iii) Use the credit card.

(2) GSA Advantage!® may be accessed via the GSA Home Page. The internet address is: *http://www.gsa.gov.*

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–104 Dissemination of Information by Contractor.

As prescribed in 538.273(d)(28), insert the following clause:

DISSEMINATION OF INFORMATION BY CONTRACTOR (MAY 2019)

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule contract award documents. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–105 Deliveries Beyond the Contractual Period—Placing of Orders.

As prescribed in 538.273(d)(29), insert the following clause:

DELIVERIES BEYOND THE CONTRACTUAL PERIOD—PLACING OF ORDERS (MAY 2019)

In accordance with Clause 552.238–113, Scope of Contract (Eligible Ordering Activities), this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

(End of clause)

[84 FR 22383, May 17, 2019]

552.238–106 Interpretation of Contract Requirements.

As prescribed in 538.273(d)(30), insert the following clause:

INTERPRETATION OF CONTRACT REQUIREMENTS (MAY 2019)

No interpretation of any provision of this contract, including applicable specifications,

shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–107 Export Traffic Release (Supplies).

As prescribed in 538.273(d)(31), insert the following clause:

EXPORT TRAFFIC RELEASE (SUPPLIES) (MAY 2019)

Supplies ordered by GSA for export will not be shipped by the Contractor until shipping instructions are received from GSA. To obtain shipping instructions, the Contractor shall forward completed copies of GSA Form 1611, Application for Shipping Instructions and Notice of Availability, to the GSA office designated on the purchase order at least 15 days prior to the anticipated shipping date. Copies of GSA Form 1611 will be furnished to the Contractor with the purchase order. Failure to comply with this requirement could result in nonacceptance of the material by authorities at the port of exportation. When supplies for export are ordered by other Government agencies the Contractor should obtain shipping instructions from the ordering agency.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–108 Spare Parts Kit.

As prescribed in 538.273(d)(32), insert the following clause:

SPARE PARTS KIT (MAY 2019)

(a) The Contractor will be required to offer a spare parts kit conforming, generally, to the following requirements for each item awarded under this solicitation: [The Ordering Activity contracting officer should insert the specifications for a spare parts kit specific to the solicited items.]

(b) The Contractor shall furnish prices for spare parts kits as follows:

(i) Price of kit unpackaged.

(ii) Price of kit in domestic pack.

(iii) Price of kit in wooden case, steel-strapped.

(c) The Contractor will be required to furnish a complete description of spare parts kit offered, a list of parts included, and the price of the kit delivered f.o.b. destination to any point within the conterminous United States within 15 days after receipt of a request from the Ordering Activity Contracting Officer. If the kit offered is acceptable to the Ordering Activity, awards covering requirements will be made by supplemental agreement to this contract.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–109 Authentication Supplies and Services.

As prescribed in 538.273(d)(33), insert the following clause:

AUTHENTICATION SUPPLIES AND SERVICES (MAY 2019)

(a) *General background.* (1) The General Services Administration (GSA) established the ''Identity and Access Management Services'' (IAMS) Program to clearly define the kinds of digital certificates and PKI services that meet the requirements for service providers and supplies that support FISMA-compliant IAM systems deployed by Federal agencies.

(2) Homeland Security Presidential Directive 12 (HSPD–12), ''Policy for a Common Identification Standard for Federal Employees and Contractors'' establishes the requirement for a mandatory Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and Contractor employees assigned to Government contracts in order to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy. Further, the Directive requires the Department of Commerce to promulgate a Federal standard for secure and reliable forms of identification within six months of the date of the Directive. As a result, the National Institute of Standards and Technology (NIST) released Federal Information Processing Standard (FIPS) 201–2: Personal Identity Verification of Federal Employees and Contractors August 2013. FIPS 201–2 requires that the digital certificates incorporated into the Personal Identity Verification (PIV) identity credentials comply with the X.509 Certificate Policy for the U.S. Federal PKI Common Policy Framework. In addition, FIPS 201–2 requires that Federal identity badges referred to as PIV credentials, issued to Federal employees and Contractors comply with the Standard and associated NIST Special Publications 800–73, 800–76, 800–78, and 800–79.

(b) *Special item numbers.* GSA has established the e-Authentication Initiative (see URL: *http://www.idmanagement.gov*) to provide common infrastructure for the authentication of the public and internal Federal users for logical access to Federal e-Government applications and electronic services.

To support the government-wide implementation of HSPD–12 and the Federal e-Authentication Initiative, GSA has established Special Item Numbers (SINs) pertaining to Authentication Products and Services, including Electronic Credentials, Digital Certificates, eAuthentication, Identify and Access Management, PKI Shared Service Providers, and HSPD–12 Product and Service Components.

(c) *Qualification information*. (1) All Authentication supplies and services must be qualified as being compliant with Government-wide requirements before they will be included on a GSA Information Technology (IT) Schedule contract. The Qualification Requirements and associated evaluation procedures against the Qualification Requirements for each SIN and the specific Qualification Requirements for HSPD–12 implementation components are presented at the following URL: *http://www.idmanagement.gov*.

(2) In addition, the National Institute of Standards and Technology (NIST) has established the NIST Personal Identity Verification Program (NPIVP) to evaluate integrated circuit chip cards and supplies against conformance requirements contained in FIPS 201. GSA has established the FIPS 201Evaluation Program to evaluate other supplies needed for agency implementation of HSPD–12 requirements where normative requirements are specified in FIPS 201 and to perform card and reader interface testing for interoperability. Products that are approved as FIPS–201 compliant through these evaluation and testing programs may be offered directly through HSPD–12 Supplies and Services Components SIN under the category ''Approved FIPS 201-Compliant Products and services.

(d) *Qualification requirements*. Offerors proposing Authentication supplies and services under the established SINs are required to provide the following:

(1) Proposed items must be determined to be compliant with Federal requirements for that SIN. Qualification Requirements and procedures for the evaluation of supplies and services are posted at the URL: *http://www.idmanagement.gov*. GSA will follow these procedures in qualifying offeror's supplies and services against the Qualification Requirements for applicable to SIN. Offerors must submit all documentation certification letter(s) for Authentication Supplies and Services offerings at the same time as submission of proposal. Award will be dependent upon receipt of official documentation from the Acquisition Program Management Office (APMO) listed below verifying satisfactory qualification against the Qualification Requirements of the proposed SIN(s).

(2) After award, Contractor agrees that certified supplies and services will not be offered under any other SIN on any Federal Supply Schedule

(3)(i) If the Contractor changes the supplies or services previously qualified, GSA may require the Contractor to resubmit the supplies or services for re-qualification.

(ii) If the Federal Government changes the qualification requirements or standards, Contractor must resubmit the supplies and services for re-qualification.

(4) Immediately prior to making an award, Contracting Officers MUST consult the following website to ensure that the supplies and/or services recommended for award under any Authentication Supplies and Services SINs are in compliance with the latest APL qualification standards: *www.idmanagement.gov*. A dated copy of the applicable page should be made and included with the award documents.

(e) *Demonstrating conformance*. (1) The Federal Government has established Qualification Requirements for demonstrating conformance with the Standards. The following websites provide additional information regarding the evaluation and qualification processes:

(i) For Identify and Access Management Services (IAMS) and PKI Shared Service Provider (SSP) Qualification Requirements and evaluation procedures: *http://www.idmanagement.gov;*

(ii) For HSPD–12 Product and Service Components Qualification Requirements and evaluation procedures: *http://www.idmanagement.gov;*

(iii) For FIPS 201 evaluation program testing and certification procedures: *https://www.idmanagement.gov/fips201/*.

(f) *Acquisition Program Management Office (APMO)*. GSA has established the APMO to provide centralized technical oversight and management regarding the qualification process to industry partners and Federal agencies. Contact the following APMO for information on the eAuthentication Qualification process. Technical, APMO, FIPS 201, and HSPD–12 Points of Contact can be found below, or in an additional attachment to the solicitation. [The contracting officer should insert the points of contact information below, unless otherwise included elsewhere in the solicitation.]

____

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–110 Commercial Satellite Communication (COMSATCOM) Services.

As prescribed in 538.273(d)(34) insert the following clause:

COMMERCIAL SATELLITE COMMUNICATION (COMSATCOM) SERVICES (MAY 2019)

(a) *General background.* Special Item Numbers (SINs) have been established for Commercial Satellite Communications (COMSATCOM) services, focused on transponded capacity (SIN 132–54) and fixed and mobile subscription services (SIN 132–55), to make available common COMSATCOM services to all Ordering Activities.

(b) *Information assurance.* (1) The Contractor shall demonstrate, to the maximum extent practicable, the ability to meet:

(i) The Committee on National Security Systems Policy (CNSSP) 12, ''National Information Assurance Policy for Space Systems used to Support National Security Missions,'' or

(ii) Department of Defense Directive (DoDD) 8581.1, ''Information Assurance (IA) Policy for Space Systems Used by the Department of Defense.''

(2) The Contractor shall demonstrate the ability to comply with the Federal Information Security Management Act of 2002 as implemented by Federal Information Processing Standards Publication 200 (FIPS 200), ''Minimum Security Requirements for Federal Information and Information Systems.'' In response to ordering activity requirements, at a minimum, all services shall meet the requirements assigned against:

(i) A low-impact information system (per FIPS 200) that is described in the current revision of National Institute of Standards and Technology (NIST) Special Publication (SP) 800–53, ''Recommended Security Controls for Federal Information Systems and Organizations,'' or

(ii) A Mission Assurance Category (MAC) III system that is described in the current revision of DoD Instruction (DoDI) 8500.2, ''Information Assurance Implementation.''

(3) The Contractor's information assurance boundary is where the Contractor's services connect to the user terminals/equipment (*i.e.,* includes satellite command encryption (ground and space); systems used in the Satellite Operations Centers (SOCs), Network Operations Centers (NOCs) and teleport; and terrestrial infrastructure required for service delivery).

(c) *Delivery schedule.* The Contractor shall deliver COMSATCOM services in accordance with 552.238–86.

(d) *Portability.* The Contractor shall have the capability to redeploy COMSATCOM services, subject to availability. Portability shall be provided within the COMSATCOM Contractor's resources at any time as requested by the ordering activity. When portability is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor.

(e) *Flexibility/optimization.* The Contractor shall have the capability to re-groom resources for spectral, operational, or price efficiencies. Flexibility/optimization shall be provided within the COMSATCOM Contractor's resources at any time as requested by the ordering activity. When flexibility/optimization is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor. The Contractor is encouraged to submit re-grooming approaches for ordering activity consideration that may increase efficiencies for existing COMSATCOM services.

(f) *Net ready (interoperability).* COMSATCOM services shall be consistent with commercial standards and practices. Services shall have the capability to access and/or interoperate with Government or other Commercial teleports/gateways and provide enterprise service access to or among networks or enclaves. Interfaces may be identified as interoperable on the basis of participation in a sponsored interoperability program.

(g) *Network monitoring (Net OPS).* The Contractor shall have the capability to electronically collect and deliver near real-time monitoring, fault/incident/outage reporting, and information access to ensure effective and efficient operations, performance, and availability, consistent with commercial practices. Consistent with the Contractor's standard management practices, the Net Ops information will be provided on a frequency (example: Every 6 hours, daily) and format (example: SNMP, XML) as defined in a requirement to a location/entity/electronic interface defined by the ordering activity. Specific reporting requirements will be defined by the Ordering Activity.

(h) *EMI/RFI identification, characterization, and geo-location.* The Contractor shall have the capability to collect and electronically report in near real-time Electro Magnetic Interference (EMI)/Radio Frequency Interference (RFI) identification, characterization, and geo-location, including the ability to identify and characterize sub-carrier EMI/RFI being transmitted underneath an authorized carrier, and the ability to geo-locate the source of any and all EMI/RFI. The Contractor shall establish and use with the ordering activity a mutually agreed upon media and voice communications capability capable of protecting ''Sensitive, but Unclassified'' data.

(i) *Security.* (1) The Contractor may be required to obtain/possess varying levels of personnel and facility security clearances up to U.S. Government TOP SECRET/Sensitive Compartmented Information (TS/SCI) or equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally.

(2) For incident resolution involving classified matters, the Contractor shall provide appropriately cleared staff who can affect COMSATCOM services operations (example:

Satellite payload operations, network operations). The Contractor shall provide a minimum of one operations staff member AND a minimum of one person with the authority to commit the company if resolution requires business impacting decisions (example: Chief Executive Officer, Chief Operations Officer, etc.).

(3) When Communications Security or Transmission Security equipment or keying material is placed in the equipment/terminal shelter, the Contractor shall ensure compliance with applicable physical security directives/guidelines and that all deployed equipment/terminal operations and maintenance personnel shall possess the appropriate clearances, equal to or higher than the classification level of the data being transmitted. Where local regulations require use of foreign personnel for terminal operations and maintenance, then the Contractor shall ensure compliance with applicable security directives/guidelines and document to the U.S. Government's satisfaction that protective measures are in place and such individuals have equivalent clearances granted by the local host nation.

(4) For classified operations security (OPSEC), the Contractor shall ensure that all personnel in direct contact with classified OPSEC indicators (example: The unit, location, and time of operations) have U.S. SECRET or higher personnel security clearances, or, as appropriate, equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally, in accordance with applicable security directives and guidelines.

(5) For classified requirements, cleared satellite operator staff must have access to secure voice communications for emergency purposes. Communications security equipment certified by the National Security Agency (NSA) to secure unclassified and up to and including SECRET communication transmissions at all operations centers is preferred. If a Contractor is unable to have access to NSA-approved communications security equipment at its operations centers, then a combination of a ''Sensitive but Unclassified'' (SBU) cryptographic module approved by the U.S. National Institute for Standards and Technology and pre-arranged access to National Security Agency-approved communications security equipment at an agreed alternate facility is acceptable.

(6) The Contractor shall have the capability to ''mask'' or ''protect'' users against unauthorized release of identifying information to any entity that could compromise operations security. Identifying information includes but is not limited to personal user and/or unit information including tail numbers, unit names, unit numbers, individual names, individual contact numbers, street addresses, etc.

(j) *Third party billing for COMSATCOM subscription services.* The Contractor shall identify authorized network infrastructure for the ordering activity. In some cases, the user of the terminal may access network infrastructure owned or operated by a third party. In the event a terminal is used on a third party's network infrastructure, the Contractor shall provide to the ordering activity, invoices and documentation reflecting actual usage amount and third party charges incurred. The ordering activity shall be billed the actual third party charges incurred, or the contract third party billing price, whichever is less.

(End of clause)

[84 FR 17046, Apr. 23, 2019; 84 FR 22383, May 17, 2019]

552.238–111 Environmental Protection Agency Registration Requirement.

As prescribed in 538.273(d)(35), insert the following clause:

ENVIRONMENTAL PROTECTION AGENCY REGISTRATION REQUIREMENT (MAY 2019)

(a) With respect to the products described in this solicitation which require registration with the Environmental Protection Agency (EPA), as required by the Federal Insecticide, Fungicide, and Rodenticide Act, Section 3, Registration of Pesticides, awards will be made only for such products that have been assigned an EPA registration number, prior to the time of bid opening.

(b) The offeror shall insert in the spaces provided in this section, the manufacturer's and/or distributor's name and the ''EPA Registration Number'' for each item offered. Any offer which does not specify a current ''EPA Registration Number'' in effect for the duration of the contract period, and including the manufacturer's and/or distributor's name will be rejected.

Items			
Item numbers	Name of manufacturer/distributor	EPA registration number	Date of expiration

Items			
Item numbers	Name of manufacturer/distributor	EPA registration number	Date of expiration

(c) If, during the performance of a contract awarded as a result of this solicitation, the EPA Registration Number for products being furnished is terminated, withdrawn, canceled, or suspended, and such action does not arise out of causes beyond the control, and with the fault or negligence of the Contractor or subcontractor, the Government may terminate the contract pursuant to either the Default Clause or Termination for Cause Paragraph (contained in the clause 52.212–4, Contract Terms and Conditions—Commercial Items), whichever is applicable to the resultant contract.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–112 Definition (Federal Supply Schedules)—Non-Federal Entity.

As prescribed in 538.7004(a), insert the following clause:

DEFINITION (FEDERAL SUPPLY SCHEDULES)—NON-FEDERAL ENTITY (MAY 2019)

Ordering activity (also called ''ordering agency'' and ''ordering office'') means an eligible ordering activity (see 552.238–113), authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–113 Scope of Contract (Eligible Ordering Activities).

As prescribed in 538.7004 (b) insert the following clause:

SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (MAY 2019)

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For Special Item Number 132–53, Wireless Services ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101–26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 U.S.C. 450j(k);

(7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);

(8) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and

(9) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) *Definitions.*

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

(c) Offerors are requested to check one of the following boxes:

☐ Contractor will provide domestic and overseas delivery.

☐ Contractor will provide overseas delivery only.

☐ Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for good or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f)(1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 52.232–36 Payment by Third Party. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 52.232–36 Payment by Third Party.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of $2,500 (two thousand, five hundred dollars) during the contract term.

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–114 Use of Federal Supply Schedule Contracts by Non-Federal Entities.

As prescribed in 538.7004(c), insert the following clause:

USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY NON-FEDERAL ENTITIES (MAY 2019)

(a) If an entity identified in paragraph (d) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies ''Compliance with laws unique to Government contracts'' (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual

responsible for placing the order for the ordering activity (e.g., FAR 52.212–4 at paragraph (f) and FSS clause I–FSS–249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause 552.238–80, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238–113 Scope of Contract (Eligible Ordering Activities).

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.238–115 Special Ordering Procedures for the Acquisition of Order-Level Materials.

As prescribed in 538.7204(b), insert the following clause:

SPECIAL ORDERING PROCEDURES FOR THE ACQUISITION OF ORDER-LEVEL MATERIALS (MAY 2019)

(a) *Definition.*

Order-level materials means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. Order-level materials acquired following the procedures in paragraph (d) of this section are done so under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).

(b) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS.

(c) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

(d) Procedures for including order-level materials when placing an individual task or delivery order against an FSS contract or FSS BPA.

(1) The procedures discussed in FAR 8.402(f) do not apply when placing task and delivery orders that include order-level materials.

(2) Order-level materials are included in the definition of the term ''material'' in FAR clause 52.212–4 Alternate I, and therefore all

provisions of FAR clause 52.212–4 Alternate I that apply to ''materials'' also apply to order-level materials. The ordering activity shall follow procedures under the Federal Travel Regulation and FAR Part 31 when order-level materials include travel.

(3) Order-level materials shall only be acquired in direct support of an individual task or delivery order and not as the primary basis or purpose of the order.

(4) The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS contract shall not exceed 33.33%.

(5) All order-level materials shall be placed under the Order-Level Materials SIN.

(6) Prior to the placement of an order that includes order-level materials, the Ordering Activity shall follow procedures in FAR 8.404(h).

(7) To support the price reasonableness of order-level materials—

(i) The contractor proposing order-level materials as part of a solution shall obtain a minimum of three quotes for each order-level material above the simplified acquisition threshold.

(A) One of these three quotes may include materials furnished by the contractor under FAR 52.212–4 Alt I (i)(1)(ii)(A).

(B) If the contractor cannot obtain three quotes, the contractor shall maintain its documentation of why three quotes could not be obtained to support their determination.

(C) A contractor with an approved purchasing system per FAR 44.3 shall instead follow its purchasing system requirement and is exempt from the requirements in paragraphs (d)(7)(i)(A)–(B) of this clause.

(ii) The Ordering Activity Contracting Officer must make a determination that prices for all order-level materials are fair and reasonable. The Ordering Activity Contracting Officer may base this determination on a comparison of the quotes received in response to the task or delivery order solicitation or other relevant pricing information available.

(iii) If indirect costs are approved per FAR 52.212–4(i)(1)(ii)(D)(2) Alternate I), the Ordering Activity Contracting Officer must make a determination that all indirect costs approved for payment are fair and reasonable. Supporting data shall be submitted in a form acceptable to the Ordering Activity Contracting Officer.

(8) Prior to an increase in the ceiling price of order-level materials, the Ordering Activity Contracting Officer shall follow the procedures at FAR 8.404(h)(3)(iv).

(9) In accordance with GSAR clause 552.238–83, Examination of Records by GSA, GSA has the authority to examine the Contractor's records for compliance with the pricing provisions in FAR clause 52.212–4 Alternate I, to include examination of any books, documents, papers, and records involving transactions related to the contract for overbillings, billing errors, and compliance with the IFF and the Sales Reporting clauses of the contract.

(10) OLMs are exempt from the following clauses:

(i) 552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

(ii) 552.238–77 Submission and Distribution of Authorized FSS Schedule Pricelists.

(iii) 552.238–81 Price Reductions.

(11) *Exceptions for travel.* (i) Travel costs are governed by FAR 31.205–46 and therefore the requirements in paragraph (d)(7) do not apply to travel costs.

(ii) Travel costs do not count towards the 33.33% limitation described in paragraph (d)(4) of this section.

(iii) Travel costs are exempt from clause 552.238–80 Industrial Funding Fee and Sales Reporting.

(End of clause)

[84 FR 17046, Apr. 23, 2019]

552.239–70 Information Technology Security Plan and Security Authorization.

As prescribed in 539.7002(a), insert the following provision:

INFORMATION TECHNOLOGY SECURITY PLAN AND SECURITY AUTHORIZATION (JUN 2011)

All offers/bids submitted in response to this solicitation must address the approach for completing the security plan and certification and security authorization requirements as required by the clause at 552.239–71, Security Requirements for Unclassified Information Technology Resources.

(End of provision)

[76 FR 34888, June 15, 2011]

552.239–71 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 539.7002(b), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2012)

(a) *General.* The Contractor shall be responsible for information technology (IT) security, based on General Services Administration (GSA) risk assessments, for all systems connected to a GSA network or operated by the Contractor for GSA, regardless of location. This clause is applicable to all or any

part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to GSA's information that directly supports the mission of GSA, as indicated by GSA. The term information technology, as used in this clause, means any equipment, including telecommunications equipment that is used in the automatic acquisition, storage, manipulation, management, control, display, switching, interchange, transmission, or reception of data or information. This includes major applications as defined by OMB Circular A–130. Examples of tasks that require security provisions include:

(1) Hosting of GSA e-Government sites or other IT operations;

(2) Acquisition, transmission, or analysis of data owned by GSA with significant replacement cost should the Contractors copy be corrupted;

(3) Access to GSA major applications at a level beyond that granted the general public; e.g., bypassing a firewall; and

(4) Any new information technology systems acquired for operations within the GSA must comply with the requirements of HSPD–12 and OMB M–11–11. Usage of the credentials must be implemented in accordance with OMB policy and NIST guidelines (e.g., NIST SP 800–116). The system must operate within the GSA's access management environment. Exceptions must be requested in writing and can only be granted by the GSA Senior Agency Information Security Officer.

(b) *IT Security Plan*. The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractors IT Security Plan shall comply with applicable Federal laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and GSA policies and procedures. GSA's Office of the Chief Information Officer issued ''CIO IT Security Procedural Guide 09–48, Security Language for Information Technology Acquisitions Efforts,'' to provide IT security standards, policies and reporting requirements. This document is incorporated by reference in all solicitations and contracts or task orders where an information system is contractor owned and operated on behalf of the Federal Government. The guide can be accessed at *http://www.gsa.gov/portal/category/25690*. Specific security requirements not specified in ''CIO IT Security Procedural Guide 09–48, Security Language for Information Technology Acquisitions Efforts'' shall be provided by the requiring activity.

(c) *Submittal of IT Security Plan*. Within 30 calendar days after contract award, the Contractor shall submit the IT Security Plan to the Contracting Officer and Contracting Officers Representative (COR) for acceptance. This plan shall be consistent with and further detail the approach contained in the contractors proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer and COR, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) *Submittal of a Continuous Monitoring Plan*. The Contractor must develop a continuous monitoring strategy that includes:

(1) A configuration management process for the information system and its constituent components;

(2) A determination of the security impact of changes to the information system and environment of operation;

(3) Ongoing security control assessments in accordance with the organizational continuous monitoring strategy;

(4) Reporting the security state of the information system to appropriate GSA officials; and

(5) All GSA general support systems and applications must implement continuous monitoring activities in accordance with this guide and NIST SP 800–37 Revision 1, *Guide for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach*.

(e) *Security authorization*. Within six (6) months after contract award, the Contractor shall submit written proof of IT security authorization for acceptance by the Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. The security authorization must be in accordance with NIST Special Publication 800–37. This security authorization will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This security authorization, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The Contractor shall comply with the accepted security authorization documentation.

(f) *Annual verification*. On an annual basis, the Contractor shall submit verification to the Contracting Officer that the IT Security plan remains valid.

(g) *Warning notices*. The Contractor shall ensure that the following banners are displayed on all GSA systems (both public and

private) operated by the Contractor prior to allowing anyone access to the system:

Government Warning

WARNINGWARNING**WARNING**

Unauthorized access is a violation of U.S. law and General Services Administration policy, and may result in criminal or administrative penalties. Users shall not access other users or system files without proper authority. Absence of access controls IS NOT authorization for access! GSA information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

WARNINGWARNING**WARNING**

(h) *Privacy Act notification*. The Contractor shall ensure that the following banner is displayed on all GSA systems that contain Privacy Act information operated by the Contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93–579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to $5,000, or both.

(i) *Privileged or limited privileges access*. Contractor personnel requiring privileged access or limited privileges access to systems operated by the Contractor for GSA or interconnected to a GSA network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(j) *Training*. The Contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB Circular A–130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on the rules of behavior.

(k) *GSA access*. The Contractor shall afford GSA access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, IT systems and devices, and personnel used in performance of the contract, regardless of the location. Access shall be provided to the extent required, in GSA's judgment, to conduct an inspection, evaluation, investigation or audit, including vulnerability testing to safeguard against threats and hazards to the integrity, availability and confidentiality of GSA data or to the function of information technology systems operated on behalf of GSA, and to preserve evidence of computer crime. This information shall be available to GSA upon request.

(l) *Subcontracts*. The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(m) *Notification regarding employees*. The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment when that employee has access to GSA information systems or data. If an employee's employment is terminated, for any reason, access to GSA's information systems or data shall be immediately disabled and the credentials used to access the information systems or data shall be immediately confiscated.

(n) *Termination*. Failure on the part of the Contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

[76 FR 34888, June 15, 2011, as amended at 77 FR 751, Jan. 6, 2012]

552.241–70 Availability of Funds for the Next Fiscal Year or Quarter.

As prescribed in 541.501, insert the clause 552.241–70, Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232–19, in all utility acquisitions.

AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR OR QUARTER (AUG 2010)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond _____, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

[75 FR 48873, Aug. 12, 2010]

552.241–71 Disputes (Utility Contracts).

As prescribed in 541.501, insert clause 552.241–71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

DISPUTES (UTILITY CONTRACTS) (AUG 2010)

The requirements of the Disputes clause at FAR 52.233–1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

[75 FR 48873, Aug. 12, 2010]

552.242–70 Status Report of Orders and Shipments.

As prescribed in 542.1107, insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (FEB 9, 2009)

(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 QVOC*] Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) A copy of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be reproduced by the Contractor.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 74 FR 863, Jan. 9, 2009]

552.243–71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

EQUITABLE ADJUSTMENTS (MAR 2019)

(a) This clause governs the determination of equitable adjustments to which the Contractor may be entitled under the ''Changes'' clause prescribed by FAR 52.243–4, the ''Changes and Changed Conditions'' clause prescribed by FAR 52.243–5, the ''Differing Site Conditions'' clause prescribed by FAR 52.236–2, and any other provision of this contract allowing entitlement to an equitable adjustment. This clause does not govern determination of the Contractor's relief allowable under the ''Suspension of Work'' clause prescribed by FAR 52.242–14.

(b) At the written request of the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements set forth herein, for an equitable adjustment to the contract for changes or other conditions that may entitle a Contractor to an equitable adjustment. If the Contractor deems an oral or written order to be a change to the contract, it shall promptly submit to the Contracting Officer a proposal for equitable adjustment attributable to such deemed change. The proposal shall also conform to the requirements set forth herein.

(c) The proposal shall be submitted within the time specified in the ''Changes'', ''Changes and Changed Conditions'', or ''Differing Site Conditions'' clause, as applicable, or such other time as may reasonably be required by the Contracting Officer.

(d) Proposals for equitable adjustments, including no cost requests for adjustment of the contract's required completion date, shall include a detailed breakdown of the following elements, as applicable:

(1) Direct costs.

(2) Markups.

(3) Change to the time for completion specified in the contract.

(e) *Direct costs.* The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work impacted by the change. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:

(1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material fabrication and cost of delivery to site, unless separately itemized);

(2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate, together with itemization of applied labor burdens (exclusive of employer's overhead, profit, and any labor cost burdens carried in employer's overhead rate);

(3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed;

(4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs (e)(1) and (e)(2) of this clause;

(5) Delivery costs, if not included in material unit costs;

(6) Time-related costs not separately identified as direct costs, and not included in the Contractor's or subcontractors' overhead rates, as specified in paragraph (g) of this clause; and

(7) Other direct costs.

(f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph (i) of this clause.

(g) Extensions of Time and Time-Related Costs. The Contractor shall propose a daily rate for each firm's time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

(1) Increases or decreases to a firm's time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.

(2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.

(3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm's performance of work.

(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm's overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor's project schedule.

(h) *Markups*. For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractor[s] shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth below in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h).

(j) *Proposal Preparation Costs*. If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them. Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation was paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o), or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:

(1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.

(2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the Contracting Officer's diligent efforts to negotiate the equitable adjustment.

(End of clause)

[74 FR 864, Jan. 9, 2009, as amended at 84 FR 3723, Feb. 13, 2019]

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 (JUL 09)

(a) *Inspection system and inspection of 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. Unless otherwise authorized in writing by the Contracting Officer, the Contractor 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 9001:2000 (Quality Management Systems—Requirements). A documented description of the inspection system shall be made available to the Government before contract award. At the sole discretion of the Contracting Officer, he/she may authorize in writing exceptions to the quality assurance standards identified above. The Contractor shall immediately notify the Administrative Contracting Officer (ACO) 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 U.S. 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 9001:2000 or as otherwise approved by the Government, records shall include the date 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) The Contractor shall provide the Administrative Contracting Officer ACO with the name(s) of the individual and an alternate responsible for the inspection system. In the event that the designated individual(s) becomes unavailable to oversee the inspection system, the Contractor, within 10 calendar days of such event, shall provide the ACO with the names of the replacement individual(s).

(b) *Inspection by the Contractor*. The Contractor is required to demonstrate that the supplies in the shipment have been subject to and have passed all inspections and tests required by the contract and meet the requirements of the contract.

(c) *Inspection by Government personnel*. (1) Although the Government will normally rely upon the Contractor's representation 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) The offeror shall indicate, in the spaces provided below, the location(s) at which the supplies will be inspected or made available for inspection.

INSPECTION POINT

ITEM NO(S).	NAME OF MANUFACTURER	NAME, ADDRESS (Including County), and	TELEPHONE NUMBER

NOTE: If additional space is needed, the offeror may furnish the requested information by an attachment to the offer.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification, inspection, and testing. Samples selected for testing 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.

(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 Contracting Officer may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its own 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 equitable amount 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) The Contractor may be issued a Quality Deficiency Notice (QDN) if:

(i) Supplies in process, shipped, or awaiting shipment to fill Government orders are

found not to comply with contract requirements, or (ii) deficiencies in either plant quality or process controls are found. 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 Government representative, within 5 workdays, of the action plan or the corrective action taken. The Government may elect to verify the corrective action at the Contractor location(s). Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination of the contract. Delays due to the insurance of a QDN do not constitute excusable delay under the default clause of this contract. Failure to complete corrective action in a timely manner may result in termination of the 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 that do not meet the requirements of the contract are being shipped, or if the contractor fails to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor shall 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) of this clause, 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 and charged against 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 shall also be charged against the Contractor's account);

(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; or

(4) Otherwise disposed of by the Government.

(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 Acquisition Service or a designee.

[74 FR 26108, June 1, 2009]

552.246–71 Source Inspection by Government.

As prescribed in 546.302–71, insert the following clause:

SOURCE INSPECTION BY GOVERNMENT (JUNE 1, 2009)

(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 U.S. 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 Acquisition Service or a designee.*

[64 FR 37229, July 9, 1999, as amended at 74 FR 26110, June 1, 2009]

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)

552.246–77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.

As prescribed in 546.710(a), insert the following clause in solicitations and contracts that include FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature.

ADDITIONAL CONTRACT WARRANTY PROVISIONS FOR SUPPLIES OF A NONCOMPLEX NATURE (JUL 09)

(a) *Definitions. Correction*, as used in this clause, means the elimination of a defect.

(b) *Contractor's obligations.* 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.

(c) *Remedies available to the Government.* 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.

(End of clause)

[74 FR 26110, June 1, 2009]

552.246–78 Inspection at Destination.

As prescribed in 546.302–72 insert the following clause:

INSPECTION AT DESTINATION (JUL 09)

Inspection of all purchases under this contract will be made at destination by an authorized Government representative.

(End of clause)

[74 FR 26110, June 1, 2009]

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 570.702, insert the following provision:

INSTRUCTIONS TO OFFERORS—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY (JUN 2011)

(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, writing or written*'' means any worded or numbered expression that 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 fifth 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 that 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 execution and delivery of the Lease contract by the Government establishes a valid award and 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.

(f) *Paperwork collection.* 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.

(End of provision)

Alternate I (MAR 1998). As prescribed in 570.702, 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 570.702, 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.

[64 FR 37229, July 9, 1999, as amended at 76 FR 30845, May 27, 2011]

552.270–2 Historic Preference.

As prescribed in 570.702, insert the following provision:

HISTORIC PREFERENCE (SEP 2004)

(a) The Government will give preference to offers of space in historic properties following this hierarchy of consideration:

(1) Historic properties within historic districts.

(2) Non-historic developed and non-historic undeveloped sites within historic districts.

(3) Historic properties outside of historic districts.

(b) *Definitions.* (1) *Determination of eligibility* means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register (36 CFR 60.3(c)).

(2) *Historic district* means a geographically definable area, urban or rural, possessing a

significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history (36 CFR 60.3(d)). The historic district must be included in or be determined eligible for inclusion in the National Register of Historic Places.

(3) *Historic property* means any pre-historic or historic district, site, building, structure, or object included in or been determined eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior (36 CFR 800.16(1)).

(4) *National Register of Historic Places* means the National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture that the Secretary of the Interior is authorized to expand and maintain under the National Historic Preservation Act (36 CFR 60.1).

(c) The offer of space must meet the terms and conditions of this solicitation. 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 an historic building, such as high ceilings and wooden floors, or to maintain the integrity of an historic district, such as setbacks, floor-to-ceiling heights, and location and appearance of parking.

(d) When award will be based on the lowest price technically acceptable source selection process, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(e) When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within a historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(f) The Government will compute price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in this provision. The price evaluation preference will be used for price evaluation purposes only. The Government will award a contract in the amount of the actual price(s) proposed by the successful offeror and accepted by the Government.

(g) To qualify for a price evaluation preference, offerors must provide satisfactory documentation in their offer that their property qualifies as one of the following:

(1) An historic property within an historic district.

(2) A non-historic developed or undeveloped site within an historic district.

(3) An historic property outside of an historic district.

(End of provision)

[69 FR 55938, Sept. 16, 2004, as amended at 76 FR 30845, May 27, 2011]

552.270–3 Parties To Execute Lease.

As prescribed in 570.702, insert the following provision:

PARTIES TO EXECUTE LEASE (JUN 2011)

(a) If the lessor is an individual, that individual shall sign the lease. A lease with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words, ''an individual doing business as _____ [insert name of firm].''

(b) If the Lessor is a partnership, the lease must be signed in the partnership name, followed by the name of the legally authorized partner signing the same, and 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 must be signed in 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.

(d) If the Lessor is a joint venture, the lease must be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) of this provision for each type of participant. When a corporation is participating in the joint venture, the corporation shall provide evidence that the corporation is authorized to participate in the joint venture.

(e) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of the power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

(End of provision)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30845, May 27, 2011]

552.270–4 Definitions.

As prescribed in 570.703, 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) *ANSI/BOMA Office Area (ABOA)* means the area ''where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed,'' as stated by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) publication, Z65.1–1996.

(b) ''Commencement Date'' means the first day of the term.

(c) ''Contract'' and ''Contractor'' means ''Lease'' and ''Lessor,'' respectively.

(d) ''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.

(e) ''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.

(f) ''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.''

(g) ''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.

(h) ''Lessor'' means the sub-lessor if this lease is a sublease.

(i) ''Lessor shall provide'' means the Lessor shall furnish and install at Lessor's expense.

(j) ''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.

(k) ''Premises'' means the space described in this lease.

(l) ''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.

(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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–5 Subletting and Assignment.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–6 Maintenance of Building and Premises—Right of Entry.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–7 Fire and Casualty Damage.

As prescribed in 570.703, insert the following clause:

FIRE AND CASUALTY DAMAGE (JUN 2011)

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 after such determination; 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–8 Compliance with Applicable Law.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–9 Inspection—Right of Entry.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–10 Failure in Performance.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–11 Successors Bound.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–12 Alterations.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–13 Proposals for Adjustment.

As prescribed in 570.703, insert the following clause:

PROPOSALS FOR ADJUSTMENT (OCT 2016)

(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 $750,000 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 $750,000 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011; 81 FR 68336, Oct. 4, 2016]

552.270–14 Changes.

As prescribed in 570.703, insert the following clause:

CHANGES (JUN 2011)

(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 ABOA 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. The Lessor's failure to assert its right for adjustment within the time frame specified herein shall be a waiver of the Lessor's right to an adjustment under this paragraph. 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–15 Liquidated Damages.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–16 Adjustment for Vacant Premises.

As prescribed in 570.703, insert the following clause:

ADJUSTMENT FOR VACANT PREMISES (JUN 2011)

(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. The reduction shall occur after the Government gives 30 calendar days notice to the Lessor, and shall continue in effect until the Government occupies or reoccupies the vacant premises or the lease expires or is terminated.

(b) The rate will be reduced by that portion of the costs per ABOA square foot of operating expenses not required to maintain the space. In addition, at the first operating cost adjustment after the notice of reduction to the rent, the base cost of services subject to escalation will be reduced by said amount. In the event that the Government occupies or reoccupies the vacant premises on the lease anniversary date following the occupation of the vacant premises, the base cost of services subject to escalation will be increased by said amount.

(c) The reduction in operating costs shall be negotiated and stated in the lease.

(End of clause)

[76 FR 30846, May 27, 2011]

552.270–17 Delivery and Condition.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–18 Default in Delivery—Time Extensions.

As prescribed in 570.703, 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 ABOA 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–19 Progressive Occupancy.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–20 Payment.

As prescribed in 570.703, insert the following clause:

PAYMENT (SEP 1999)

(a) When space is offered and accepted, ABOA 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 ABOA square footage stated in the lease.

(c) If the amount of ABOA square footage delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of ABOA space delivered and the annual rental will be adjusted as follows:

ABOA square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is:

× (1+CAF) × Rate per RSF = Reduction in Annual Rent.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–21 Effect of Acceptance and Occupancy.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–22 Default by Lessor During the Term.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–23 Subordination, Nondisturbance and Attornment.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–24 Statement of Lease.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30846, May 27, 2011]

552.270–25 Substitution of Tenant Agency.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30847, May 27, 2011]

552.270–26 No Waiver.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30847, May 27, 2011]

552.270–27 Integrated Agreement.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30847, May 27, 2011]

552.270–28 Mutuality of Obligation.

As prescribed in 570.703, 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)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30847, May 27, 2011]

552.270–29 Acceptance of Space.

As prescribed in 570.703, insert the following clause:

ACCEPTANCE OF SPACE (JUN 2011)

(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 ABOA square footage as indicated in the solicitation paragraph, Amount and Type of Space.

(End of clause)

[64 FR 37229, July 9, 1999, as amended at 76 FR 30847, May 27, 2011]

552.270–30 Price Adjustment for Illegal or Improper Activity.

As prescribed in 570.703, insert the following clause:

PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN 2011)

(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 five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by five 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 thereof. 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)

[76 FR 30847, May 27, 2011]

552.270–31 Prompt Payment.

As prescribed in 570.703, insert the following clause:

PROMPT PAYMENT (JUN 2011)

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) Name 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 seven 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 seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven 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 one year. Interest 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.

(d) *Overpayments.* If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected lease number;

(iii) Affected lease line item or subline item, if applicable; and

(iv) Lessor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(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 as (b).

[76 FR 30847, May 27, 2011]

552.270–32 Covenant Against Contingent Fees.

As prescribed in 570.703, insert the following clause:

COVENANT AGAINST CONTINGENT FEES (JUN 2011)

(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 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 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)

[76 FR 30847, May 27, 2011]

PART 553—FORMS

Subpart 553.2—Illustrations of Forms

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37265, July 9, 1999, unless otherwise noted.

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

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

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570.701 FAR provisions and clauses.
570.702 GSAR solicitation provisions.
570.703 GSAR contract clauses.
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Subpart 570.8—Forms

570.801 Standard forms.
570.802 GSA forms.

AUTHORITY: 40 U.S.C. 121(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	515.209–70	519.12	536.271
502	515.305	522.805	537.2
503	517.202	522.807	552
509.4	517.207	532.111	553
514.407	519.7	533	

(c) [Reserved]

(d) The FAR does not apply to leasehold acquisitions of real property. Where referenced in this part, FAR provisions have been adopted based on a statutory requirement applicable to such lease acquisitions or as a matter of policy, including, but not limited to ''Federal agency procurement'' as defined at FAR 3.104.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30848, May 27, 2011]

570.102 Definitions.

ANSI/BOMA Office Area (ABOA) means the area ''where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed,'' as stated by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) publication, Z65.1–1996.

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.

Lease acquisition means the acquiring by lease of an interest in improved real property for use by the Government, whether the space already exists or must be constructed.

Lease extension means extension of the expiration date of a lease to provide for continued occupancy on a short term basis.

Lease renewal (option) means the right, but not the obligation of the Government to continue a lease upon specified terms and conditions, including lease term and rent.

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.

Simplified lease acquisition procedures mean the procedures for awarding leases at or below the simplified lease acquisition threshold.

Simplified lease acquisition threshold means the simplified acquisition threshold (see FAR 2.101), when applied to the average annual amount of rent for the term of the lease, including option periods and excluding the cost of 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 that has annual average gross receipts for the preceding three fiscal years which are less than the size standard established by the Small Business Administration pursuant to 13 CFR Part 121. The size standards may be found at *https://www.sba.gov/content/small-business-size-standards*. For most lease procurements, the NAICS code is 531190.

Solicitation for Offers (SFO) means a request for proposals.

Substantially as follows or *substantially the same as,* when used in prescribing a provision or clause, means that the contracting officer 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.

Succeeding lease means a lease whose effective date immediately follows the expiration date of an existing lease for space in the same building.

Superseding lease means a lease that replaces an existing lease, prior to the scheduled expiration of the existing lease term.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30848, May 27, 2011; 81 FR 1533, Jan. 13, 2016]

570.103 Authority to lease.

(a) The Administrator of General Services is authorized by 40 U.S.C. §585 to enter into a lease agreement for the accommodation of a Federal agency in a building (or improvement) which is in existence or being erected by the lessor for the accommodation of the Federal agency. The lease agreement may not bind the Government for more than 20 years.

(b) The contracting officer has exclusive authority to enter into and administer leases on the Government's behalf to the extent provided in the certificate of appointment as a contracting officer. Nothing in this paragraph is intended to limit the contracting officer's authority to designate, consistent with statute and regulation, a contracting officer's representative.

[76 FR 30848, May 27, 2011]

570.104 Competition.

Unless the contracting officer uses the simplified procedures in subpart 570.2, the competition requirements of FAR part 6 apply to acquisition of leasehold interests in real property.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30849, May 27, 2011]

570.105 Methods of contracting.

570.105–1 Contracting by negotiation.

Contracting by negotiation is appropriate for acquiring space in a building through a lease contract. The contracting officer will usually need to conduct discussions with offerors about their proposals and consider factors other than price in making the award.

[76 FR 30849, May 27, 2011]

570.105–2 Criteria for the use of two-phase design-build.

The contracting officer may use the two-phase design-build selection procedures in 41 U.S.C. 253m for lease construction projects. This includes lease construction projects with options to purchase the real property leased. Use the procedures in 41 U.S.C. 253m and FAR 36.3 when the conditions in (a) and (b) below are met:

(a) The contracting officer anticipates that the lease will involve the design and construction of a building, facility, or work for lease to the Government.

(b) The contracting officer determines whether the procedures are appropriate for entering into a lease construction contract based on the following:

(1) The contracting officer expects 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) The contracting officer considers 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 past performance of potential contractors.

(v) The suitability of the project for use of the two-phase selection procedures.

(vi) The capability of the agency to manage the two-phase selection process.

(vii) Other criteria established by the HCA.

(c) See 570.305 for additional information.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30849, May 27, 2011]

570.106 Advertising, publicizing, and notifications to Congress.

(a) If a proposed acquisition is not exempt under FAR 5.202 or GSAR

570.106(e), and is for a leasehold interest in real property estimated to exceed 10,000 square feet, then the contracting officer must publicize the proposed acquisition in the Government-wide Point of Entry (GPE) at *https://beta.sam.gov* or successor system.

(b) For leasehold acquisitions where the solicitation requires the construction of a new building on a preselected site, the contracting officer, in accordance with the timeframes established in FAR 5.203, must publicize the proposed acquisition in the GPE regardless of size or value.

(c) For leasehold acquisitions not subject to a square foot measurement (e.g., antennas, piers, parking), contracting officers must publicize the proposed acquisition in the GPE when the contract action is expected to exceed $25,000, unless an exception under FAR 5.202 applies.

(d) Other than as identified in paragraphs (a) through (c) of this section, the contracting officer need not publicize the proposed acquisition of a leasehold interest in real property, including expansion requests within the scope of a lease (see 570.403), lease extensions under the conditions defined in 570.405, and building alterations within the scope of a lease (see 570.5). However, the contracting officer may publicize proposed lease acquisitions of any dollar value or square footage in the GPE or local newspapers if, in the opinion of the contracting officer, doing so is necessary to promote competition.

(e) The contracting officer may issue a consolidated advertisement for multiple leasing actions.

(f) Except as otherwise provided in paragraph (b) of this section, where publicizing of the proposed acquisition is required, the notice shall be published in the GPE not less than three calendar days prior to issuance of a solicitation.

(g) Except as otherwise provided in paragraph (b) of this section and as set forth in paragraphs (g) and (h) of this section, the contracting officer shall provide offerors not less than 20 calendar days between solicitation issuance and the date established for receipt of initial offers.

(1) For a proposed acquisition using simplified lease acquisition procedures (see 570.2), consider the individual acquisition and establish a reasonable response time.

(2) In cases of unusual and compelling urgency (FAR 6.303–2), provide as much time as reasonably possible under the circumstances and document the contract file.

(h) If a Member of Congress has specifically requested notification of award, the contracting officer must provide award notifications in accordance with 505.303.

[76 FR 30849, May 27, 2011, as amended at 85 FR 38337, June 26, 2020]

570.106–1 Synopsis of lease awards.

(a) Except for lease actions described in paragraph (b) of this subsection, contracting officers must synopsize in the GPE awards exceeding $25,000 total contract value that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required if—

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

(2) The lease—

(i) Is for an amount not greater than the simplified lease acquisition threshold;

(ii) Was made through a means where access to the notice of proposed lease action was provided through the GPE; and

(iii) Permitted the public to respond to the solicitation electronically.

(c) Justifications for other than full and open competition must be posted in the GPE Information exempt from public disclosure must be redacted.

[76 FR 30849, May 27, 2011, as amended at 85 FR 38337, June 26, 2020]

570.107 Oral presentations.

The contracting officer may require oral presentations for acquisitions of

leasehold interests in real property. Follow the procedures in FAR 15.102.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30849, May 27, 2011]

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 exclusions in the System for Award Management (SAM).

(b) The contracting officer's signature on the contract is deemed an affirmative determination.

(c) If the contracting officer finds an offeror nonresponsible, sign and place in the contract file a determination of nonresponsibility. State the basis for the determination.

(d) If the contracting officer finds 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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30849, May 27, 2011; 81 FR 1533, Jan. 13, 2016]

570.109 Certifications.

Before awarding a lease, review applicable representations and certifications for compliance with statute and regulations.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30849, May 27, 2011]

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 of offered rental rates, the contracting officer may use a market survey, an appraisal conducted using accepted real property appraisal procedures to establish a market price for comparison, or other relevant market research data. For price analysis of offered tenant improvement costs, obtain two offers or cost and pricing data.

(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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30850, May 27, 2011]

570.111 Inspection and acceptance.

Before accepting the space, the contracting officer must verify that the space complies with the Government's requirements and specifications and document this in an inspection report. The inspection and acceptance document must contain the square footage accepted and the acceptance date. Include the inspection and acceptance in the contract file. When space such as piers, antennas, and parking are leased, square footage may not be the manner in which the amount of space is specified; therefore, document that the space complies with the Government's written requirements.

[76 FR 30850, May 27, 2011]

570.112 Awards to Federal employees.

If the contracting officer receives an offer from an officer or employee of the Government, follow the procedures in FAR 3.6.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30850, May 27, 2011]

570.113 Disclosure of mistakes after award.

If a mistake in a lessor's offer is discovered after award, the contracting officer should process it substantially in accordance with FAR 14.407–4 and GSAM 514.407–4.

[76 FR 30850, May 27, 2011]

570.114 Protests.

FAR 33.1 and 533.1 apply to protests of lease acquisitions.

570.115 Novation and change of ownership.

In the event of a transfer of ownership of the leased premises or a change

in the lessor's legal name, FAR 42.12 applies.

[76 FR 30850, May 27, 2011]

570.116 Contract format.

The uniform contract format is not required for leases of real property.

[76 FR 30850, May 27, 2011]

570.117 Sustainable requirements for lease acquisition.

Contracting officers must include sustainable design requirements appropriate for the type of leasing action in the solicitations for offers. Contracting officers can find solicitation requirements and instructions on *http://www.gsa.gov/leasing* under Leasing Policies and Procedures, Green Leasing, and in the Leasing Desk Guide to assist them in complying with GSA's sustainable requirements identified in this part.

[76 FR 30850, May 27, 2011]

570.117–1 Federal leadership in environmental, energy, and economic performance.

In order to create a clean energy economy that will increase our Nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment, GSA will accomplish all requirements of E.O. 13514 that apply to lease acquisition.

[76 FR 30850, May 27, 2011]

570.117–2 Guiding principles for federal leadership in high performance and sustainable buildings.

GSA is committed to the design, construction, operation, and maintenance of leased space that comply with all of the following Guiding Principles:

(a) Employ Integrated Design Principles;

(b) Optimize Energy Performance;

(c) Protect and Conserve Water;

(d) Enhance Indoor Environmental Quality; and

(e) Reduce the Environmental Impact of Building Materials.

[76 FR 30850, May 27, 2011]

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) To the maximum extent practicable, the contracting officer must solicit at least three sources to promote competition. If there are repeated requirements for space in the same market, invite two sources, if practicable, that are not included in the most recent solicitation to submit offers.

(b) If the contracting officer solicits only one source, document the file to explain the lack of competition.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30850, May 27, 2011]

570.203–3 Soliciting offers.

(a) The contracting officer must solicit offers by providing each prospective offeror a proposed short form lease GSA Form 3626 or SFO. The short form lease or SFO must:

(1) Describe the Government's requirements.

(2) List all award factors, including price or cost, and any significant subfactors that the contracting officer will consider in awarding the lease.

(3) State the relative importance of the evaluation factors and subfactors.

(4) State 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) Include either in full text or by reference, applicable FAR provisions and contract clauses required by 570.6.

(6) Include sustainable design requirements.

(b) As necessary, review with prospective offerors the Government's requirements, pricing matters, evaluation procedures and submission of offers.

[76 FR 30850, May 27, 2011]

570.203–4 Negotiation, evaluation, and award.

(a) If the contracting officer needs 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. See 570.110.

(c) If the total price, including options, exceeds the amount established by FAR 15.403–4, consider whether the contracting officer needs 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) Regardless of the process used, the contracting officer must determine whether the price is fair and reasonable.

(e) If the total contract value of the lease, including options, will exceed the amount established by FAR 19.702(a), 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.

(f) Make award to the responsible offeror whose proposal represents the best value to the Government considering price and other factors included in the solicitation.

[76 FR 30850, May 27, 2011]

Subpart 570.3—Acquisition Procedures for Leasehold Interests in Real Property Over the Simplified Lease Acquisition Threshold

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 :

(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 570.8.

(i) Include sustainable design requirements.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30851, May 27, 2011]

570.303–2 Issuing the SFO.

Release the SFO to all prospective offerors at the same time. The SFO may be released electronically.

[76 FR 30851, May 27, 2011]

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, readvertise if required by 570.106, and issue a new SFO.

(e) If there are changes to the Government's requirements for amount of space, delineated area, occupancy date, and/or other major aspects of the requirements, the contracting officer shall consider whether there is a need to readvertise, and to document the file accordingly.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30851, May 27, 2011]

570.304 General source selection procedures.

(a) These procedures apply to acquisitions of leasehold interests except if the contracting officer uses one of the following:

(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) In a trade off procurement, the contracting officer must include price or cost to the Government, past performance, the planned participation of small disadvantaged business concerns in performance of the contract, and other factors as required by FAR 15.304 as evaluation factors. The contracting officer may include other evaluation factors as needed.

(d) The evaluation factors and significant subfactors must comply with FAR 15.304 and either one of the following:

(1) FAR 15.101–1 if the contracting officer will use the tradeoff process.

(2) FAR 15.101–2 if the contracting officer will use the lowest price technically acceptable source selection process.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30851, May 27, 2011]

570.305 Two-phase design-build selection procedures.

(a) These procedures apply to acquisitions of leasehold interests if the contracting officer uses the two-phase design-build selection procedures authorized by 570.105–2. Follow FAR 36.3.

(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) The planned participation of small disadvantaged business concerns in performance of the contract.

(v) Other appropriate factors, such as site or location.

(2) The contracting officer shall not require offerors to submit detailed design information or cost or price information in phase one. The contracting officer shall not use cost related or price related evaluation factors.

(d) The contracting officer shall set the maximum number of offerors to be selected for phase-two to not exceed five unless the contracting officer determines 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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30851, May 27, 2011]

570.306 Evaluating offers.

(a) The contracting officer 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. The contracting officer must review the elements of the offeror's proposed rent to analyze whether the individual elements are realistic and reflect the offeror's clear understanding of the work to be performed. The contracting officer must discuss any inconsistencies with the offeror. If the offeror refuses to support or make any changes to the rent proposed, consider the risk to the Government prior to making any lease award.

(c) Evaluate past performance on previous lease projects in accordance with 515.305 and FAR 15.305(a)(2). Obtain information through:

(1) Questionnaires tailored to the circumstances of the acquisition;

(2) Interviews with program managers or contracting officers;

(3) Other sources; or

(4) Past performance information collected under FAR 42.15 and available through the Contractor Performance Assessment Reporting System at *https://www.cpars.gov/*, or successor system.

(d) The contracting officer may obtain information to evaluate an offeror's past performance on subcontracting plan goals and small disadvantaged business participation, monetary targets, and notifications under FAR 19.1202–4(b) from the following sources:

(1) The Small Business Administration;

(2) Information on prior contracts from contracting officers and administrative contracting officers;

(3) Offeror's references; and

(4) Past performance information collected under FAR 42.15 and available through PPIRS.

(e) 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.

(f) Also see the requirements in 570.108, 570.109 and 570.111.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30851, May 27, 2011; 85 FR 38337, June 26, 2020]

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 the contracting officer 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, the contracting officer may request the extensions orally. The contracting officer must make a record of the request 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.

[76 FR 30851, May 27, 2011]

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 517.207. The contract must first provide the right to renew the lease. If a renewal option was not evaluated as part of the lease at award, then the addition of a renewal option during the lease term must satisfy the requirements of GSAM 506 regarding full and open competition.

(b) *Market information review.* Before exercising an option to renew a lease, review current market information to determine that the rental rate in the option is fair and reasonable.

[76 FR 30851, May 27, 2011]

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, the contracting officer 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, the contracting officer may enter into the lease under either of the following conditions:

(1) The contracting officer does not identify any potential acceptable locations.

(2) The contracting officer identifies 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.

[76 FR 30852, May 27, 2011]

570.402–2 Publicizing/Advertising.

The contracting officer must publish a notice if required by 570.106. The notice should:

(a) Indicate that the Government's lease is expiring.

(b) Describe the requirements in terms of type and quantity of space.

(c) Indicate that the Government is interested in considering alternative space if economically advantageous, and that otherwise the Government intends to pursue a sole source acquisition.

(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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30852, May 27, 2011]

570.402–3 Market survey.

Conduct a market survey following 570.301.

570.402–4 No potential acceptable locations.

If the contracting officer does not identify any potential acceptable locations through the advertisement or the market survey, prepare a written 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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30852, May 27, 2011]

570.402–5 Potential acceptable locations.

If the contracting officer identifies 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 the contracting officer 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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30852, May 27, 2011]

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, the contracting officer 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, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to meet the expansion requirement and existing tenancy to 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 the contracting officer determines 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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30852, May 27, 2011]

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 or when market conditions warrant renegotiation of an existing 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, the contracting officer may use the simplified procedures in 570.2 and explain the absence of competition in the file.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30852, May 27, 2011]

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, the contracting officer 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, but not limited to, 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 and the contracting officer needs to extend the terms of some leases to establish a common expiration date.

(4) The agency occupying the space has encountered delays in planning for a potential relocation to other federally controlled space due to documented organizational, financial, or other uncertainties.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30852, May 27, 2011]

Subpart 570.5—Special Aspects of Contracting for Lease Alterations

570.501 General.

(a) The procedures in 570.502 apply to alterations acquired directly from a lessor by modification or supplemental lease agreement. This is allowed if the following conditions are met:

(1) The alterations fall within the scope of the lease. Consider whether the work can be regarded fairly and reasonably as part of the original lease requirement.

(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 scope of the existing lease, decide whether to acquire the alterations through either:

(1) A supplemental lease agreement, as 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.

[64 FR 37265, July 9, 1999, as amended at 76 FR 30852, May 27, 2011]

570.502 Alterations by the lessor.

570.502–1 Justification and approval requirements.

If the proposed alterations are outside the general scope of the lease and the contracting officer plans to acquire them from the lessor without competition, the following justification and approval requirements apply:

(a) If the alteration project will not exceed the micro-purchase threshold identified in FAR 2.101(b), no justification and approval is required.

(b) If the alteration project will exceed the micro-purchase threshold identified in FAR 2.101(b), but not the simplified lease acquisition threshold, the contracting officer may use simplified acquisition procedures and explain the absence of competition in the file.

(c) If the alteration project will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply.

[76 FR 30852, May 27, 2011]

570.502–2 Procedures.

(a) *Scope of work*. The contracting officer must prepare a scope of work for each alteration project.

(b) *Independent Government estimate*. The contracting officer must obtain an independent Government estimate for each alteration project, including changes to existing alteration agreements with the lessor.

(c) *Request for proposal*. (1) The contracting officer must provide the scope of work to the lessor, including any plans and specifications, and request a proposal.

(2) The contracting officer must request sufficient cost or price information to permit a price analysis.

(d) *Audits*. If the contracting officer requires cost or pricing data and the alteration project will exceed the threshold identified in FAR 15.403–4, request an audit.

(e) *Proposal evaluation*. The contracting officer must—

(1) Determine if the proposal meets the Government's requirements.

(2) Analyze price or cost information. At a minimum, compare the proposed cost to the independent estimate and, if applicable, any audit results received.

(3) Analyze profit following FAR 15.404–4.

(4) Document the analysis under this paragraph and the resulting negotiation objectives.

(f) *Price negotiations*. The contracting officer must—

(1) Exercise sound judgment. Make reasonable compromises as necessary.

(2) Provide the lessor with the greatest incentive for efficient and economical performance.

(3) Document negotiations in the contract file, including discussions regarding restoration cost or waiver of restoration cost.

(g) *Order*. For modifications not exceeding the simplified acquisition threshold, lease contracting officers may delegate alteration contracting authority to a warranted contracting officer's representative in GSA or the tenant agency. Alterations awards must reference the lease number. If the modification does not exceed the simplified acquisition threshold, the contracting officer may use GSA Form 300, Order for Supplies or Services. Reference the lease on the form.

(h) *Inspection and payment*. The contracting officer must 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.

[76 FR 30852, May 27, 2011]

570.503 Alterations by the Government or through a separate contract.

If the Government chooses to exercise its right to make the alterations rather than contracting directly with the lessor, the Government may either:

(a) Have Federal employees perform the work.

(b) Contract out the work using standard contracting procedures that

apply to a construction contract performed on Federal property. If the Government decides to contract for the work, invite the lessor, as well as all other prospective contractors, to submit offers for the project.

[76 FR 30853, May 27, 2011]

Subpart 570.6—Contracting for Overtime Services and Utilities in Leases

SOURCE: 76 FR 30853, May 27, 2011, unless otherwise noted.

570.601 General.

(a) Lease tenant agencies may need overtime services and utilities on a regular or intermittent basis. Lease contracting officers may negotiate overtime rates for services and utilities and include those rates in leases where a need is projected. Only lease contracting officers may negotiate overtime rates.

(b) An independent government estimate is required in support of the negotiated rate.

(c) *Order*. To order overtime services and utilities, if the order does not exceed the simplified acquisition threshold, a warranted contracting officer's representative, in GSA or the tenant agency, may place an order. The order must reference the lease number.

(d) *Payment*. Do not make final payment for services and utilities until confirmed as delivered in a satisfactory manner.

Subpart 570.7—Solicitation Provisions and Contract Clauses

SOURCE: 64 FR 37265, July 9, 1999, unless otherwise noted. Redesignated at 76 FR 30853, May 27, 2011

570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below.

If . . .	Then include . . .
(a) the estimated value of the acquisition exceeds the micro-purchase threshold identified in FAR 2.101.	52.204–3 Taxpayer Identification. 52.204–6 Data Universal Numbering System (DUNS) Number. 52.204–7 System for Award Management. 52.219–1 Small Business Program Representations. 52.219–28 Post-Award Small Business Program Rerepresentation (use if lease term exceeds five years). 52.232–23 Assignment of Claims. 52.232–33 Payment by Electronic Funds Transfer—System for Award Management. 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 Equal Opportunity for Veterans. 52.222–36 Equal Opportunity for Workers with Disabilities. 52.222–37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
(c) the estimated value of the acquisition is $25,000 or more (not applicable to individuals).	52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.
(d) the estimated value of the acquisition exceeds the threshold identified in FAR 9.409(b).	52.209–6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(e) the estimated value of the acquisition exceeds $100,000	52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(f) 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. 52.204–5 Women-Owned Business (Other than Small Business). 52.209–5 Certification Regarding 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.

If . . .	Then include . . .
(g) the estimated value of the acquisition exceeds the threshold identified in FAR 19.708(b).	52.219–9 Small Business Subcontracting Plan. 52.219–16 Liquidated Damages—Subcontracting Plan.
(h) the estimated value of the acquisition the estimated value of the acquisition exceeds the threshold identified in FAR 19.1202–2(a) and the contracting officer is using a best value trade off analysis in an 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.
(i) the value of the contract is expected to exceed $5 million and the performance period is 120 days or more.	52.203–13 Contractor Code of Business Ethics and Conduct. 52.203–14 Display of Hotline Poster(s).
(j) the estimated value of the acquisition exceeds $10 million ...	52.222–24 Pre-award On-site Equal Opportunity Compliance Evaluation.
(k) the contracting officer requires cost or pricing data for work or services exceeding the threshold identified in FAR 15.403–4.	52.215–10 Price Reduction for Defective Certified Cost or Pricing Data. 52.215–12 Subcontractor Certified Cost or Pricing Data.
(l) the contracting officer authorizes submission of facsimile proposals.	52.215–5 Facsimile Proposals.
(m) 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.

[76 FR 30853, May 27, 2011, as amended at 81 FR 1533, Jan. 13, 2016]

570.702 GSAR solicitation provisions.

Each SFO must include provisions substantially the same as the following, unless the contracting officer determines that the provision is not appropriate. However, document the file with the basis for deleting or substantially changing a clause.

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.

[64 FR 37265, July 9, 1999. Redesignated and amended at 76 FR 30853, 30854, May 27, 2011]

570.703 GSAR contract clauses.

(a) 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 the contracting officer determines that a clause is not appropriate. However, document the file with the basis for deleting or substantially changing a clause. A deviation is not required under section 570.704 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.

552.215–70 Examination of Records by GSA.
552.270–4 Definitions. You must use this clause if you use 552.270–28.
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.

(b) Include the following provisions and clauses in leasehold interests in real property.

552.270–30 Price Adjustment for Illegal Improper Activity.
552.270–31 Prompt Payment.
552.270–32 Covenant Against Contingent Fees.

[76 FR 30854, May 27, 2011]

570.704 Deviations to provisions and clauses.

(a) The contracting officer needs a deviation approved under Subpart 501.4 to omit any required provision or clause.

(b) The contracting officer also needs an approved deviation to modify the language of a provision or clause mandated by statute (e.g., FAR 52.215–2, Audit and Records—Negotiation). The authorizing statute must allow for a waiver.

(c) Certain clauses required by non-GSA regulations require approval of the issuing agency before the contracting officer can delete or modify them. For example, FARs 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.

[76 FR 30854, May 27, 2011]

Subpart 570.8—Forms

SOURCE: 64 FR 37265, July 9, 1999, unless otherwise noted. Redesignated at 76 FR 30853, May 27, 2011

570.801 Standard forms.

Use Standard Form 2, U.S. Government Lease for Real Property, to award leases unless the contracting officer uses GSA Form 3626 (see 570.802).

[76 FR 30854, May 27, 2011]

570.802 GSA forms.

(a) The contracting officer may use GSA Form 3626, U.S. Government Lease for Real Property (Short Form), to award leases if using the simplified leasing procedures in Subpart 570.2 or if the contracting officer determines it advantageous to use the form.

(b) The contracting officer 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) The contracting officer may use GSA Form 1364, Proposal To Lease Space to obtain offers from prospective offerors.

(d) The contracting officer may use GSA Form 1217, Lessor's Annual Cost Statement, to obtain pricing information regarding offered services and lease commissions.

[76 FR 30854, May 27, 2011]

EFFECTIVE DATE NOTE: Amend section 570.802 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), effective Oct. 19, 2020.

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SUBCHAPTER A—GENERAL

PART 600 [RESERVED]

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 through the Department's Intranet system at *http://aope.a.state.gov*, or through the Internet from A/OPE's Acquisition Web site. The Internet address is: *http://www.statebuy.state.gov/*.

[69 FR 19329, Apr. 13, 2004]

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 information and recordkeeping requirements for Form DS–4053, *Department of State Mentor-Protégé Program Application*, have been approved by OMB under OMB Control Number 1405–0161.

[80 FR 6913, Feb. 9, 2015]

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. 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; 80 FR 6913, Feb. 9, 2015]

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 and DOS is the procurement agency, the FAR and DOSAR apply to all administrative and technical support acquisitions.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994; 64 FR 43620, Aug. 11, 1999; 80 FR 6913, Feb. 9, 2015]

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.

601.601–70 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 Management 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. Design/build solicitations and contracts may only be entered into with the written approval of A/OPE and OBO. Proposed construction contracts exceeding $500,000 and any related architect-engineer contracts must have prior A/OPE approval.

(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 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 services, including construction, is delegated to the Director or designee as the HCA.

(3) *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.

(4) *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.

(5) *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.

(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 International Narcotics and Law Enforcement Affairs*. The authority to enter into and administer simplified acquisition transactions under FAR part 13, to enter into and administer contracts over the simplified acquisition threshold but not exceeding $500,000 for non-commercial item acquisitions; up to $6.5 million for the acquisition of commercial items using the simplified acquisition procedures under the Test Program of FAR subpart 13.5; 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 (AIDAR), including any amendments thereto. INL follows the AIDAR guidance for doing personal service contracts. All other contracting actions follow the DOSAR and DoS regulations. These authorities extend to any acquisition performed by any Department of State contracting activity on behalf of INL.

(6) *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.

(7) *Bureau of Administration, Office of Operations*. The authority to enter into and administer simplified acquisition transactions for emergency or contingency operations necessary to protect life or federal property. This authority is limited to cases when a contracting officer in the Office of Acquisitions Management is unavailable.

(8) *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) at the following locations:

(i) RPSO Frankfurt in conjunction with Consulate General Frankfurt; and

(ii) RPSO Florida in conjunction with the Florida Regional Center.

(c) *Execution of delegated authority*. (1) Whenever the contracting officer makes use of the various statutory authorities available to the Department to waive the application of the Federal Acquisition Regulation or laws governing acquisition, such as those provided in the Foreign Assistance Act (22 U.S.C. 2291) or the Foreign Service Buildings Act (22 U.S.C. 294), a written determination of the basis for using the authority must be prepared and included in the file.

(2) If the statute or current practice of the requiring office does not specify a particular format, use the following format.

DETERMINATION FOR USE OF AUTHORITY TO WAIVE _____[FILL IN WHAT IS BEING WAIVED]

SUBJECT: [State title of program or project]

DESCRIPTION OF REQUIREMENT: [Briefly describe what is being acquired]

STATUTORY AUTHORITY: [Cite specific statute, such as 22 U.S.C. 2291(a)(4) for INL, and provide quotation from the law that conveys authority for the waiver at issue]

SCOPE OF WAIVER: [Describe what is being waived, such as (but not limited to) the Federal Acquisition Regulation (FAR) in its entirety, the Competition in Contracting Act as implemented in FAR Parts 5 and 6, or FAR Part 32 limitation on advance payments, etc.; also identify the individual acquisition or class of acquisitions for which the waiver is being sought.]

JUSTIFICATION: [Describe the need to use the authority and the anticipated impact of not doing so; discuss alternatives considered, if any]

CONCURRENCE:

_____

Contracting Officer

_____

Date

_____

Legal Advisor

_____

Date

_____

APPROVAL/SIGNATURE:

_____

Approving Official

_____

Date

(3) The determination may be made for an individual acquisition or on a class basis, as appropriate. The Contracting Officer must ensure that the proper official makes the determination in question. There may already be a Department of State delegation of authority to a specific individual to make the determination.

[59 FR 66752, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43620, Aug. 11, 1999; 69 FR 19330, Apr. 13, 2004; 71 FR 34839, June 16, 2006; 72 FR 45695, Aug. 15, 2007. Redesignated and amended at 80 FR 6913, Feb. 9, 2015]

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 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 601.601–70.

(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; 72 FR 45695, Aug. 15, 2007; 81 FR 24707, Apr. 27, 2016]

601.602–3 Ratification of unauthorized commitments.

(b) *Policy*. (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that could result in disciplinary action against the transgressor, e.g., withdrawal of a contracting officer's warrant or a Contracting Officer's Representative delegation or collection action.

(2)(i) Unauthorized commitments not exceeding $1,000. The head of the contracting activity is delegated the authority to serve as the ratifying official for unauthorized commitments not exceeding $1,000, including unauthorized commitments from other agencies where a DOS employee serves as the contracting officer for that action. The head of the contracting activity may refer any actions not exceeding $1,000 to the DOS Procurement Executive for ratification if he or she so chooses.

(ii) Unauthorized commitments exceeding $1,000. All DOS unauthorized commitments in excess of $1,000 shall be submitted to the DOS Procurement Executive for ratification. Unauthorized commitments in excess of $1,000 from other agencies may be referred to the other agency's representative at post for resolution in accordance with that agency's ratification process.

(3) *Claims*. Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR subpart 33.2 and subpart 633.2.

(4) *Disciplinary action*. The Procurement Executive may refer egregious cases of unauthorized commitments to HR/ER for possible disciplinary action in accordance with 3 FAM 4370 or 3 FAM 4540. Examples might include repeated unauthorized commitments knowingly made by an employee; failure to take responsibility for a deliberate unauthorized commitment; or similar reasons. The Procurement Executive may revoke the appointment certificate of any contracting officer who makes an unauthorized commitment. The Procurement Executive may direct a contracting officer to revoke the appointment memorandum of a Contracting Officer's Representative or Government Technical Monitor who makes an unauthorized commitment.

[80 FR 6914, Feb. 9, 2015]

601.602–3–70 Procedures.

(a)(1) The person who made the unauthorized commitment shall submit all records and documents concerning the unauthorized commitment to the contracting officer assigned the ratification action. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed; a statement justifying a sole source acquisition (Justification for Other Than Full and Open Competition) if the unauthorized commitment exceeds $100,000; why and how the vendor was selected; a list of other sources considered; a description of work or products; a statement regarding the status of performance; an estimated or agreed price; certified funding citations; a statement as to why he/she should not be personally liable for the cost, e.g., a public purpose was served and no personal benefit was received; a statement as to whether the individual has ever been responsible for any other unauthorized commitments in the Department of State; and, a statement as to the number of unauthorized commitments processed by the responsible office within the last three calendar years and the circumstances surrounding each of these actions.

(2) When the person who made the unauthorized contractual commitment

is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized commitment.

(3) In addition, a cognizant management official from the office that employed the individual who made the unauthorized commitment at the time the unauthorized commitment was made shall provide a statement detailing actions that he/she will take to ensure that such commitments will not occur again under the same or similar circumstances.

(4) This statement shall be cleared by the Executive Director of the Bureau that employs (or employed) the person who made the unauthorized commitment.

(b) The contracting officer assigned the ratification action shall prepare and execute a recommendation to the ratifying official. The contracting officer shall either recommend that the ratifying official approve and ratify the unauthorized commitment; or, disapprove the ratification of the unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602–3(c)(1) and (c)(3) through (6); and a recommendation to the ratifying official as to whether the unauthorized commitment should be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the ratifying official hereby ratifies (or disapproves) the unauthorized commitment in the amount specified; and a date and signature block for the ratifying official.

(c) The information required in paragraph (b)(1) of this section shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit the complete file to the ratifying official. For actions exceeding $1,000, the file shall be submitted through the head of the contracting activity to the Procurement Executive.

(e) Upon receipt and review of the complete file, if the ratifying official ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity if the action exceeds $1,000, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the ratifying official shall return the request to the head of the contracting activity (if over $1,000) or to the contracting officer (if under $1,000) with a written explanation for the decision and a recommendation for disposition of the action.

[80 FR 6914, Feb. 9, 2015]

601.603 Selection, appointment, and termination of appointment for contracting officers.

601.603–1 General.

Details of the Department's acquisition career management program are described in 14 FAH–3, Acquisition Career Management Program Handbook, which is available on the Internet at *http://www.state.gov/m/a/dir/regs/fah/14fah03/index.htm*

[72 FR 45695, Aug. 15, 2007, as amended at 80 FR 6914, Feb. 9, 2015]

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 employees shall be appointed as contracting officers. For acquisitions at $25,000 and below only, this includes locally employed staff (*i.e.*, Foreign Service Nationals and Third Country nationals). Personal services contractors 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) The Human Resources Officer;

(2) The Human Resources/Financial Management Officer; or,

(3) The Management Officer or an American Foreign Service Officer designated to perform human resource functions.

(e) *Real property leases.* The FAR and DOSAR do not apply to leases of real property. A contracting officer certificate of appointment is not required. Authority to sign real property leases is as follows:

(1) *Domestic real property leases.* The General Services Administration has delegated domestic leasing authority to the Department of State's Office of Real Property Management (A/OPR/RPM). This delegation is accomplished on a case-by-case basis.

(2) *Real property leases abroad.* Authority to sign real property leases abroad is held by the Director/Chief Operating Officer (DIR/COO) of the Bureau of Overseas Buildings Operations (OBO), through the Secretary of State, under the Foreign Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*). Leases at post may be executed by the General Services Officer or by other post administrative personnel as authorized by OBO.

[59 FR 66752, Dec. 28, 1994, as amended at 64 FR 43620, Aug. 11, 1999; 69 FR 19330, Apr. 13, 2004; 76 FR 30265, May 25, 2011; 80 FR 6914, Feb. 9, 2015]

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.

Chief of Mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96–465) to be temporarily in charge of such a mission or office.

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 supplies between the U.S. and posts within its specific geographic area as assigned by the Office of Logistics Operations. There are six Despatch Agencies, one each in Iselin, New Jersey; Baltimore, Maryland; Miami, Florida; Seattle, Washington; Brownsville, Texas; and

the European Logistical Support Office in Antwerp, Belgium.

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 (2) is $30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (3).

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; 69 FR 19330, Apr. 13, 2004; 72 FR 45695, Aug. 15, 2007]

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.1—Safeguards

Sec.
603.104 Procurement integrity.
603.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
603.104–7 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 603.8—Limitations on the Payment of Funds To Influence Federal Transactions

603.804 Policy

Subpart 603.9—Whistleblower Protections for Contractor Employees

603.905 Procedures for investigating complaints.
603.906 Remedies.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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.

603.104–4 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, 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 (OSDBU), 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.

[64 FR 43620, Aug. 11, 1999. Redesignated at 69 FR 19330, Apr. 13, 2004; 80 FR 6915, Feb. 9, 2015]

603.104–7 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 3.104–7(d)(2)(ii)(B).

[64 FR 43620, Aug. 11, 1999. Redesignated and amended at 69 FR 19330, Apr. 13, 2004]

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) Upon completion of the investigation and/or prosecution or with the consent of the U.S. Department of Justice, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a report, together with all pertinent documentation, concerning the suspected violation. The Office of the Procurement Executive shall provide to the contractor a written notice by certified mail, return receipt requested, presenting the findings, and shall establish a schedule, including location, for an investigative hearing for the purposes described in FAR 3.204(b).

[64 FR 43620, Aug. 11, 1999, as amended at 69 FR 19330, Apr. 13, 2004]

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. This policy also applies to individuals hired under personal services agreements and personal services contracts.

[59 FR 66754, Dec. 28, 1994, as amended at 69 FR 19331, Apr. 13, 2004]

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 603.8—Limitations on the Payment of Funds To Influence Federal Transactions

603.804 Policy

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at FAR 52.203–12 to the Office of the Legal Adviser, Employment Law, Senior Ethics Counsel (L/EMP/Ethics).

[69 FR 19331, Apr. 13, 2004]

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

Subpart 604.2—Contract Distribution

Sec.
604.202 Agency distribution requirements.

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

Subpart 604.8—Government Contract Files

604.802 Contract files.
604.803 Contents of contract files.
604.803–70 Contract file table of contents.
604.804 Closeout of contract files.
604.804–70 Contract closeout procedures.
604.805 Storage, handling, and disposal of contract files.

Subpart 604.13—Personal Identity Verification

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Subpart 604.16—Unique Procurement Instrument Identifiers

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Subpart 604.70—Contract Review

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Subpart 604.71—Procurement Quality Assurance Program

604.7101 Purpose.
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604.7102–1 Peer reviews.
604.7102–2 Form and scope of review
604.7102–3 Approval.
604.7103 Review by Assistant Legal Adviser for Buildings and Acquisitions (L/BA).

Subpart 604.72—Secure Procurement for Controlled Access Areas

604.7201 Policy.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 69 FR 19331, Apr. 13, 2004, unless otherwise noted.

Subpart 604.2—Contract Distribution

SOURCE: 80 FR 6915, Feb. 9, 2015, unless otherwise noted.

604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the

Contracting Officer's Representative; the requirements office; the Post Occupational Safety and Health Officer (POSHO); the Despatch Agent or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; the financial management office; and each post or office where the contract shall be performed. Where required by the laws of a foreign country, overseas posts shall retain the original copy of the contract or modification awarded by a domestic contracting activity for performance overseas. The contracting officer shall send copies of contracts and modifications awarded as small business or 8(a) set-asides to OSDBU.

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

(b) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.502(b).

(1)(i) *Materials not in automated format.* For solicitations containing drawings or other materials that are not in an automated format, the contracting officer shall:

(A) Post as much of the solicitation as possible on the Internet; and,

(B) Make hard copies available for those parts of the solicitation that are not in an automated format.

(ii) *Posting solicitations for overseas contracting activities.* Contracting officers at overseas contracting activities shall post competitive local guard solicitations on the Internet using the Government-wide point of entry if U.S. firms may be competing. Posting of other solicitations is optional.

[69 FR 19331, Apr. 13, 2004, as amended at 72 FR 45695, Aug. 15, 2007]

Subpart 604.8—Government Contract Files

SOURCE: 80 FR 6915, Feb. 9, 2015, unless otherwise noted.

604.802 Contract files.

Heads of contracting activities shall maintain standard procedures to conform to FAR 4.802 for file location and maintenance.

(f) *Electronic files.* Offices may maintain files in electronic media provided all documentation is maintained as required by FAR subpart 4.8. Electronic files dispersed in multiple locations, or maintained with no naming convention, do not constitute adequate electronic records.

604.803 Contents of contract files.

604.803–70 Contract file table of contents.

(a) It is the Department's policy that all contracts, regardless of dollar value, be properly documented so as to provide a complete record of: pre-solicitation activities; the solicitation, evaluation, and award process; and, the administration of the contract through closeout.

(b) All domestic contracting activities awarding contracts using other than simplified acquisition procedures shall use the format of Form DS–1930, *Domestic Contract File Table of Contents,* and all overseas contracting activities shall use the format of Form DS–1929, *Overseas Contract File Table of Contents,* unless an alternate format has been approved by A/OPE.

(c) Each table of contents is organized in chronological order, with six separate sections for each of the six parts of the file folder (from Section I, Pre-Solicitation, through Section VI, Contract and Modifications/Contract Closeout). Alternatively, for ease of contract administration, offices may choose to organize contract files with Section VI of the table of contents at the beginning of the folder, with Section I at the back of the folder.

(d) The format of Form DS–1928, *Contract Administration File Table of Contents,* may be used by those offices that prefer to have a separate file folder for contract modifications or delivery/task orders.

604.804 Closeout of contract files.

604.804–70 Contract closeout procedures.

(a) This section sets forth procedures for closing out contracts awarded using other than simplified acquisition procedures by contracting activities and requirements offices. It is the Department's policy to close out contracts in

the time frames prescribed by FAR Part 4.

(b) Contracting activities are responsible for initiating each contract closeout. Contracting activities and requirements offices are jointly responsible for timely compliance with required contract closeout procedures.

(c) The contract closeout process shall begin as soon as possible after the contract is physically completed, which means that the contractor has delivered the required supplies and the Government has inspected and accepted them, or the contractor has performed and the Government has accepted all services required by the contract, and the base period and any option periods exercised have expired.

(d) *Specific procedures*. The normal steps for closing out a physically completed contract shall be as follows. These steps are summarized in the Contract Closeout Checklist, which shall be completed by the contracting officer and included in the contract file. The contracting officer shall indicate any items that are not applicable (e.g., patent reports, royalty reports, etc.).

(1) The contracting officer shall verify that all work under the contract has been completed; obtain the COR's assessment of the contractor's performance; and conduct an initial funds status review, *i.e.*, determine if the contract has excess funds that should be deobligated by contract modification. Contracting officers shall send a cover memo to the COR, to which should be attached the COR Completion Certificate, the applicable performance evaluation form (depending on whether the contract is for construction (SF–1420), architect-engineering services (SF–1421), or other supplies or services (DS–1771, *Contractor Evaluation Statement*)); and, a final payment and closeout memorandum. Contracting officers may require CORs to input past performance data directly into the Contractor Performance Assessment Reporting System (CPARS) as opposed to completing a paper evaluation form (see 642.1503–70).

(2) After receipt of the COR's response, and the contractor's release, the contracting officer shall send a final payment memo to the office responsible for payment of invoices/vouchers.

(3) An audit is required for cost-reimbursement contracts over $550,000, unless available data are considered adequate for a reasonableness determination, in which case the contract file shall be documented with the appropriate rationale. Requests for audits, normally by the Defense Contract Audit Agency (DCAA) in accordance with the agreement DOS has with DCAA to conduct incurred cost audits, shall be submitted through the A/LM/AQM/BOD/QA Audit Team (see 642.101(b)). Cost-reimbursement contracts may be closed after receipt of the audit report and resolution of any issues raised. Quick closeout procedures may be followed, as prescribed in FAR 42.708. The contracting officer may request an audit of any contract, if warranted; however, audits should not be requested if the cost of the audit is likely to exceed potential cost recovery, except where fraud or misrepresentation is suspected.

(4) The contracting officer shall send a letter to the contractor requesting release of claims, using the appropriate format. In addition, a Contractor Assignment Letter is required for certain contracts. To determine which format is applicable, contracting officers shall refer to the Payments clause in the contract.

(5) The contracting officer shall reconcile the contract obligations and contractor payments, and then deobligate any excess funds remaining in the contract by issuing a contract modification on a SF–30. Close coordination with the finance office is necessary in order to receive the required information to perform a funds status review.

(6) The contracting officer shall verify that all relevant documentation is included in the contract file (see 604.803–70).

(7) Upon completion of 8(a) contracts, the contracting officer shall complete the Small Business Administration's Contract Completion Form within ten (10) days of contract completion. One copy shall be forwarded to SBA, one copy shall be retained in the contract file, and one copy shall be sent to OSDBU.

(8) For classified contracts, the contractor is required to return to the Department all classified material received or generated under the contract, or to destroy all classified material, unless retention is requested and authorized by the Department. The contracting officer shall notify DS/PRD/IN of contract completion, final delivery of goods or services or the termination of the classified contract. The contracting officer shall ensure that any classified material contained in the contract file is properly marked and accounted for.

(9) Closeout documents are available on the Intranet at the A/OPE Web site.

(e) Contract files that have been closed out shall be retained in accordance with the schedule in FAR 4.805.

(f) Contract files for contracts using simplified acquisition procedures are considered closed when the contracting officer receives evidence of property/services and final payment. Disposal of such files shall be as prescribed in FAR 4.805.

[80 FR 6915, Feb. 9, 2015, as amended at 82 FR 58351, Dec. 12, 2017]

604.805 Storage, handling, and disposal of contract files.

Heads of contracting activities shall prescribe procedures for handling, storing, and disposing of contract files. Additional guidance on records management may be found in 5 FAM.

Subpart 604.13—Personal Identity Verification

SOURCE: 76 FR 20250, Apr. 12, 2011, unless otherwise noted.

604.1301 Policy.

The DOS official responsible for verifying contractor employee personal identity is the Assistant Secretary for Diplomatic Security.

[76 FR 20250, Apr. 12, 2011. Redesignated at 80 FR 6916, Feb. 9, 2015]

604.1303 Contract clause.

[76 FR 20250, Apr. 12, 2011. Redesignated at 80 FR 6916, Feb. 9, 2015]

604.1303–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.204–70, Department of State Personal Identification Card Policy and Procedures, in solicitations and contracts that require contractor employees to perform on-site at a DOS location and/or that require contractor employees to have access to DOS information systems.

[80 FR 6916, Feb. 9, 2015]

Subpart 604.16—Unique Procurement Instrument Identifiers

SOURCE: 80 FR 6916, Feb. 9, 2015, unless otherwise noted.

604.1601 Policy.

(c)(1) *Procurement Instrument Identifier (PIID)*. Uniform numbers shall be assigned to all DOS procurement instruments, domestic and overseas. The numbering system applies to all contracts, purchase orders, and other related instruments, including solicitation documents and delivery orders. This includes instruments executed by DOS contracting officers on behalf of other federal agencies. It does not include requisitions submitted to a contracting activity, or to instruments awarded under Federal assistance arrangements, e.g., grants, cooperative agreements, and loans. Numbers shall be placed in appropriate spaces on government forms and appear on all documentation intended to support official contract files.

(2) *Responsibility*. Heads of contracting activities are responsible for enforcing compliance with the uniform numbering system. Heads of contracting activities shall develop and maintain a system for assigning and recording contract numbers that conforms to this section.

(3) *Instrument identification numbers*. A 13-character ''alpha-numeric'' designator shall be assigned to all DOS procurement instruments. Positions (beginning at the left) one through six shall identify the purchasing office; positions seven and eight, the fiscal year in which the number is assigned; position nine, a symbol designating a type

of procurement instrument; and positions ten through thirteen, a four-position serial number.

(i) The first six positions shall commence with ''S'' to designate a DOS-issued contract. The remaining five characters shall identify the activity preparing the instrument. Domestic and overseas contracting activities shall assign the character codes using the five-digit designator from the listing at *http://www.aopeprocurementreports.com/ReportServer__OPEMS2008/Pages/ReportViewer.aspx?%2fDOSReport%2fPostCodeList&rs:Command=Render*. DOS organizations not listed shall contact A/OPE for assignment of an office code.

(ii) The seventh and eighth positions shall be the last two digits of the fiscal year in which the number is assigned.

(iii) The ninth position shall be a capital letter assigned to indicate the type of instrument, as follows:

(A) Blanket Purchase Agreement	A
(B) Invitation for Bids	B
(C) Contract (includes letter contracts, contracts incorporating basic agreements and basic ordering agreements)	C
(D) Indefinite Delivery Contract	D
(E) Reserved. Do not use	E
(F) Delivery/Task Order (includes orders placed against all U.S. Government contracts, whether issued by DOS or another agency)	F
(G) Basic Ordering Agreement	G
(H) Basic Agreement	H
(I) Request for Information/Comment	I
(J) Reserved. Do not use	J
(K) Reserved. Do not use	K
(L) Orders under Blanket Purchase Agreements	L
(M) Purchase Order	M
(N) Reserved. Do not use	N
(O) Do not use this letter	O
(P) Personal services contract	P
(Q) Request for Quotations	Q
(R) Request for Proposals	R

(iv)(A) The tenth through thirteenth positions shall be the serial number for the instrument. A separate set of serial numbers may be used for any type of instrument listed in paragraph (c)(3)(iii) of this section. Each series of numbers for the same activity shall begin with the number 0001 at the start of each fiscal year.

(v)(A) The following illustrates a properly configured contract number for the first number assigned to a fiscal year 2015 contract awarded by the Department of State, Embassy Ottawa: SCA525–15–C–0001

(B) Use of the dashes to separate the individual elements of the series is optional; however, when reporting individual contract actions to the Federal Procurement Data System (see FAR subpart 6.4), dashes shall not be used.

(C) Contracting activities are authorized to use the first digit of the serial number (position 10) to establish discrete series of numbers. For example, the ''1000'' series may be reserved for Bureau of Consular Affairs requirements (domestic), or the ''1000'' series may be reserved for Economic section requirements (overseas). Use of discrete series is appropriate generally for activities handling large numbers of transactions and can provide useful management information.

(4) *Solicitation amendment and contract modification numbers.* Solicitation amendments are to be numbered sequentially, beginning with the alpha designator ''A,'' e.g., A001. Contract modifications shall also be numbered sequentially, beginning with the alpha designator ''M,'' e.g., M001.

Subpart 604.70—Contract Review

SOURCE: 80 FR 6916, Feb. 9, 2015, unless otherwise noted.

604.7001 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract file shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

604.7002 Procedures.

(a) *Overseas contracting activities.* (1) A/OPE reviews all procurements that exceed the warrant levels of post contracting officers. Post contracting officers may request A/OPE review and assistance for transactions below this level.

(2) *Personal services agreements.* Prior A/OPE approval is not applicable to personal services agreements, as they

are not subject to procurement statute and regulation.

(b) *Domestic contracting activities and Regional Procurement Support Offices.* A/OPE reviews domestic acquisitions as described in the A/LM/AQM Quality Assurance Plan.

(c) *Delegation or waiver.* The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

Subpart 604.71—Procurement Quality Assurance Program

SOURCE: 80 FR 6916, Feb. 9, 2015, unless otherwise noted.

604.7101 Purpose.

A procurement quality assurance program is essential to the effective operation of each domestic contracting activity. Each domestic contracting activity and RPSO shall develop a quality assurance plan for review and approval of contract actions to ensure that all requirements of law, regulation, Departmental policy, and sound procurement practices are met, the taxpayer's interests are adequately protected, and the Department's mission is well-served. Post quality assurance includes A/OPE review of actions exceeding warrant levels and Staff Assistance Visits (SAVs).

604.7102 Contracting activity reviews.

604.7102–1 Peer reviews.

All contract actions above the simplified acquisition threshold shall be independently reviewed by at least one other qualified contracting professional. This includes solicitations, contracts, contract modifications, and delivery/task orders. This requirement is waived for overseas posts and RPSOs that have only one qualified contracting professional.

604.7102–2 Form and scope of review

(a) The review shall focus on both compliance with statutory/regulatory requirements as well as good contracting practices. Reviews shall be included in the official contract file along with documentation regarding the actions taken in response to the review.

(b) Reviews should be limited in time to prevent unnecessary procurement lead-time, but thorough in scope, considering all documents in the contract file and all relevant contracting issues. Checklists may be used to facilitate a thorough review, as appropriate.

604.7102–3 Approval.

The solicitation, contract, or contract modification being reviewed shall not be issued until all review comments requiring corrective action are satisfactorily resolved. Waivers shall not be granted except in unusual circumstances, and shall be approved in advance by the head of the contracting activity.

604.7103 Review by Assistant Legal Adviser for Buildings and Acquisitions (L/BA).

(a) L/BA shall review solicitations, contract awards, and delivery orders against GSA Federal Supply Schedule contracts exceeding $1 million that are generated by domestic contracting activities, including RPSOs. L/BA shall also review domestic contract modifications exceeding $1 million if the scope or ceiling of the contract may be in question. This review is not required for modifications exercising priced options, incremental funding modifications, and similar actions that do not involve questions regarding the scope or ceiling of the contract.

(b) L/BA shall also review and approve any nonpersonal services contract, purchase order or blanket purchase agreement to be awarded to an individual who is a U.S. citizen.

Subpart 604.72—Secure Procurement for Controlled Access Areas

604.7201 Policy.

A/LM issues procedures for the acquisition of secure items that are needed by overseas posts. Posts shall contact A/LM/AQM regarding secure procurement matters, and shall consult the periodic guidance issued by A/LM on this subject.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopses of Proposed Contract Actions

Sec.
605.202 Exceptions.
605.202–70 Foreign acquisitions.
605.207 Preparation and transmittal of synopses.
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: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26164, July 11, 1988, unless otherwise noted.

Subpart 605.2—Synopses 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 notices in the Governmentwide point of entry (GPE) for the Department's foreign acquisitions awarded by overseas contracting activities is waived. GPE notices may be published for any acquisition where the contracting officer decides that publication would be in the Department's best interests.

(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 GPE 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 exclusions*. GPE waiver authority does not apply to local guard service contracts exceeding $250,000, or any contracts exceeding $5 million. Local guard service contracts that exceed $250,000 and other contracts that exceed $5 million shall be published in the GPE. 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; 69 FR 19331, Apr. 13, 2004]

605.207 Preparation and transmittal of synopses.

(a)(1) Contracting officers at overseas posts shall submit notices of proposed contract actions to A/OPE for electronic transmittal to the GPE. Alternately, posts may obtain a user ID and password that allows direct registration and issuance of the notice in the GPE. Posts should contact A/OPE for assistance in obtaining the ID and password if they choose to directly input the notice information.

[80 FR 6917, Feb. 9, 2015]

605.207–70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each notice 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.

[53 FR 26164, July 11, 1988, as amended at 69 FR 19331, Apr. 13, 2004]

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 Bureau 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; 69 FR 19331, Apr. 13, 2004]

Subpart 605.4—Release of Information

605.403 Requests from Members of Congress.

The Procurement Executive is the agency head for the purposes of FAR 5.403.

[59 FR 66755, Dec. 28, 1994, as amended at 72 FR 45695, Aug. 15, 2007]

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 alternative 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 Justifications.
606.303–1 Requirements.
606.303–2 Content.
606.304 Approval of the justification.
606.304–70 Acquisitions by overseas posts.
606.370 Department of State standardization program.

Subpart 606.5—Advocates for Competition

606.501 Requirement.
606.501–70 Overseas posts.
606.570 Solicitation provision.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 alternative 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 13526 and FAR 6.302–6 have been met. The Office Director, Office of Information Security, Security Infrastructure Directorate, Bureau of Diplomatic Security (DS/SI/IS) 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 13256 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 GPE;

(ii) Why the GPE notice 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 GPE 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; 69 FR 19331, Apr. 13, 2004; 72 FR 45695, Aug. 15, 2007; 80 FR 6918, Feb. 9, 2015]

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 Justifications.

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]

606.303–2 Content.

(a) All justifications shall address the requirements of FAR 6.303–2. A sample Justification for Other than Full and Open Competition for acquisitions by both overseas posts and domestic contracting activities is available on the A/OPE Intranet Web site. Use of the format for overseas posts is mandatory; domestic contracting activities may develop their own format based on the sample. In addition, sample formats are provided for posts to justify motor vehicle and household appliance purchases made in accordance with the Department's standardization program (see 606.370(b)). All applicable approvals are as indicated on the formats. The justification must be completed and signed by the appropriate individuals.

(b)(9) All justifications for acquisitions exceeding $5 million shall include a copy of the acquisition plan, as required by 607.103(d).

[80 FR 6918, Feb. 9, 2015]

606.304 Approval of the justification.

(a)(2) The approval authority for a proposed contract within the dollar range set forth in FAR 6.304(a)(2) for domestic contracting activities that do not have an advocate for competition is the Department Advocate for Competition.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999; 72 FR 45695, Aug. 15, 2007; 80 FR 6918, Feb. 9, 2015; 81 FR 24707, Apr. 27, 2016]

606.304–70 Acquisitions by overseas posts.

The Departmental Advocate for Competition 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, as amended at 80 FR 6918, Feb. 9, 2015]

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. 3304(a)(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. 3304(a)(1)shall be supported by the written justification described in FAR 6.303. The contracting officer, requirements office, procuring activity advocate for competition, 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 Management Officer at each post is the procuring activity advocate for competition 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, as amended at 69 FR 19331, Apr. 13, 2004; 80 FR 6918, Feb. 9, 2015]

Subpart 606.5—Advocates for Competition

606.501 Requirement.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Department Advocate for Competition.

(b) A contracting activity advocate for competition has been designated for A/LM/AQM. A/LM/AQM's advocate for competition is also designated the contracting activity advocate for competition for the Regional Procurement Support Offices. The Department Advocate for Competition is the activity advocate for competition for all other domestic contracting activities.

[59 FR 66756, Dec. 28, 1994, as amended at 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004, as amended 80 FR 6918, Feb. 9, 2015; 81 FR 24707, Apr. 27, 2016]

606.501–70 Overseas posts.

The Management Officer at each overseas post is the advocate for competition for that post.

[53 FR 26165, July 11, 1988, as amended at 69 FR 19331, Apr. 13, 2004; 80 FR 6918, Feb. 9, 2015]

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206–70, Advocate for Competition/Ombudsman, in all solicitations exceeding the simplified acquisition threshold.

[64 FR 43622, Aug. 11, 1999, as amended at 80 FR 6918, Feb. 9, 2015]

PART 607—ACQUISITION PLANNING

Subpart 607.1—Acquisition Plans

Sec.

607.102 Policy.
607.103 Agency-head responsibilities.
607.105 Contents of written acquisition plans.

Subpart 607.5—Inherently Governmental Functions

607.503 Policy.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

607.102 Policy.

It is the Department's policy that every acquisition be conducted and the contract file documented in conformance with the requirements for acquisition planning pursuant to FAR part 7.

[80 FR 6918, Feb. 9, 2015]

607.103 Agency-head responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 7.103.

(d) Domestic requirements offices must develop a formal, written acquisition plan for all acquisitions exceeding $5 million. This includes base period plus all option years. The plan shall address the content requirements of FAR 7.105.

(j) Acquisition plans for service contracts with an anticipated annual expenditure exceeding $25 million must be approved by the bureau Assistant Secretary.

[55 FR 5774, Feb. 16, 1990, as amended at 80 FR 6918, Feb. 9, 2015]

607.105 Contents of written acquisition plans.

(b)(10) Acquisition Plans for support of contract administration and other tasks closely related to inherently governmental functions must include a determination that the services being requested are not inherently governmental and a risk mitigation strategy. Procurement Information Bulletin (PIB) 2011–11, Attachment 1, lists functions requiring additional oversight and potential mitigation strategies.

(b)(19) Acquisition Plans must include planning for contract administration. Planning shall be developed by the bureau technical program office and should consider an initial assessment of resources required for contractor oversight, support, travel and communications. Planning should take into account the need for multiple

technical monitors based on geographic dispersion and multiple technical disciplines. Program offices must identify financial and other resources that are reserved for implementation of contract administration.

[80 FR 6918, Feb. 9, 2015]

Subpart 607.5—Inherently Governmental Functions

SOURCE: 80 FR 6918, Feb. 9, 2015, unless otherwise noted.

607.503 Policy.

(e) Requirements offices shall provide to the contracting officer a written determination that none of the functions to be performed are inherently governmental. This determination shall be included with the procurement request package, which is transmitted to the contracting officer to initiate an action. The Form DS–4208 may be used to meet this requirement. The contracting officer shall obtain review from the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) of any request package that the contracting officer determines raises substantial questions as to the performance of inherently governmental functions. Disagreements regarding the determination shall be resolved by the head of the contracting activity.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 608.4—Federal Supply Schedules

Sec.
608.405 Ordering procedures for Federal Supply Schedules.
608.405–3 Blanket Purchase Agreements.

Subpart 608.8—Acquisition of Printing and Related Services

608.802 Policy.

Subpart 608.70—Acquisition of Official Vehicles by Overseas Contracting Activities

608.7001 Definitions.
608.7002 Acquisitions for the Department of State.
608.7003 Acquisitions on behalf of other Federal agencies.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 80 FR 6919, Feb. 9, 2015, unless otherwise noted.

Subpart 608.4—Federal Supply Schedules

SOURCE: 81 FR 24707, Apr. 27, 2016, unless otherwise noted.

608.405 Ordering procedures for Federal Supply Schedules.

608.405–3 Blanket Purchase Agreements.

(a) *Establishment.*

(3)(ii) The Procurement Executive is the head of the agency for the purposes of FAR 8.405–3(a)(3)(ii).

Subpart 608.8—Acquisition of Printing and Related Services

608.802 Policy.

(a)(4) In accordance with Section 2(a) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669), overseas printing and binding services may be acquired from sources other than the Government Printing Office.

(b) The DOS central printing authority is the Director, Global Publishing Solutions under the Deputy Assistant Secretary for Global Information Services.

Subpart 608.70—Acquisition of Official Vehicles by Overseas Contracting Activities

608.7001 Definitions.

Official vehicle means a U.S. Government-owned or leased motor vehicle that is fueled by petroleum or electric batteries, has a minimum of four wheels, and is designed primarily for use on highways, such as sedans, station wagons, buses, carryalls, and trucks.

608.7002 Acquisitions for the Department of State.

(a) A/LM funds and controls the acquisition of official vehicles required

by overseas posts. Accordingly, any acquisition of official vehicles by overseas contracting activities must be approved and authorized in advance by A/LM.

(b) GSA is the mandatory source for U.S. manufactured vehicles acquired in the United States. Purchase requests are submitted by A/LM to GSA on behalf of overseas posts. Overseas posts shall use U.S. manufactured vehicles unless justified as described in paragraph (c) of this section.

(c) Overseas posts may acquire non-U.S. manufactured vehicles only in special cases that are approved in advance. Requests to purchase non-U.S. manufactured vehicles may be justified under the conditions specified in 6 FAM 228.9–3(B)(c). The request shall be submitted to A/LM for approval. If approval is granted to acquire non-U.S. manufactured vehicles from the local economy, overseas posts shall follow the normal procedures in the FAR.

(d) Standardization of motor vehicles shall follow the procedures in 606.370.

608.7003 Acquisitions on behalf of other Federal agencies.

(a) *Acquisition of U.S. manufactured vehicles.* (1) GSA is the mandatory source for official vehicles purchased in the United States for all Federal agencies. Non-DOS agencies must have a waiver from GSA that allows them to acquire official vehicles from sources in the United States other than GSA, in accordance with the Federal Property Management Regulation, 41 CFR 101–38.104.

(2) DOS overseas contracting activities shall not obtain GSA waivers or acquire vehicles through GSA or directly from sources in the United States on behalf of other agencies. Requests to acquire vehicles in this manner shall be returned to the requesting agency without action, and the agency instructed to use its own contracting personnel or GSA for this purpose.

(b) *Acquisition from non-U.S. sources.* No GSA waiver is required for official vehicles purchased outside the United States from non-U.S. sources. Normal acquisition procedures shall be followed. However, contracting officers should be aware that statutory ceilings apply to the acquisition of passenger vehicles (*i.e.*, sedans and station wagons) (see P.L. 103–329), so other agencies shall not request that posts acquire vehicles without providing an analysis of how the price compares with this ceiling.

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

609.402 Policy.
609.403 Definitions.
609.403–70 DOSAR definitions.
609.404 System for Award Management Exclusions.
609.404–70 Specially Designated Nationals List.
609.405 Effect of listing.
609.405–1 Continuation of current contracts.
609.405–2 Restrictions on subcontracting.
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: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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

609.402 Policy.

The Procurement Executive is the agency head's designee to be the debarring official and the suspending official.

[80 FR 6919, Feb. 9, 2015]

609.403 Definitions.

[53 FR 26165, July 11, 1988, as amended at 80 FR 6919, Feb. 9, 2015]

609.403–70 DOSAR definitions.

Fact-finding official means the individual designated by the debarring official to conduct additional proceedings as necessary concerning disputed material facts.

[81 FR 51125, Aug. 3, 2016]

609.404 System for Award Management Exclusions.

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (6). The authority to establish procedures prescribed in FAR 9.404(c)(7) is delegated, without power of redelegation, to the head of the contracting activity.

[80 FR 6919, Feb. 9, 2015]

609.404–70 Specially Designated Nationals List.

Contracting officers shall not award to any of the entities listed on the Specially Designated Nationals (SDN) List, available on the Department of Treasury's Office of Foreign Assets Control Web site at *http://www.treas.gov/ofac/*. Contracting officers shall consult this list prior to award for any dollar amount. This list is included in searches conducted on the System for Award Management (SAM) Web site at *https://www.sam.gov*.

[80 FR 6919, Feb. 9, 2015]

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d)(3) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(d)(3).

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004]

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 649.101–70.

[53 FR 26165, July 11, 1988, as amended at 81 FR 51125, Aug. 3, 2016]

609.405–2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–2.

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 might serve as the basis for debarment shall refer those cases through the contracting officer to the debarring official. The debarring official shall refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include, as appropriate and available—

(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.

(3) As deemed appropriate, the debarring official may conduct investigations to supplement the information provided in the referral, or may request investigations by the Office of the Inspector General or other Department office.

(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, or a designee, shall chair such a meeting. 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 a fact-finding proceeding.

(4) The debarring official shall designate a fact-finding official and shall provide the fact-finding official with a copy of all documentary evidence considered in proposing debarment. 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 official 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 proceeding shall be conducted in accordance with procedures determined 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 official 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. 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).

(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 (e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004; 81 FR 51126, Aug. 3, 2016]

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 official 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.

[53 FR 26165, July 11, 1988, as amended at 81 FR 51128, Aug. 3, 2016]

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

611.501 Policy.

Subpart 611.6—Priorities and Allocations

611.600 Scope of subpart.
611.602 General.
611.603 Procedures.

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

611.501 Policy.

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.501(d).

[64 FR 43622, Aug. 11, 1999. Redesignated and amended at 71 FR 34839, June 16, 2006]

Subpart 611.6—Priorities and Allocations

SOURCE: 69 FR 19332, Apr. 13, 2004, unless otherwise noted.

611.600 Scope of subpart.

On September 18, 2001, the Department of Commerce (DOC) authorized the Department of State to use the Defense Priorities and Allocations System (DPAS). This authority expires on October 1, 2006. The Department of Defense has approved the Department's Embassy Security Protection Program (DOSESPP) as a national defense program eligible for the priorities support under the DPAS.

611.602 General.

(c)(1) Authority to use the DPAS is limited to the following circumstances:

(i) The contract or order must be placed with a U.S. firm; and,

(ii) The contract or order must be in support of the DOSESPP, which consists of work involving the security of overseas posts. The DOSESPP includes a wide range of elements of both physical and technical security, such as:

(A) New Embassy/Consulate Compound (NEC/NCC) Program. This program involves the construction of new secure Embassies, Consulates, and related facilities, as well as renovations of newly acquired buildings when used as alternatives to the construction of new secure buildings.

(B) Physical security upgrade. This includes installation of forced entry/ballistic resistant (FE/BR) windows and doors, walls/fences, active anti-ram barriers, bollards (concrete and steel barriers), and related items.

(C) Forced entry/ballistic resistant (FE/BR) components. This includes doors, windows, and related facilities and items that can provide the necessary time to protect Government personnel from attack.

(D) Armored vehicles. This includes passenger vehicles with appropriate armoring.

(E) Entry control and building surveillance equipment. This includes walk-through metal detectors, X-ray equipment, surveillance cameras, explosive detection equipment, and other features to enhance the protection of Government personnel and facilities.

(2) DOC has assigned the following priority rating to DOSESPP contracts or orders: DO-H8.

611.603 Procedures.

(f) Department of State contracting officers are authorized to sign DO-H8 rated contracts or orders. It is the responsibility of the requirements office to determine which contracts or orders should be rated. All contracts with U.S. firms under the DOSESPP will not necessarily need to be assigned a priority rating.

(g) The contracting officer should place a DO-H8 rating on any contract or order if there is any doubt as to whether a contractor doing work for Embassy security protection will be able to deliver on time. If an unrated contract or order is not completed on time, the contracting officer may modify the contract or order to add the rating; however, the rating shall only be effective for the newly established delivery date, not the original delivery date.

(1) DOC can provide special assistance to implement the DPAS program in specific cases. For example, the Department may request a higher priority rating, or request that DOC issue a written directive to a contractor that

is not complying with the DPAS regulations. In addition, although the DPAS program normally applies only to U.S. firms, if the Department has a prime contract with a foreign firm that will be awarding subcontracts with U.S. firms, the Department may request from DOC authorization to place a rating on the prime contract.

(2) Contracting officers or requirements offices who wish to request special assistance from DOC must complete DOC Form BXA–999, *Request for Special Priorities Assistance*, and submit it to A/OPE, which will arrange for submission of the request to DOC.

PART 612—ACQUISITION OF COMMERCIAL ITEMS

Subpart 612.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

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

(c) The head of the contracting activity shall approve any request for a waiver to tailor a clause or otherwise include any additional terms or conditions in a solicitation or contract in a manner that is inconsistent with customary commercial practice.

[69 FR 19332, Apr. 13, 2004]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 613.2—Actions At or Below the Micro-Purchase Threshold

Sec.
613.201 General.

Subpart 613.3—Simplified Acquisition Methods

613.302 Purchase orders.
613.302–1 General.
613.302–5 Clauses.
613.302–5–70 DOSAR clauses.
613.303 Blanket purchase agreements (BPAs).
613.303–1 General.
613.303–5 Purchases under BPAs.
613.303–6 Review procedures.
613.305 Imprest funds and third party drafts.
613.305–3 Conditions for use.
613.307 Forms.
613.307–70 File folders for purchase orders, delivery orders, blanket purchase agreements, and purchase card transactions.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

Subpart 613.2—Actions At or Below the Micro-Purchase Threshold

613.201 General.

(g)(1) The procurement Executive is the agency head's designee for the purpose of FAR 13.201(g)(1).

[72 FR 45695, Aug. 15, 2007]

Subpart 613.3—Simplified Acquisition Methods

613.302 Purchase orders.

613.302–1 General.

(d) The contracting officer shall distribute copies of each purchase order in conformance with subpart 604.2.

[80 FR 6919, Feb. 9, 2015]

613.302–5 Clauses.

The contracting officer shall ensure that the appropriate clauses prescribed in FAR part 13 are added or incorporated by reference on all purchase orders with both U.S. and foreign vendors.

[80 FR 6919, Feb. 9, 2015]

613.302–5–70 DOSAR clauses.

In addition to the appropriate FAR clauses, each purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. The DOSAR clauses may be incorporated by reference.

[80 FR 6919, Feb. 9, 2015]

613.303 Blanket purchase agreements (BPAs).

613.303–1 General.

BPAs shall not be used to acquire pest control services.

[80 FR 6919, Feb. 9, 2015]

613.303–5 Purchases under BPAs.

(b) Individual purchases under BPAs for commercial items may exceed the simplified acquisition threshold; however, the higher threshold must be consistent with the requirements of FAR 13.303–5(b)(1) and (2).

(c) In accordance with FAR 13.303–5(c), BPAs shall be awarded to small businesses to the maximum extent practicable.

[64 FR 43623, Aug. 11, 1999, as amended at 69 FR 19332, Apr. 13, 2004]

613.303–6 Review procedures.

(a) Contracting officers shall conduct an annual internal review to ensure that authorized BPA procedures are being followed and report the results of the review, including needed corrective action, to the head of the contracting activity.

[80 FR 6919, Feb. 9, 2015]

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).

613.307 Forms.

(b)(2) Other than commercial items. The OF–347 shall be mandatory for use by domestic contracting activities for issuing purchase orders, delivery orders, and BPAs, unless ordering against another Federal agency contract that stipulates a different form (e.g., DD–1155, Order for Supplies or Services:) or, unless the Procurement Executive has approved another form. The OF–347 may also be used as a voucher. In lieu of the OF–347, DOS overseas contracting activities may use the DS–2076, Purchase Order, Receiving Report, and Voucher; and DS–2077, Continuation Sheet. Contracting activities may use the Optional Form (OF) 127, Receiving and Inspection Report, for documenting receipt and inspection.

[80 FR 6920, Feb. 9, 2015]

613.307–70 File folders for purchase orders, delivery orders, blanket purchase agreements, and purchase card transactions.

Contracting officers shall use Forms DS–1918, Purchase Order File; DS–1919, Delivery Order File; DS–1920, Blanket Purchase Agreement (BPA) File; and DS–3014, Purchase Card Transaction File (Actions Exceeding $3,000 Through $25,000), to record relevant data and document those acquisitions, respectively.

[80 FR 6920, Feb. 20, 2015]

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 615.4—Contract Pricing

615.404 Proposal analysis.
615.404–4 Profit.

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 614.201–70 also apply when contracting by negotiation.

[64 FR 43623, Aug. 11, 1999, as amended at 81 FR 24707, Apr. 27, 2016]

Subpart 615.3—Source Selection

615.303 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR

15.303(a). The HCA is delegated authority to appoint someone other than the contracting officer as source selection authority for a particular acquisition.

[64 FR 43623, Aug. 11, 1999, as amended at 80 FR 6920, Feb. 9, 2015]

Subpart 615.4—Contract Pricing

SOURCE: 80 FR 6920, Feb. 9, 2015, unless otherwise noted.

615.404 Proposal analysis.

615.404–4 Profit.

(b)(2) It is the Department's policy to use the structured approach for profit/fee analysis contained in the Department of Health and Human Services' (HHS) FAR Supplement (see 48 CFR chapter 3), for acquisitions awarded by domestic contracting activities and RPSOs. This document may be accessed from A/OPE's Acquisition Web site (see 601.105–3). Contracting officers shall follow these procedures. HHS Form 674, *Structured Approach Profit/Fee Objective*, or an equivalent form, may be used to document the profit/fee analysis. If more than one pre-negotiation cost objective is developed (e.g., high and low), a separate form should be completed for each. The contracting officer shall ensure that a written explanation is attached to the form justifying the weights chosen for each cost category or factor. This approach considers the factors outlined in FAR 15.404–4(d).

(c)(4)(i)(B) In accordance with a delegation from OBO, overseas posts may request a waiver from A/OPE if post is unable to negotiate a price for architect-engineer services within the six percent price limitation. To obtain a waiver, the contracting officer must send the following information to A/OPE:

(*1*) Description of project;

(*2*) Estimated dollar amount, with cost breakdown; and,

(*3*) Description of negotiation efforts.

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 616.1—Selecting Contract Types

616.102 Policies.
616.102–70 Overseas posts.
616.103 Negotiating contract type.

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

616.504 Indefinite-quantity contracts.
616.505 Ordering.
616.506 Solicitation provisions and contract clauses.
616.506–70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 616.1—Selecting Contract Types

SOURCE: 80 FR 6920, Feb. 9, 2015, unless otherwise noted.

616.102 Policies.

616.102–70 Overseas posts.

Pursuant to 601.601–70(a)(1)(i), no authority is delegated to overseas posts to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts, unless the Procurement Executive's approval is obtained. Such requests shall be submitted by the head of the contracting activity on a case-by-case basis.

616.103 Negotiating contract type.

(d) The Procurement Executive has issued class determinations for the following categories of contracts awarded by overseas contracting activities: painting, vehicle insurance, vehicle rental, alarm installation, cell phone rental, janitorial, hotel and cost per copy services; gardening and maintenance services; and packing/shipping services. Copies may be found in the Overseas Contracting and Simplified Acquisition Guidebook. Contracting officers need not develop their own determinations provided that they use A/OPE's model solicitations. Contracting officers shall place a copy of the appropriate determination in the contract file.

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

616.504 Indefinite-quantity contracts.

(c) *Multiple award preference*—(1) *Planning the acquisition*.

(ii)(D)*(1)* The Procurement Executive is the head of the agency for the purposes of FAR 16.504(c)(1)(ii)(D)*(1)*.

[81 FR 24707, Apr. 27, 2016]

616.505 Ordering.

(b)(5) The Departmental Advocate for Competition is designated the task and delivery order ombudsman.

[64 FR 43624, Aug. 11, 1999, as amended at 69 FR 19332, Apr. 13, 2004; 80 FR 6920, Feb. 9, 2015]

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

617.204 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: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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

617.204 Contracts.

(e) The Procurement Executive shall approve any solicitations or contracts which exceed the five (5) year maximum length for supplies or services. The Procurement Executive may delegate this approval authority to individuals within the Office of the Procurement Executive.

[59 FR 66759, Dec. 28, 1994, as amended at 69 FR 19332, Apr. 13, 2004]

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 and Bureau Executive Directors 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, 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; 69 FR 19332, Apr. 13, 2004]

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

Sec.
619.000 Scope of part.

Subpart 619.2—Policies

619.201 General policy.
619.202 Specific policies.
619.202–70 The Department of State Mentor-Protégé Program.

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 Responsibility

619.602 Procedures.
619.602–1 Referral.

Subpart 619.7—The Small Business Subcontracting Program

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.
619.803 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– SBA Acceptance Under MOUs for Acquisitions Exceeding $150,000.
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.
619.870 Acquisition of technical requirements.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26170, July 11, 1988, unless otherwise noted.

619.000 Scope of part.

(b) It is the Department's policy to provide maximum opportunities for U.S. small businesses to participate in the acquisition process. DOS contracts that are awarded domestically for performance overseas shall be subject to the Small Business Act as a matter of policy. Contracts that are both awarded and performed overseas should comply on a voluntary basis.

[71 FR 34839, June 16, 2006]

Subpart 619.2—Policies

619.201 General policy.

(a) The Operations Director, Office of Small and Disadvantaged Business Utilization (OSDBU), 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, or designee, is responsible for establishing in coordination with the OSDBU Operations Director annual goals for the DOS small business program.

(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, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns are provided adequate specifications or drawings by initiating, 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 acquisition threshold, including commercial items using the simplified acquisition procedures of FAR Subpart 13.5, and task and delivery orders under multiple award contracts exceeding $2 million, to assure that small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business, 8(a), or HUBZone set-asides. This includes proposed contract modifications for new or additional requirements that do not fall within the original scope of the contract and which exceed the simplified acquisition limitation. 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, small disadvantaged, woman-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small 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, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business has been rejected for non-responsiveness or non-responsibility, 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 concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprise 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 concerns are included;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business 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; and

(18) Participating in interagency programs relating to small business matters as authorized by the OSDBU Operations Director.

(f)(1) The Procurement Executive is the agency designee for the purposes of FAR 19.201(f)(1). The written determination shall be forwarded to the Procurement Executive through the OSDBU Operations Director.

[69 FR 19333, Apr. 13, 2004, as amended at 72 FR 45695, Aug. 15, 2007; 80 FR 6920, Feb. 9, 2015]

619.202 Specific policies.

619.202–70 The Department of State Mentor-Protégé Program.

(a) *Purpose*. The Mentor-Protégé Program is designed to motivate and encourage firms to assist small businesses with business development, including small disadvantaged businesses, women-owned small businesses, HUBZone small businesses, veteran-owned small businesses and service-disabled veteran-owned small businesses. The program is also designed to improve the performance of DOS contracts and subcontracts, foster the establishment of long-term business relationships between small businesses and prime contractors, and increase the overall number of small businesses that receive DOS contract and subcontract awards. The program is limited to non-commercial item acquisitions.

(b) *Definitions*. The definitions of small business (SB), HUBZone small business concern (HUBZone), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB), and service-disabled veteran-owned small business (SDVOSB) are the same as found in FAR 2.101.

Mentor means a prime contractor that elects to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé.

Protégé means a small business, HUBZone small business, small disadvantaged business, women-owned small business, veteran-owned small business, or service-disabled veteran-owned small business that is the recipient of developmental assistance pursuant to a mentor-protégé program.

(c) *Non-affiliation*. For purposes of the Small Business Act, a protégé firm is not considered an affiliate of a mentor firm solely because the protégé firm is receiving developmental assistance from the mentor firm under the program.

(d) *General policy*. (1) Eligible business prime contractors not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' that are approved as mentor firms may enter into agreements with eligible protégé.

(2) A firm's status as a protégé under a DOS contract shall not have an effect on the firm's ability to seek other prime contracts or subcontracts.

(e) *Incentives for prime contractor participation*. (1) Under the Small Business Act (15 U.S.C. 637(d)(4)(E)), DOS is authorized to provide appropriate incentives to encourage subcontracting opportunities for small businesses consistent with the efficient and economical performance of the contract. This authority is limited to negotiated acquisitions.

(2) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance, if any, under an existing arrangement, may be considered by the contracting officer in:

(i) Evaluating the quality of a proposed subcontracting plan under FAR 19.704–5; and,

(ii) Assessing the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705–5(a)(1).

(3) A non-monetary award may be presented annually (or as often as appropriate) to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Operations Director, OSDBU.

(f) *Measurement of program success.* The success of the DOS Mentor-Protégé Program will be measured by:

(1) The increase in the number and dollar value of contracts awarded to protégé firms under DOS contracts from the date the protégé enters the program;

(2) The increase in the number and dollar value of contracts and subcontracts awarded to the protégé under other Federal agencies and commercial contracts; and,

(3) The developmental assistance provided by the mentor firm and the resulting increase in the technical, managerial, financial or other capabilities of the protégé firm, as reported by the protégé.

(g) *Eligibility of mentor firms.* A mentor firm:

(1) May be either a large or small business;

(2) Must be eligible for award of U.S. Government contracts;

(3) Must be able to provide developmental assistance that will enhance the ability of protégé to perform as subcontractors; and,

(4) Will be encouraged to enter into arrangements with protégé and firms with whom they have established business relationships.

(h) *Eligibility of protégé firms.* (1) A protégé firm must be:

(i) A SB, HUBZone, SDB, WOSB, VOSB, or SDVOSB as those terms are defined in FAR 2.101;

(ii) Small in the NAICS code for the services or supplies to be provided by the protégé to the mentor; and,

(iii) Eligible for award of U.S. Government contracts.

(2) Except for SDB and HUBZone firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (h)(1) of this subsection. Mentors may rely in good faith on written representations by potential protégé that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined by FAR 19.304. HUBZone status eligibility and documentation requirements are determined by FAR 19.1303.

(3) Protégé may have multiple mentors. protégé participating in mentor-protégé programs in addition to DOS's program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

(i) *Selection of protégé firms.* (1) Mentor firms are solely responsible for selecting protégé firms. The mentor is encouraged to identify and select a broad base of protégé firms whose core competencies support DOS's mission.

(2) Mentors may have multiple protégé.

(3) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with FAR and SBA regulations.

(j) *Application and agreement process for mentor-protégé teams to participate in the program.* (1) Firms interested in becoming a mentor firm shall apply in writing to OSDBU. The application (Form DS–4053, Department of State Mentor-Protégé Program Application), shall be evaluated by the nature and extent of technical and managerial support proposed as well as the extent of financial assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support proposed.

(2) A proposed mentor shall submit the application form and associated information to OSDBU.

(k) *OSDBU review of application.* (1) OSDBU shall review the information to ensure the mentor and protégé are eligible and the information provided is complete. OSDBU shall consult with the contracting officer on the adequacy of the proposed mentor-protégé arrangement, and its review shall be complete no later than 30 calendar days after receipt of the application by OSDBU.

(2) Upon completion of the review, OSDBU will advise the mentor if its application is acceptable. The mentor may then implement the developmental assistance program in accordance with the approved agreement.

(3) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and the DOS.

(l) *Developmental assistance.* The forms of developmental assistance a mentor can provide to a protégé include:

(1) Management guidance relating to:

(i) Financial management;

(ii) Organizational management;

(iii) Overall business management/planning;

(iv) Business development; and,

(v) Technical assistance.

(2) Loans;

(3) Rent-free use of facilities and/or equipment;

(4) Property;

(5) Temporary assignment of personnel to protégé for purpose of training; and,

(6) Any other types of permissible, mutually beneficial assistance.

(m) *Obligation.* (1) A mentor or protégé firm may voluntarily withdraw from the program. However, in no event shall such withdrawal impact the program mission and contractual requirements under the prime contract.

(2) Mentor and protégé firms shall submit to OSDBU annual reports on program progress of the mentor-protégé agreements. Large business mentors may submit these reports as part of their SB, HUBZone, SDB, WOSB, VOSB, and SDVOSB plan submission in accordance with the due date on the SF–295. DOS shall consider the following in evaluating these reports:

(i) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as suppliers to the U.S. Government and to commercial entities;

(ii) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(iii) To what extent the protégé has met the developmental objectives in the agreement; and,

(iv) To what extent the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms and agencies other than the DOS.

(3) The DOS OSDBU shall submit the annual reports to the cognizant contracting officer regarding participating prime contractor(s) performance in the program.

(4) Mentor and protégé firms shall submit an evaluation to the OSDBU at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the program, whichever comes first.

(n) *Internal controls.* (1) OSDBU shall oversee the program and shall work with the cognizant contracting officer to achieve program objectives.

(2) DOS may rescind approval of an existing Mentor-Protégé agreement if it determines that such an action is in the Department's best interest. The rescission shall be in writing and sent to the mentor and protégé firms after approval by the OSDBU Operations Director. Rescission of an agreement does not change the terms of the subcontract between the mentor and the protégé or the prime contractor's obligations under its subcontracting plan.

(o) *Solicitation provision and contract clause.* (1) The contracting officer shall insert the provision at 652.219–72, Department of State Mentor-Protégé Program, in all unrestricted solicitations exceeding $650,000 ($1,500,000 for construction) that offer subcontracting opportunities.

(2) The contracting officer shall insert the clause at DOSAR 652.219–73, Mentor Requirements and Evaluation, in all contracts where the prime contractor has signed a Mentor-Protégé Agreement with the Department of State.

[69 FR 19333, Apr. 13, 2004, as amended at 80 FR 6920, Feb. 9, 2015]

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 OSDBU Operations Director shall perform the action so required.

[53 FR 26170, July 11, 1988, as amended at 80 FR 6920, Feb. 9, 2015]

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 OSDBU Operations Director and the contracting officer.

[59 FR 66759, Dec. 28, 1994, as amended at 80 FR 6920, Feb. 9, 2015]

Subpart 619.6—Certificates of Competency and Determinations of Responsibility

619.602 Procedures.

619.602–1 Referral.

The contracting officer shall transmit to the OSDBU 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).

[53 FR 26170, July 11, 1988, as amended at 80 FR 6920, Feb. 9, 2015]

Subpart 619.7—The Small Business Subcontracting Program

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 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, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business firms. Where funds are available, an incentive clause such as that found in FAR 52.219–10, Incentive Subcontracting Program, is encouraged.

[69 FR 19335, Apr. 13, 2004]

619.705–3 Preparing the solicitation.

To further promote the use of small, disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business 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.

[69 FR 19335, Apr. 13, 2004]

619.705–4 Reviewing the subcontracting plan.

OSDBU shall review subcontracting plans to determine if small, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business concerns are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

[69 FR 19335, Apr. 13, 2004, as amended at 80 FR 6920, Feb. 9, 2015]

619.705–6 Postaward responsibilities of the contracting officer.

619.705–6–70 Reporting responsibilities.

(a) The contracting officer shall forward to the OSDBU 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, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small 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 OSDBU 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; 69 FR 19335, Apr. 13, 2004; 80 FR 6920, Feb. 9, 2015]

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 Subcontracting Plan, is used.

[59 FR 66760, Dec. 28, 1994, as amended at 69 FR 19335, Apr. 13, 2004]

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.

619.803 Selecting acquisitions for the 8(a) program.

619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

OSDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, OSDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

[64 FR 43624, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

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 $150,000, to 8(a) participants. The $150,000 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 System for Award Management (*https://www.sam.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 52.219–14, Limitations on Subcontracting, and 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, OSDBU 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.

[64 FR 43624, Aug. 11, 1999, as amended at 71 FR 34839, June 16, 2006; 80 FR 6921, Feb. 9, 2015]

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 $150,000.

(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.

(b) For requirements exceeding $150,000 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.

[64 FR 43624, Aug. 11, 1999, as amended at 69 FR 19335, Apr. 13, 2004; 72 FR 45695, Aug. 15, 2007; 80 FR 6921, Feb. 9, 2015]

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.

(c) The Procurement Executive is the agency head for the purposes of FAR 19.810(c).

[64 FR 43624, Aug. 11, 1999, as amended at 72 FR 45696, Aug. 15, 2007]

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. 3304(a)(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 652.219–71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding $150,000, 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, OSDBU 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.

[64 FR 43624, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

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) The contracting officer shall insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, (Deviation), in competitive solicitations and contracts exceeding $150,000 when the acquisition is processed under the MOU cited in 619.800.

(e) The contracting officer shall insert the clause at FAR 52.219–14, Limitations on Subcontracting, and 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.

[64 FR 43624, Aug. 11, 1999, as amended at 71 FR 34839, June 16, 2006; 72 FR 45696, Aug. 15, 2007; 80 FR 6921, Feb. 9, 2015]

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 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.

[64 FR 43624, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

619.870 Acquisition of technical requirements.

(a) *Offering letter*. When a decision has been made by OSDBU and the contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the Small and Disadvantaged Business Utilization Specialist. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the business concerns being considered under an 8(a) program acquisition if under the $4 million competitive threshold for 8(a) competition than under a non-8(a) program acquisition. Informal assessments of potential 8(a) sources shall be within the parameters of 13 CFR 124.308(g). The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

[80 FR 6921, Feb. 9, 2015]

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 Construction Wage Rate Requirements statute wage determinations.
622.404–3 Procedures for requesting wage determinations.
622.404–6 Modifications of wage determinations.
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622.404–11 Wage determination appeals.
622.406 Administration and enforcement.
622.406–1 Policy.
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622.406–10 Disposition of disputes concerning construction contract labor standards enforcement.
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Subpart 622.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

622.604 Exemptions.
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622.1305 Waivers.
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Subpart 622.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

622.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 Construction Wage Rate Requirements statute wage determinations.

622.404–3 Procedures for requesting wage determinations.

The cognizant contracting activity (see 601.601–70) is the contracting agency for the purposes of FAR 22.404–3(b) and (d).

[53 FR 26172, July 11, 1988, as amended at 72 FR 45696, Aug. 15, 2007; 80 FR 6921, Feb. 9, 2015]

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 head 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).

[55 FR 5774, Feb. 16, 1990, as amended at 80 FR 6921, Feb. 9, 2015]

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—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

622.604 Exemptions

622.604–2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604–2(b)(1).

[55 FR 5774, Feb. 16, 1990, as amended at 71 FR 34839, June 16, 2006]

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—Equal Opportunity for Veterans

622.1305 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1305.

[53 FR 26172, July 11, 1988. Redesignated and amended at 69 FR 19335, Apr. 13, 2004]

622.1310 Solicitation provision and contract clauses.

The Procurement Executive is the agency head for the purposes of FAR 22.1310 (a)(1)(ii) and (a)(2).

[55 FR 5775, Feb. 16, 1990. Redesignated and amended at 69 FR 19336, Apr. 13, 2004; 72 FR 45696, Aug. 15, 2007]

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]

Subpart 622.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

622.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(e) The contracting officer shall refer to the DOS Inspector General for Investigation any instances where the contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in FAR 22.1503(c).

[69 FR 19336, Apr. 13, 2004]

PART 623—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 623.2—Energy and Water Efficiency and Renewable Energy

Sec.
623.204 Procurement exemptions.

Subpart 623.3—Hazardous Material Identification and Material Safety Data

623.302–70 Policy.

Subpart 623.4—Use of Recovered Materials and Biobased Products

623.400 Scope of subpart.

Subpart 623.5—Drug-Free Workplace

623.506 Suspension of payments, termination of contract, and debarment and suspension actions.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 623.2—Energy and Water Efficiency and Renewable Energy

SOURCE: 80 FR 6921, Feb. 9, 2015, unless otherwise noted.

623.204 Procurement exemptions.

The head of the contracting activity is the agency head's designee for the purpose of executing the written determination to not purchase ENERGY STAR® or FEMP-designated products.''

Subpart 623.3—Hazardous Material Identification and Material Safety Data

623.302–70 Policy.

Any work that 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, as amended at 80 FR 6921, Feb. 9, 2015]

Subpart 623.4—Use of Recovered Materials and Biobased Products

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 awarded outside the United States or its possessions.

[64 FR 43626, Aug. 11, 1999, as amended at 69 FR 19336, Apr. 13, 2004]

Subpart 623.5—Drug-Free Workplace

623.506 Suspension of payments, termination of contract, and debarment and suspension actions.

(e) 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, as amended at 81 FR 24707, Apr. 27, 2016]

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

624.203 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. Redesignated at 80 FR 6921, Feb. 9, 2015]

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American—Supplies

Sec.
625.103 Exceptions.
625.105 Determining reasonableness of cost.

Subpart 625.2—Buy American—Construction Materials

625.202 Exceptions.
625.204 Evaluating offers of foreign construction material.

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—Supplies

625.103 Exceptions.

(a) The authority to make the determination prescribed in FAR 25.103(a) is delegated, without power of redelegation, to the head of the contracting activity.

[69 FR 19336, Apr. 13, 2004]

625.105 Determining reasonableness of cost.

(a)(1) The authority to make the determinations prescribed in FAR 25.105(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[69 FR 19336, Apr. 13, 2004]

Subpart 625.2—Buy American—Construction Materials

625.202 Exceptions.

(a)(1) The authority to make the determination prescribed in FAR 25.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[69 FR 19336, Apr. 13, 2004]

625.204 Evaluating offers of foreign construction material.

(b) The head of the contracting activity is the agency head for the purposes of FAR 25.204(b).

[69 FR 19336, Apr. 13, 2004]

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 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.

[64 FR 43626, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 627—PATENTS, DATA, AND COPYRIGHTS

Subpart 627.2—Patents and Copyrights

Sec.
627.201 Patent and copyright infringement liability.
627.201–2 Contract clauses.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.
627.304 Procedures.
627.304–1 General.
627.304–4 Appeals.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

Subpart 627.2—Patents and Copyrights

627.201 Patent and copyright infringement liability.

627.201–2 Contract clauses.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 27.201–2(e).

[59 FR 66763, Dec. 28, 1994. Redesignated and amended at 80 FR 6921, Feb. 9, 2015]

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

The Procurement Executive is the agency head's designee to make the determinations addressed in FAR 27.303. Determinations proposed to be issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

[59 FR 66763, Dec. 28, 1994, as amended at 80 FR 6922, Feb. 9, 2015]

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 proposed to be issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

[59 FR 66763, Dec. 28, 1994, as amended at 81 FR 24707, Apr. 27, 2016]

627.304–4 Appeals.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304–4. Questions regarding the appeals procedure as specified in FAR 27.304–4(b) shall be referred to A/OPE.

[59 FR 66763, Dec. 28, 1994. Redesignated and amended at 80 FR 6922, Feb. 9, 2015]

PART 628—BONDS AND INSURANCE

Subpart 628.1—Bonds and Other Financial Protections

Sec.
628.101 Bid guarantees.
628.101–1 Policy on use.
628.106–6 Furnishing information.

Subpart 628.2—Sureties and Other Security for Bonds

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.
628.309 Contract clauses for workers' compensation insurance.
628.309–70 DOSAR provisions and clauses.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 628.1—Bonds and Other Financial Protections

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 and Other Security for Bonds

628.203 Acceptability of individual surety.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the Assistant Inspector General for Investigations.

[59 FR 66763, Dec. 28, 1994, as amended at 69 FR 19336, Apr. 13, 2004]

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: 71 FR 34840, June 16, 2006, unless otherwise noted.

628.305 Overseas workers' compensation and war-hazard insurance.

(b)(1) Acquisitions for services, including construction but excluding personal services contracts, requiring 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 covered contractor employees. For the purposes of this section, ''covered contractor employees'' includes the following individuals:

(i) United States citizens or residents;

(ii) Individuals hired in the United States or its possessions, regardless of citizenship; and,

(iii) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(2) Individuals who are self-employed (*i.e.*, they have not incorporated) do not meet the definition of an employee. No Defense Base Act insurance is required when contracting with these individuals.

(3) Exceptions are discussed in paragraphs (e)(1) and (f) of this section.

(d) The authority to recommend a waiver from the Defense Base Act, as set forth in FAR 28.305(d), is reserved to the Secretary of State.

(e)(1) The Secretary of Labor has waived the applicability of the Defense Base Act to all DOS service contracts, including construction, for contractor employees who are local nationals or third country nationals. This waiver is conditioned on the requirement for the contractor to provide workers' compensation benefits against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention as prescribed by the local workers' compensation laws.

(2) In cases where a contract is performed in a country where there are no local workers' compensation laws, local and third country national contractor employees are considered to be ''covered contractor employees'', and the contractor shall acquire Defense Base Act insurance for those employees pursuant to the contract between the Department of State and the Defense Base Act insurance broker.

(f)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. The Department of State has established that ''persons'' includes employees hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for employees who

work on an intermittent or short-term basis. Waivers may be issued only for employees who are U.S. citizens and residents, and only where the contractor provides evidence of alternative workers' compensation coverage for those employees. Waivers may not be issued for local or third country nationals.

(2) The contractor shall submit waiver requests to the contracting officer. The request shall contain the following information:

(i) Contract number;

(ii) Name of contractor;

(iii) Brief description of the services to be provided under the contract and country of performance;

(iv) Name and position title of individual(s);

(v) Nationality of individual(s) (must be U.S. citizen or resident);

(vi) Dates (or timeframe) of performance at the overseas location; and

(vii) Evidence of alternative workers' compensation coverage for these employees (e.g., evidence that the State workers' compensation program covers workers on short-term foreign assignments).

(3) The contracting officer shall review the request for completeness and accuracy. If the request is complete and accurate, the contracting officer shall forward the request to the Procurement Executive. If the contractor does not provide complete and accurate information, the contracting officer shall return the request to the contractor with an explanation as to what additional information is required.

(4) The Procurement Executive shall review requests for waiver forwarded by the contracting officer and either approve or disapprove the request. The Procurement Executive shall return the request indicating his/her approval or disapproval to the contracting officer. Any request that is not approved shall describe the reason(s) why the request was not approved. The contracting officer shall provide the contractor with the original of the approved or disapproved document and maintain a copy in the contract file.

[71 FR 34840, June 16, 2006, as amended at 80 FR 6922, Feb. 9, 2015]

628.309 Contract clauses for workers' compensation insurance.

628.309–70 DOSAR provisions and clauses.

(a) The contracting officer shall insert the provision at 652.228–70, Defense Base Act—Covered Contractor Employees, in all solicitations for services and construction to be performed outside of the United States.

(b) The contracting officer shall insert the clause at 652.228–71, Workers' Compensation Insurance (Defense Base Act)—Services, in solicitations and contracts for services to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the clause.

[71 FR 34840, June 16, 2006, as amended at 80 FR 6922, Feb. 9, 2015]

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 630—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 630.2—CAS Program Requirements

Sec.
630.201 Contract requirements.
630.201–5 Waiver.

SOURCE: 69 FR 19336, Apr. 13, 2004, unless otherwise noted.

Subpart 630.2—CAS Program Requirements

630.201 Contract requirements.

630.201–5 Waiver.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 30.201–5(a) and (b).

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: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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)(6) The head of the contracting activity is the agency head's designee for the purpose of FAR 31.205–6(g)(6).

[64 FR 43627, Aug. 11, 1999, as amended at 72 FR 45696, Aug. 15, 2007; 80 FR 6922, Feb. 9, 2015]

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.
632.006–3 Responsibilities.
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 for Non-Commercial Items

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.
632.706 Contract clauses.
632.706–70 DOSAR contract clause.

Subpart 632.8—Assignment of Claims

632.803 Policies.

Subpart 632.9—Prompt Payment

632.906 Making payments.
632.908 Contract clauses.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 Procurement Executive.

[64 FR 43627, Aug. 11, 1999, as amended at 69 FR 19336, Apr. 13, 2004]

632.006–3 Responsibilities.

(b) DOS personnel shall report immediately and in writing any apparent or suspected instances where the contractor's request for advance, partial, or progress payments is based on fraud. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall outline the events, acts, or conditions which indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations will investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the Procurement Executive.

[80 FR 6922, Feb. 9, 2015]

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 for Non-Commercial Items

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).

632.706 Contract clauses.

632.706–70 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

632.906 Making payments.

(a) *General*. The authority to make the determination prescribed in FAR 32.906(a) is delegated, without power of redelegation, to the head of the contracting activity. Before making this determination, the head of the contracting activity shall consult with the appropriate financial office.

[69 FR 19336, Apr. 13, 2004]

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 Alternative dispute resolution (ADR)
633.214–70 DOS ADR program.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 Government Accountability 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; 72 FR 45696, Aug. 15, 2007]

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 Advocate for Competition.

[64 FR 43628, Aug. 11, 1999, as amended at 80 FR 6922, Feb. 9, 2015]

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.

(b) The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

(c) The Agency Board of Contract Appeals for the Department of State is the United States Civilian Board of Contract Appeals (CBCA). See *http://www.cbca.gsa.gov*.

[53 FR 26173, July 11, 1988, as amended at 80 FR 6922, Feb. 9, 2015]

633.214 Alternative Dispute Resolution (ADR)

633.214–70 DOS ADR program.

(a) *Policy*. The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Disputes statute (41 U.S.C. chapter 71). 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 CBCA 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 CBCA) 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 threshold) 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; 80 FR 6922, Feb. 9, 2015]

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.
636.104 Policy
636.104–70 Foreign Service Buildings Act of 1926, as amended.
636.104–71 Omnibus Diplomatic Security and Antiterrorism Act.

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.
636.570 Additional DOSAR provisions.

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.
636.606 Negotiations.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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 where necessary from the provisions of the FAR (48 CFR Chapter 1) under the authority of section 3 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 294). The Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations is authorized to approve such exceptions.

[69 FR 19337, Apr. 13, 2004]

636.104 Policy.

636.104–70 Foreign Service Buildings Act of 1926, as amended.

(a) *Policy*. Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302) limits competition for the construction, alteration, or repair of buildings or grounds abroad exceeding $5 million to:

(1) American-owned firms; or

(2) Firms from countries which permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) *Limitation*. This participation may be permitted by or limited to:

(1) Host-country firms where required by international agreement; or

(2) By the laws of the host country; or

(3) Where determined by the Secretary of State to be necessary in the interest of bilateral relations or necessary to carry out the construction project.

(c) *Evaluation preference.* For purposes of determining competitive status, American-owned firms shall receive a ten (10) percent price preference reduction, provided that two prospective responsible bidders/offerors submit a bid/offer.

[69 FR 19337, Apr. 13, 2004]

636.104–71 Omnibus Diplomatic Security and Antiterrorism Act.

(a) *Preference for United States contractors.* The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399; 22 U.S.C. 4852) limits certain construction projects abroad to United States persons or qualified United States joint venture persons. The Omnibus Diplomatic Security and Antiterrorism Act of 1986 applies to the following, as determined by the Assistant Secretary for Diplomatic Security:

(1) Diplomatic construction or design projects abroad exceeding $10 million; or,

(2) Diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology.

(b) *Exception.* This preference shall not apply with respect to any diplomatic construction or design project in a foreign country whose statutes prohibit the use of United States contractors on such projects.

(c) *Subcontracting limitation.* With respect to a diplomatic construction project, a prime contractor may not subcontract more than 50 percent of the total value of the contract for that project.

[69 FR 19337, Apr. 13, 2004]

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) The contracting officer shall insert the clause at 652.236–70, Additional Safety Measures in all solicitations and contracts that include FAR 52.236–13, Accident Prevention, Alternate I, *i.e.:*

(1) When a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold and the contract will involve work of a long duration or hazardous nature; or

(2) When a contract for services to be performed at Government facilities (see FAR part 37) is contemplated, and technical representatives advise that special precautions are appropriate, such as contracts for building maintenance, building operations or infrastructure repair.

(b) The contracting officer shall confer with OBO/OM/SHEM if there are any questions on any factors listed in paragraph (a) of the clause, or if the contracting officer has any questions regarding safety issues.

[82 FR 58353, Dec. 12, 2017]

636.570 Additional DOSAR provisions.

(a) The contracting officer shall insert the provision at 652.236–71, Foreign Service Buildings Act, As Amended, in all contracts exceeding $5,000,000 for the construction, alteration, or repair of buildings and grounds overseas, unless:

(1) An international agreement with or laws of the host country government permits or limits the participation to host-country firms; or,

(2) The Secretary of State determines that it is necessary to the interest of bilateral relations or to carry out the

project to either permit or limit the participation to host-country firms; or,

(3) The provision at 652.236–72 applies.

(b) The contracting officer shall insert the provision at 652.236–72, Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act, in all diplomatic construction or design solicitations exceeding $10 million; or, diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology, as determined by the Assistant Secretary of Diplomatic Security.

[69 FR 19337, Apr. 13, 2004, as amended at 80 FR 6922, Feb. 9, 2015]

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) For acquisitions conducted by A/LM/AQM on behalf of the Bureau of Overseas Buildings Operations, the final selection decision shall be made by the Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations, with the concurrence of the contracting officer and L/BA. For other domestic acquisitions, the selection decision shall be made by an individual designated by the Assistant Secretary of State for Administration. For acquisitions conducted by overseas posts, the selection decision shall be made by the contracting officer.''

[80 FR 6922, Feb. 9, 2015]

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]

636.606 Negotiations.

(a) Contracting officers at overseas posts may request a waiver from A/OPE if the contracting officer is unable to negotiate a fee within the six percent limitation. See 615.404–4(c)(4)(i)(B).''

[80 FR 6922, Feb. 9, 2015]

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

Sec.
637.102 Policy.
637.102–70 Special requirements for the acquisition of local guard services overseas.
637.102–71 Safety considerations.
637.103 Contracting officer responsibility.
637.104 Personal services contracts.
637.104–70 DOS authorities for personal services contracts.
637.104–71 Personal services agreements.
637.110 Solicitation provisions and contract clauses.

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

Subpart 637.6—Performance-Based Contracting

637.601 General.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 637.1—Service Contracts—General

637.102 Policy.

(c) Any Acquisition Plan or procurement request package for services expected to exceed $25,000 shall include a Form DS–4208 completed by the requiring activity. Instructions for completing the DS–4208 may be found at *http://aopepd.a.state.gov/Content/documents/DS-4208-Instructions.docx*.

[53 FR 26176, July 11, 1988, as amended at 80 FR 6922, Feb. 9, 2015]

637.102–70 Special requirements for the acquisition of local guard services overseas.

(a) *Policy*. Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864) encourages the participation of United States persons and qualified United States joint venture persons in local guard contracts overseas under diplomatic security programs.

(b) *Evaluation preference*. For purposes of determining competitive status, proposals of United States persons and qualified United States joint venture persons shall receive a ten (10) percent price preference reduction.

[69 FR 19337, Apr. 13, 2004]

637.102–71 Safety considerations.

When contracting for services to be performed overseas, always consider 636.513(b) and FAR 36.513(b), and consult with technical representatives to determine whether special precautions are appropriate, such as when the services are for building operations, building maintenance or infrastructure repairs.

[82 FR 58353, Dec. 12, 2017]

637.103 Contracting officer responsibility.

(a)(2) The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

(e) The Contracting Officer shall review the Forms DS–4208 submitted by requiring activities, not contract for inherently governmental functions and assist in implementation of mitigation strategies for efforts that are closely associated with inherently governmental functions. A copy of the DS–4208 shall be retained in the contract file.

[53 FR 26176, July 11, 1988, as amended at 80 FR 6922, Feb. 9, 2015]

637.104 Personal services contracts.

(e) The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104–70 DOS authorities for 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 Bureau of Overseas Buildings Operations, 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; 69 FR 19337, Apr. 13, 2004]

637.104–71 Personal services agreements.

(a) *Applicability*. This section applies only to personal services agreements (PSAs) awarded under the authority of 22 U.S.C. 2669(c).

(b) *Definition*. ''Personal Services Agreement (PSA)'' is a method of employment using the statutory authority under 22 U.S.C. 2669(c). The Procurement Executive has delegated program management responsibility for PSAs awarded under the Department of State basic authority at 22 U.S.C. 2669(c). When applied to U.S. citizens hired under this authority, the term ''PSA Plus'' is normally used.

(c) *Policy*. DOS contracting officers at overseas posts should not award any personal services contracts that are subject to acquisition statutes and regulations.

(d) *Authority*. (1) The Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, amended section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)) by revising the Department's authority. This language states: ''and such contracts are authorized to be negotiated, the terms of the contracts to be prescribed, and the work to be performed, where necessary, without regard to such statutory provisions as relative to the negotiation, making, and performance of contracts and performance of work in the United States.''

(2) This authority was further amended under the National Defense Authorization Act for Fiscal Year 2002 which added subsection (n) to 22 U.S.C. 2669. This language states ''exercise the authority provided in section (c), upon the request of the Secretary of Defense or the head of any other department or agency of the United States, to enter into personal services contracts with individuals to perform services in support of the Department of Defense or such other department or agency, as the case may be.'' This authority allowed the use of 22 U.S.C. 2669(c) by all other agencies, provided they meet certain criteria and agree to follow certain guidelines laid out in a Memorandum of Agreement (MOA). That MOA is not signed at the post level, but by a senior official at the Department of State and the other agency. Without the MOA in place, other agencies may not use this basic authority. HR/OE has responsibility for implementation of the authority that came with this legislative change. The HR/OE Web site includes the latest listing of agencies that have signed the MOA and can use this authority.

(3) This statutory language has continuing effect and provides authority to the Department of State, and now other agencies, if they so agree, to obtain personal services without adherence to acquisition statutes. In furtherance of the authority provided by the statute, the Procurement Executive has waived the applicability of acquisition regulations when obtaining personal services under the authority of 22 U.S.C. 2669(c). As a result, it is not necessary for the individual executing a PSA under the authority of 22 U.S.C. 2669(c) to have a contracting officer's certificate of appointment required under FAR 1.603 and 601.603 (see 601.603–3(d)).

(e) *Signatory authority*. Only direct hire U.S. citizens may sign PSAs. Provided the individual meets that criterion, individuals who may sign PSAs are limited to the following:

(1) The Human Resources Officer;

(2) The Human Resources/Financial Management Officer; or,

(3) The Management Officer or American FSO designated to perform human resources functions (e.g., GSO, RSO, etc.).

[80 FR 6923, Feb. 9, 2015]

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 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.

(c) The contracting officer shall insert the provision at 652.237–73, Statement of Qualifications for Preference

as a U.S. Person, in all overseas local guard solicitations.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43629, Aug. 11, 1999; 69 FR 19337, Apr. 13, 2004; 76 FR 20250, Apr. 12, 2011]

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]

Subpart 637.6—Performance-Based Contracting

637.601 General.

It is the Department's policy that all new service contracts be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy shall be fully justified in writing and approved by the Departmental Advocate for Competition.

[69 FR 19337, Apr. 13, 2004, as amended at 80 FR 6923, Feb. 9, 2015]

PART 639—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 639.1—General

Sec.

639.107 Contract clause.
639.107–70 DOSAR solicitation provision and contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 72 FR 51569, Sept. 10, 2007, unless otherwise noted.

Subpart 639.1—General

639.107 Contract clause.

639.107–70 DOSAR solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 652.239–70, Information Technology Security Plan and Accreditation, in solicitations that include information technology resources or services in which the contractor will have physical or electronic access to Department information that directly supports the mission of the Department.

(b) The contracting officer shall insert the clause at 652.239–71, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts containing the provision at 652.239–70. The provision and clause shall not be inserted in solicitations and contracts for personal services with individuals.

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

Sec.

Subpart 642.1—Contract Audit Services

642.101 Contract audit responsibilities

Subpart 642.2—Contract Administration Services

642.270 Contracting Officer's Representative (COR).
642.271 Government Technical Monitor (GTM).
642.272 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 642.15—Contractor Performance Information

642.1503 Procedures.
642.1503–70 Contractor Performance Assessment Reporting System (CPARS).

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 642.1—Contract Audit Services

SOURCE: 82 FR 58351, Dec. 12, 2017, unless otherwise noted.

642.101 Contract audit responsibilities.

(b) The Department has an interagency agreement with the Defense Contract Audit Agency (DCAA) to perform incurred cost audits on cost-reimbursement contracts. DCAA audits are requested through the A/LM/AQM/BOD/QA Audit Team.

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 Government Technical Monitor (GTM).

(a) *Policy*. The contracting officer may appoint a Government Technical Monitor (GTM) to assist the Contracting Officer's Representative (COR) in monitoring a contractor's performance. The contracting officer may appoint a GTM because of physical proximity to the contractor's work site, or because of special skills or knowledge necessary for monitoring the contractor's work. The contracting officer may also appoint a GTM to represent the interests of another requirements office or post concerned with the contractor's work. A GTM shall be a direct-hire U.S. Government employee.

[69 FR 19338, Apr. 13, 2004]

642.272 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. Redesignated at 69 FR 19338, Apr. 13, 2004]

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 642.15—Contractor Performance Information

642.1503 Procedures.

642.1503–70 Contractor Performance Assessment Reporting System (CPARS).

(a) The Department of State subscribes to the Contractor Performance Assessment Reporting System (CPARS) maintained at *http://www.cpars.gov/*. CPARS is an Internet-based tool allowing government activities to input past performance information. This information is uploaded by CPARS into the Past Performance Information Retrieval System (PPIRS).

(b) All DOS contracting officers shall evaluate contractors' past performance as required by FAR 42.1502 and 42.1503.

(c) All Terminations for Default and Terminations for Cause shall be entered into CPARS regardless of contract purpose or dollar value.

(d) Heads of contracting activities shall send a list of the names, work addresses, and phone numbers of all acquisition personnel whom they wish to have access to the CPARS to *AQMCPARS@state.gov*.

[80 FR 6923, Feb. 9, 2015]

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: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 64 FR 43629, Aug. 11, 1999, unless otherwise noted.

Subpart 644.3—Contractors' Purchasing Systems 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 645.1—General

Sec.
645.107 Contract clauses.
645.107–70 DOSAR contract clause and solicitation provision.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 78 FR 76076, Dec. 16, 2013, unless otherwise noted.

Subpart 645.1—General

645.107 Contract clauses.

645.107–70 DOSAR contract clause and solicitation provision.

(a) The contracting officer shall insert the provision at 652.245–70, Status of Property Management System, in solicitations when any of the following conditions apply:

(1) Highway motor vehicles or aircraft, regardless of cost, are provided by the Government or acquired by the contractor for the account of the Government;

(2) Software exceeding $500,000 in value, including labor costs to develop, is provided by the Government or acquired by the contractor for the account of the Government; or

(3) Personal property greater than $25,000 (and not in paragraph (a)(1) of this subsection) is provided by the Government or acquired by the contractor for the account of the Government. The personal property must be complete within itself; does not lose its identity or become a component part of other property when put into use; and is of a durable nature with an estimated useful life expectancy to exceed two years.

(b) The contracting officer shall insert the clause at 652.245–71, Special Reports of Government Property, in all solicitations and contracts that contain the provision at 652.245–70.

[78 FR 76076, Dec. 16, 2013, as amended at 80 FR 6923, Feb. 9, 2015]

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.

Subpart 647.3—Transportation in Supply Contracts

647.305 Solicitation provisions, contract clauses, and transportation factors.
647.305–70 Notice of shipment.
647.305–71 Shipping instructions.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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]

Subpart 647.3—Transportation in Supply Contracts

SOURCE: 80 FR 6923, Feb. 9, 2015, unless otherwise noted.

647.305 Solicitation provisions, contract clauses, and transportation factors.

647.305–70 Notice of shipment.

The contracting officer shall insert the clause at 652.247–70, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

647.305–71 Shipping instructions.

The contracting officer shall insert the clause at 652.247–71, Shipping Instructions, in solicitations and contracts with a source in the United States if overseas shipment of supplies is required.

PART 648—VALUE ENGINEERING

Subpart 648.1—Policies and Procedures

Sec.
648.102 Policies.

Subpart 648.2—Contract Clauses

648.201 Clauses for supply or service contracts.

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

Sec.
649.101 Authorities and responsibilities.
649.101–70 Termination action decisions after debarment.
649.106 Fraud or other criminal conduct.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 59 FR 66767, Dec. 28, 1994, unless otherwise noted.

Subpart 649.1—General Principles

649.101 Authorities and responsibilities.

649.101–70 Termination action decisions after debarment.

(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. Redesignated at 81 FR 51125, Aug. 3, 2016]

649.106 Fraud or other criminal conduct.

If the Contracting Officer (CO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the CO shall discontinue negotiations and report the facts to the Office of the Inspector General.

[59 FR 66767, Dec. 28, 1994, as amended at 80 FR 6923, Feb. 9, 2015]

649.111 Review of proposed settlements.

All proposed termination settlements shall be reviewed and approved by the Office of the Legal Adviser for legal sufficiency. In addition,

(a) All proposed termination settlements from domestic contracting activities shall be approved by the head of the contracting activity, with the exception of termination settlements on simplified acquisitions and no-cost termination settlements; and,

(b) All proposed termination settlements from overseas contracting activities shall be approved by the Procurement Executive.

[80 FR 6924, Feb. 9, 2015]

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

651.7001 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.

[59 FR 66767, Dec. 28, 1994, as amended at 69 FR 19338, Apr. 13, 2004. Redesignated at 81 FR 24707, Apr. 27, 2016]

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—Text of Provisions and Clauses

652.200 Scope of subpart.
652.204–70 Department of State Personal Identification Card Policy and Procedures.
652.206–70 Advocate for Competition/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.
652.219–72 Department of State Mentor-Protégé Program.
652.219–73 Mentor Requirements and Evaluation.
652.225–70 Arab League Boycott of Israel.
652.225–71 Section 8(a) of the Export Administration Act of 1979, as Amended.
652.228–70 Defense Base Act—Covered Contractor Employees.
652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services.
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 Additional Safety Measures.
652.236–71 Foreign Service Buildings Act, as Amended
652.236–72 Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act.
652.237–70 Compensatory time off.
652.237–71 [Reserved]
652.237–72 Observance of Legal Holidays and Administrative Leave.
652.237–73 Statement of Qualifications for Preference as a U.S. Person.
652.239–70 Information Technology Security Plan and Accreditation.
652.239–71 Security Requirements for Unclassified Information Technology Resources.
652.242–70 Contracting Officer's Representative (COR).
652.242–71–652.242–72 [Reserved]
652.242–73 Authorization and Performance.
652.243–70 Notices.
652.245–70 Status of Property Management System.
652.245–71 Special Reports of Government Property.
652.247–70 Notice of Shipments.
652.247–71 Shipping Instructions.
652.247–72 [Reserved]

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

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.

[53 FR 26177, July 11, 1988, as amended at 81 FR 24707, Apr. 27, 2016]

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—Text 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.

652.204–70 Department of State Personal Identification Card Policy and Procedures.

As prescribed in 604.1303–70, insert the following clause:

DEPARTMENT OF STATE PERSONAL IDENTIFICATION CARD POLICY AND PROCEDURES (FEB 2015)

(a) The Contractor shall comply with the Department of State (DOS) Personal Identification Card Policy and Procedures for all employees performing under this contract who require frequent and continuing access to DOS facilities, or information systems. The Contractor shall insert the substance of this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to DOS facilities, or information systems.

(b) The DOS Personal Identification Card Policy and Procedures may be accessed at *http://www.state.gov/m/ds/rls/rpt/c21664.htm*.

(End of clause)

[80 FR 6932, Feb. 9, 2015]

652.206–70 Advocate for Competition/Ombudsman.

As prescribed in 606.570, insert the following provision:

ADVOCATE FOR COMPETITION/OMBUDSMAN (FEB 2015)

(a) The Department of State's Advocate for Competition 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 first to contact the contracting officer for the solicitation. If concerns remain unresolved, contact:

(1) For solicitations issued by the Office of Acquisition Management (A/LM/AQM) or a Regional Procurement Support Office, the A/LM/AQM Advocate for Competition, at *AQMCompetitionAdvocate@state.gov*.

(2) For all others, the Department of State Advocate for Competition at *cat@state.gov*.

(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, as amended at 80 FR 6924, Feb. 9, 2015]

652.216–70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.506–70, insert the following clause:

ORDERING—INDEFINITE-DELIVERY CONTRACTS (APR 2004)

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 DS–2076, Purchase Order, Receiving Report and Voucher, and DS–2077, 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; 69 FR 19338, Apr. 13, 2004]

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 (APR 2004)

(a) The offeror shall provide a Small, Small Disadvantaged, Woman-Owned Small, HUBZone Small, and Service-Disabled Veteran-Owned Small Enterprise Subcontracting Plan that details its approach to selecting and using Small, Small Disadvantaged, Woman-Owned Small, HUBZone Small, and Service-Disabled Veteran-Owned Small Business Enterprises.

(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) Goal for subcontracting to HUBZone Firms: _____

(5) Goal for subcontracting to SDVO: _____

(6) Omnibus goals (if applicable): _____

(i) 10% to minority business

(ii) 10% to small business

(End of provision)

[69 FR 19338, Apr. 13, 2004]

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]

652.219–72 Department of State Mentor-Protégé Program.

As prescribed in 619.202–70(o)(1), insert the following provision:

DEPARTMENT OF STATE MENTOR-PROTÉGÉ PROGRAM (APR 2004)

(a) Large and small businesses are encouraged to participate in the Department of State Mentor-Protégé Program. Mentor firms provide eligible small business protégés with developmental assistance to enhance their business capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses, as defined in 13 CFR parts 121, 124, and 126.

(c) Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance that aids protégés. Firms interested in participating in the program are encouraged to contact the Department of State OSDBU for further information.

(End of provision)

[69 FR 19338, Apr. 13, 2004]

652.219–73 Mentor Requirements and Evaluation.

As prescribed in 619.202–70(o)(2), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (APR 2004)

(a) Mentor and protégé firms shall submit an evaluation to the Department of State's OSDBU at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal

by either party from the program, whichever occurs first. At the conclusion of each year in the mentor-protégé program, the prime contractor and protégé will formally brief the Department of State Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreement.

(b) A mentor or protégé shall notify the OSDBU and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the program. A mentor firm shall notify the OSDBU and the contracting officer upon receipt of a protégé's notice of withdrawal from the program.

(End of clause)

[69 FR 19338, Apr. 13, 2004]

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]

652.228–70 Defense Base Act—Covered Contractor Employees.

As prescribed in 628.309–70(a), insert the following provision:

DEFENSE BASE ACT—COVERED CONTRACTOR EMPLOYEES (FEB 2015)

(a) Bidders/offerors shall indicate below whether or not any of the following categories of employees will be employed on the resultant contract, and, if so, the number of such employees:

Category	Yes/No	Number
(1) United States citizens or residents		
(2) Individuals hired in the United States, regardless of citizenship		
(3) Local nationals or third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.	.....	Local nationals: _____ Third country nationals: _____
(4) Local nationals or third country nationals where contract performance takes place in a country where there are local workers' compensation laws.	.....	Local nationals: _____ Third country nationals: _____

(b) The contracting officer has determined that for performance in the country of [contracting officer insert country of performance and check the appropriate block below]

☐ Workers' compensation laws exist that will cover local nationals and third country nationals.

☐ Workers' compensation laws do not exist that will cover local nationals and third country nationals.

(c) If the bidder/offeror has indicated ''yes'' in block (a)(4) of this provision, the bidder/offeror shall not purchase Defense Base Act insurance for those employees. However, the bidder/offeror shall assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention, in accordance with the clause at FAR 52.228–4.

(End of provision)

[71 FR 34841, June 16, 2006; 71 FR 41177, July 20, 2006; 80 FR 6932, Feb. 9, 2015]

652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services.

As prescribed in 628.309–70(b), insert the following clause:

WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT)—SERVICES (FEB 2015)

(a) This clause supplements FAR 52.228–3. For the purposes of this clause, ''covered contractor employees'' includes the following individuals:

(1) United States citizens or residents;

(2) Individuals hired in the United States or its possessions, regardless of citizenship; and

(3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) The Contractor shall procure Defense Base Act (DBA) insurance directly from a Department of Labor (DOL) approved insurance provider. Approved providers can be found at the DOL Web site at *http://www.dol.gov/owcp/dlhwc/lscarrier.htm.*''

(c)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. ''Persons'' includes individuals hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for Contractor employees who work on an intermittent or short-term basis.

(2) The Contractor shall submit waiver requests to the contracting officer. The request shall contain the following information:

(i) Contract number;

(ii) Name of Contractor;

(iii) Brief description of the services to be provided under the contract and country of performance;

(iv) Name and position title of individual(s);

(v) Nationality of individual(s) (must be U.S. citizen or U.S. resident);

(vi) Dates (or timeframe) of performance at the overseas location; and,

(vii) Evidence of alternative workers' compensation coverage for these employees (e.g., evidence that the State workers' compensation program covers workers on short-term foreign assignments).

(3) The contracting officer shall provide to the Contractor the original of the approved or disapproved document and maintain a copy in the contract file.

(End of clause)

[71 FR 34841, June 16, 2006; 71 FR 41177, July 20, 2006; 80 FR 6924, Feb. 9, 2015]

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 EXEMPTION 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 632.706–70, 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, as amended at 81 FR 24707, Apr. 27, 2016]

652.236–70 Additional Safety Measures.

As prescribed in 636.513, insert the following clause.

ADDITIONAL SAFETY MEASURES (OCT 2017)

In addition to the safety/accident prevention requirements of FAR 52.236–13, Accident Prevention Alternate I, the contractor shall comply with the following additional safety measures.

(a) *High risk activities*. If the project contains any of the following high risk activities, the contractor shall follow the section in the latest edition, as of the date of the solicitation, of the U.S. Army Corps of Engineers Safety and Health manual, EM 385–1–1, that corresponds to the high risk activity. Before work may proceed, the contractor must obtain approval from the COR of the written safety plan required by FAR 52.236–13, Accident Prevention Alternate I (see paragraph (f) of this clause), containing specific hazard mitigation and control techniques.

(1) Scaffolding;

(2) Work at heights above 1.8 meters;

(3) Trenching or other excavation greater than one (1) meter in depth;

(4) Earth-moving equipment and other large vehicles;

(5) Cranes and rigging;

(6) Welding or cutting and other hot work;

(7) Partial or total demolition of a structure;

(8) Temporary wiring, use of portable electric tools, or other recognized electrical hazards. Temporary wiring and portable electric tools require the use of a ground fault circuit interrupter (GFCI) in the affected circuits; other electrical hazards may also require the use of a GFCI;

(9) Work in confined spaces (limited exits, potential for oxygen less than 19.5 percent 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.);

(10) Hazardous materials—a material with a physical or health hazard including but not limited to, flammable, explosive, corrosive, toxic, reactive or unstable, or any operations, which creates any kind of contamination inside an occupied building such as dust from demolition activities, paints, solvents, etc.; or

(11) Hazardous noise levels as required in EM 385–1 Section 5B or local standards if more restrictive.

(b) *Safety and health requirements*. The contractor and all subcontractors shall comply with the latest edition of the U.S. Army Corps of Engineers Safety and Health manual EM 385–1–1, or OSHA 29 CFR part 1910 or 1926 if no EM 385–1–1 requirements are applicable, and the accepted contractor's written safety program.

(c) *Mishap reporting*. The contractor is required to report *immediately* all mishaps to the COR and the contracting officer. A ''mishap'' is any

event causing injury, disease or illness, death, material loss or property damage, or incident causing environmental contamination. The mishap reporting requirement shall include fires, explosions, hazardous materials contamination, and other similar incidents that may threaten people, property, and equipment.

(d) *Records.* The contractor shall maintain an accurate record on all mishaps 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.

(e) *Subcontracts.* The contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) *Written program.* The plan required by paragraph (f)(1) of the clause entitled ''Accident Prevention Alternate I'' shall be known as the Site Safety and Health Plan (SSHP) and shall address any activities listed in paragraph (a) of this clause, or as otherwise required by the contracting officer/COR.

(1) The SSHP shall be submitted at least 10 working days prior to commencing any activity at the site.

(2) The plan must address developing activity hazard analyses (AHAs) for specific tasks. The AHAs shall define the activities being performed and identify the work sequences, the specific anticipated hazards, site conditions, equipment, materials, and the control measures to be implemented to eliminate or reduce each hazard to an acceptable level of risk. Work shall not begin until the AHA for the work activity has been accepted by the COR and discussed with all engaged in the activity, including the Contractor, subcontractor(s), and Government on-site representatives.

(3) The names of the Competent/Qualified Person(s) required for a particular activity (for example, excavations, scaffolding, fall protection, other activities as specified by EM 385–1–1) shall be identified and included in the AHA. Proof of their competency/qualification shall be submitted to the contracting officer or COR for acceptance prior to the start of that work activity. The AHA shall be reviewed and modified as necessary to address changing site conditions, operations, or change of competent/qualified person(s).

(End of clause)

[82 FR 58353, Dec. 12, 2017]

652.236–71 Foreign Service Buildings Act, as Amended.

As prescribed in 636.570(a), insert the following provision:

FOREIGN SERVICE BUILDINGS ACT, AS AMENDED (FEB 2015)

(a) This solicitation is subject to Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302). This statute limits competition under this solicitation to:

(1) American-owned firms, as described in paragraph (b) of this provision; and,

(2) Firms from countries that permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) To qualify as an American-owned firm for purposes of this solicitation, the bidder/offeror must demonstrate evidence of:

(1) Performance of similar construction work in the United States or at a United States diplomatic or consular establishment abroad; and

(2) Either—

(i) Ownership in excess of 50% by U.S. citizens or permanent residents; or

(ii) Incorporation in the United States for more than three (3) years and employment of U.S. citizens or permanent residents in more than half of the company's permanent full-time professional and managerial positions in the United States.

(c) For purposes of determining competitive status, offers submitted by American-owned firms shall be reduced by ten (10) percent, provided that two responsible bidders/offerors submit a bid/offer.

(d) *Evidence of qualification.* (1) Performance of similar construction work in the United States or at a United States diplomatic or consular establishment abroad. The bidder/offeror must describe below one or more similar projects completed in the United States or at a United States diplomatic or consular establishment abroad. For each project, provide the following information:

Location: _____
(City and State/Country) _____
Complexity: _____
_____
(Office building, etc.)

Type of construction: _____
Value of project: _____
Location: _____
(City and State/Country) _____
Complexity: _____

_____
(Office building, etc.)
Type of construction: _____
Value of project: _____
Location: _____
(City and State/Country) _____
Complexity: _____

_____
(Office building, etc.)
Type of construction: _____
Value of project: _____

If the bidder/offeror's participation was as a partner or co-venturer, indicate the percentage of the project performed by the bidder/offeror: _____ %

(2) Corporate location or ownership.

(i) The bidder/offeror certifies that it ☐ is ☐ is not owned in excess of fifty (50) percent by United States citizens or permanent residents.

(ii) The bidder/offeror certifies that it ☐ has ☐ has not been incorporated in the United States for more than three years and that it ☐ employs ☐ does not employ United States citizens or permanent residents in more than half of its permanent full-time professional and managerial positions in the United States.

(e) By signing this bid/offer, the bidder/offeror certifies to the best of its knowledge, all of the representations and certifications provided in this provision are accurate, current and complete.

(End of provision)

[69 FR 19339, Apr. 13, 2004, as amended at 80 FR 6924, Feb. 9, 2015]

652.236–72 Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act.

As prescribed in 636.570(b), insert the following provision:

STATEMENT OF QUALIFICATIONS FOR THE OMNIBUS DIPLOMATIC SECURITY AND ANTITERRORISM ACT (FEB 2015)

(a) This solicitation is subject to Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99–399; 22 U.S.C. 4852). The Act limits certain construction projects abroad to United States persons or United States joint venture persons. This Statement of Qualifications shall be used to determine if a bidder/offeror meets the definition of a ''United States person'' or a ''United States joint venture person'' .

(b) *Definition*. As used in this provision—

U.S. person means a company, partnership, or joint venture that the Government determines, after consideration of all available information, including but not limited to that provided by the bidder/offeror in response to this solicitation, to be qualified pursuant to Section 402.

(c) *Representation*. The bidder/offeror represents as part of its bid/offer that it ☐ does ☐ does not meet the qualifications as a U.S. person as set forth in Section 402 of the Act.

[*Complete a Statement of Qualifications for Purposes of Determining Status as a U.S. Person if the offeror represents that it is eligible. See paragraph (d) of this provision.*]

Warning: Any material misrepresentation made in the Statement of Qualifications may be the basis for disqualification of a bidder/offeror and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). Bidder/offeror qualifications will be determined primarily on the basis of information submitted in the Statement of Qualifications, including attachments thereto, but the Government may, at its discretion, rely on information contained elsewhere in the bidder's/offeror's bid/proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Determining Status as a U.S. Person (22 U.S.C. 4852)*. A bidder/offeror that represents that it is a U.S. person must provide the following information.

Statement of Qualifications for Purposes of Determining Status as a U.S. Person (22 U.S.C. 4852)

Name and address of U.S. person organization providing this information:

_____
_____
_____

Introduction. Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act (Public Law 99–399) provides that a ''United States person'' or a ''qualified United States joint venture'' must meet certain requirements, listed in sections 402(c)(2) and (3) of the Act, to be eligible to compete. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person, guidance is hereby provided. For ease of reference, the statutory language is quoted immediately before the definitions that apply to it. Space for the required information is provided immediately following each definition.

NOTE: The Statement of Qualifications shall provide information correctly applicable to the U.S. person whose qualifications are being certified, and shall not include information pertaining to corporate affiliates or subsidiaries. Organizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related organizations, must do so by way of a joint venture. A prospective bidder/offeror may be an individual

organization or firm, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a de facto joint venture where no formal agreement has been reached, but the offering entity relies upon the experience of a related U.S. firm that guarantees performance. To be considered a ''qualified United States joint venture person,'' the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. person listed in Section 402. By signing this bid/proposal, the U.S. person co-venturer agrees to be individually responsible for performance of the contract, notwithstanding the terms of any joint venture agreement.

1. *Section 402(c)(2)(A):* ''The term 'United States person' means a person which—(A) is incorporated or legally organized under the laws of the United States, including the District of Columbia, and local laws.''

Definitions for purposes of Section 402 determinations of eligibility—

Incorporated means the successful de jure incorporation of a business organization pursuant to the laws of any United States jurisdiction or component thereof.

Legally organized means the legally recognized existence of an organization other than a de jure corporation (e.g., a partnership) under the laws of any United States jurisdiction or component thereof. Only organizations that have a legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction where they are doing business will qualify as legally organized. A natural person who is a United States citizen acting in his or her entrepreneurial capacity will be deemed to be a ''person legally organized'' within the scope of this definition, provided that the prospective bidder/offeror holds all required licenses to do business in the jurisdiction where he or she is located.

United States means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Question 1. The organization seeking eligibility under Section 402 is incorporated or is legally organized under the laws of what jurisdiction?

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2. *Section 402(c)(2)(B):* ''The term 'United States person' means a person which—(B) has its principal place of business in the United States.''

Definitions for purposes of Section 402 determinations of eligibility—

Principal place of business means the main location of the prospective bidder/offeror. For purposes of this section, a prospective bidder/offeror shall identify only one principal place of business, and such location shall include at least the offices of the chief operating officer and headquarters staff. The named location must be a United States jurisdiction from which a tax return has been filed or will be filed during the calendar year in which the prospective bidder/offeror submits this bid/offer.

United States means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Question 2(a). The organization seeking eligibility has its principal place of business in what city and state?

Question 2(b). What kind of tax return was or will be filed, and in what jurisdiction, during the current calendar year?

(i) Jurisdiction: _____
(e.g., federal, state, city)

(ii) Type of return (e.g., income tax, franchise tax, etc.). Include all that apply:

---

3. *Section 402(c)(2)(C):* ''The term 'United States person' means a person which has been incorporated or legally organized in the United States—

(i) for more than 5 (five) years before the issuance date of the invitation for bids or request for proposals with respect to a construction project under subsection (a)(1); and,

(ii) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to a construction or design project abroad that involves technical security under subsection (a)(2).''

Definitions for purposes of Section 402 determinations of eligibility—

Has been incorporated or legally organized means that the organization can show continuity as an ongoing business. Organizations that have changed only their names meet the continuity requirement of this subsection. Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principal business activities will have the burden of proving that there have been ongoing operations by the same business entity for the required period of time. If the successor entity has acquired all of the assets and liabilities of the predecessor business and the predecessor business has no further existence, the successor may claim the incorporation date of the predecessor. In any other circumstance, the prospective bidder/offeror must show that the law of the jurisdiction in which it operates regards the prospective bidder/offeror as the complete successor in interest of the predecessor business for purpose of contractual obligations.

Issuance date means the date in Block 3 of the Standard Form 1442 accompanying this solicitation.

Years means calendar years measured from day of the month to day of the month. For example, January 1, 2002 through December 31, 2002 is one calendar year, as is July 1, 2002 through July 1, 2003.

Question 3:

(i) On what date was the organization seeking eligibility incorporated or legally organized? _____

(ii) If this date is less than the required number of years before the issuance date, on the basis of what documentation does the organization seeking eligibility claim that it has been in business for the requisite period of time?_____ (Identify, and forward copies as an Attachment to this Statement. This material may include such items as certificates of incorporation, partnership agreements, resolutions of boards of directors, etc.).

4. *Section 402(c)(2)(D):* ''The term 'United States person' means a person which has performed within the United States or at a United States diplomatic or consular establishment abroad administrative and technical, professional, or construction services similar in complexity, type of construction, and value to the contract being bid.''

Definitions for purposes of Section 402 determination of eligibility—

Administrative and technical, professional, or construction services means the kind of work in which the prospective bidder/offeror is interested. If the proposed contract is for construction management services, the prospective bidder/offeror will be expected to demonstrate construction management expertise. In general, ''administrative'' means the capacity or ability to manage; ''technical'' means the specific skills peculiar to the type of work required; ''professional'' means expert services resulting from advanced training in the type of work required; and ''construction'' experience if it has not directly performed all of the actual construction activities. Thus, an entity whose only construction work experience was performed by its legally distinct subsidiary or parent will not be considered to have construction experience.

Complexity means the physical size and technical size and demands of the project. ''Performed'' means projects that have been fully completed by the prospective bidder/offeror and accepted by the owner or other party to the transaction. Projects still in progress have not yet been performed for purposes of this definition.

Type of construction means the overall nature of the facilities to be built, including the kinds of materials to be used. Thus, if the contract will require the construction of a multi-story office building, the prospective bidder/offeror will be expected to demonstrate experience with facilities of this type.

Value means the total contract price of the project, not to the profit or loss to the bidder/offeror.

Within the United States means a United States jurisdiction that is the place where the subject matter of the contract or other arrangement was in fact completed. It does not mean the place where the contract or other arrangement was negotiated or signed. The term ''United States'' means any jurisdiction that is one of the 50 states, the District of Columbia, a United States territory, a United States possession, or the Commonwealth of Puerto Rico and the Northern Mariana Islands.

Question 4: List on this page, and an attachment (if necessary), one or more similar projects completed by the prospective bidder/offeror. For each project, provide the following information:

_____

Location:
(City and State, or Country)

_____

Type of service:
(administrative, etc.)

_____

Complexity:
(office building, etc.)

_____

Type of construction:

_____

Value of project:

If the prospective bidder/offeror's participation was as a partner or co-venturer, indicate the percentage of the project performed by the prospective offeror: _____ %

5. *Section 402(c)(2)(E):* ''The term 'United States person' means a person which—with respect to a construction project under subsection (a)(1)—has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C)(i).''

Definitions of purposes of Section 402 determination of eligibility—

3 years of the 5-year period before the date specified in subparagraph (C)(i) means the three to five calendar year period immediately preceding the issuance date of this solicitation.

Total business volume means the U.S. dollar value of the gross income or receipts reported by the prospective bidder/offeror on its annual federal income tax returns.

Years means the business year of the prospective bidder/offeror, as reflected on its annual federal income tax returns.

Question 5: Please complete the information below for at least three of the five listed years.

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

6. *Section 402(c)(2)(F):* ''The term 'United States person' means a person which—(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; (ii) employs United States citizens in more than half of its permanent, full-time positions in the United States; and (iii) will employ United States citizens in at least 80 percent of the supervisory positions on the foreign buildings office project site.''

Definitions for purposes of Section 402 determinations of eligibility—

In the United States refers to those positions that the prospective bidder/offeror maintains within all jurisdictions which are one of the 50 states, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Permanent, full-time positions means positions with the prospective bidder/offeror that are intended to be indefinite, as opposed to limited, seasonal, or project-duration periods. The term 'full-time' refers to positions in which the occupants are expected to and ordinarily work 40 hours a week. The term 'permanent, full-time positions' covers the portion of the prospective bidder's/offeror's workforce that continues to be employed without regard to the fluctuating requirements of production or projects.

Principal management positions refers to chief operating officer and those management officials reporting directly to him or her. In the case of a partnership, the term refers to every general partner. In the case of a corporation, the term refers to those officers of the corporation who are active in running its day-to-day operations. Members of corporation boards of directors who do not have operational responsibilities do not occupy ''principal management positions'' simply by virtue of their service on the board. In all cases, the term ''principal management positions'' also includes the position or positions held by the individual or individuals who will have primary corporate management oversight responsibility for this contract if the prospective bidder/offeror is awarded the contract. Each prospective bidder/offeror is responsible for listing all of its principal management positions and identifying their current occupants by name and citizenship.

Supervisory positions means all positions with significant authority to direct the work of others as well as those for which access to classified or controlled documents is required. Such positions will be identified in each contract.

United States citizen means natural persons with United States citizenship by virtue either of birth or of naturalization.

Question 6(a): The bidder/offeror has the following staff:

(i) Principal management positions in the United States:

Chief Operating Officer:

_____
(name)

_____
(citizenship)

(ii) For each individual reporting directly to the above-named Chief Operating Officer, list position, name, and citizenship:

_____
Position:

_____
Name:

_____
Citizenship:

(iii) Individual(s) expected to have primary management oversight responsibility for contract if it is awarded:

_____
(name)

_____
(citizenship)

Question 6(b): Number of permanent, full-time positions in the United States: _____

Question 6(c): Number of United States citizens currently employed in permanent, full-time positions in the United States: _____

Question 6(d): Certification of intent to employ U.S. citizens in a minimum of 80 percent of the supervisory positions identified by the Government on this project:

I so certify: _____
(signature)

_____
(name typed or printed)

_____
(position)

_____
(date)

7. *Section 402(c)(2)(G):* ''The term 'United States person' means a person which has the existing technical and financial resources in the United States to perform this contract.''

Definitions for purposes of Section 402 determinations of eligibility—

Existing technical and financial resources means the capability of the prospective bidder/offeror to mobilize adequate staffing and monetary arrangements from within the United States sufficient to perform the contract. Adequate staffing levels may be demonstrated by presenting the resumes of current United States citizens and resident aliens with skills and expertise necessary for the work in which the prospective bidder/offeror is interested or some other indication

of available United States citizen or permanent legal resident human resources. Demonstration of adequate financial resources must be issued by entities that are subject to the jurisdiction of United States courts and have agents located within the United States for acceptance of service of process.

Question 7: Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States.

8. *Section 402(c)(3):* ''The term 'qualified United States joint venture person' means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.''

Definitions for purposes of Section 402 determinations of eligibility—

Assets means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers.

Joint venture means a formal or *de facto* arrangement by and through which two or more persons or entities associate for the purpose of carrying out the prospective contract. Prospective bidders/offerors are advised that a joint venture may not be acceptable to projects requiring a Department of Defense facility security clearance because each co-venturer may post particular problems in obtaining security clearances. To be acceptable, all members of a joint venture must be individually and severally liable for the full performance of and resolution of any and all matters arising out of the contract, notwithstanding any provision of the joint venture agreement of law of the jurisdiction under which the joint venture was created.

Question 8(a): The bidder/offeror is is not a joint venture.

Question 8(b): If the bidder/offeror is a joint venture, the U.S. person participant is:

_____
(name)

_____
(address)

Question 8(c): If the bidder/offeror is a joint venture, the names and countries of citizenship for all co-venturers are as follows:

_____
(name)

_____
(citizenship)

_____
(name)

_____
(citizenship)

_____
(name)

_____
(citizenship)

Question 8(d): If the bidder/offeror is a joint venture, the U.S. person will own at least 51 percent of the assets of the joint venture.

I so certify: _____
(signature)

_____
(name typed printed)

_____
(position)

_____
(title)

(e) *Signature:* By signing this document, the offeror indicates that to the best of his or her knowledge, all of the representations and certifications provided in response to the questions contained in this Statement of Qualifications are accurate, current, and complete and that the offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements.

(End of provision)

[69 FR 19339, Apr. 13, 2004, as amended at 80 FR 6924, Feb. 9, 2015]

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 [Reserved]

652.237–72 Observance of Legal Holidays and Administrative Leave.

As prescribed in 637.110(b), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND ADMINISTRATIVE LEAVE (FEB 2015)

(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 New Year's Day, Independence Day, Veterans Day or Christmas Day falls on a Sunday, the following Monday is observed; when it falls on Saturday, the preceding Friday 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; 69 FR 19343, Apr. 13, 2004; 76 FR 20251, Apr. 12, 2011; 80 FR 6924, Feb. 9, 2015]

652.237–73 Statement of Qualifications for Preference as a U.S. Person.

As prescribed in 637.110(c), insert the following provision:

STATEMENT OF QUALIFICATIONS FOR PREFERENCE AS A U.S. PERSON (APR 2004)

(a) This solicitation is subject to Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864). The Act encourages the participation of United States persons and qualified United States joint venture persons in the provision of local guard services overseas, and provides for a preference for eligible offers.

(b) *Definitions*. As used in this provision—

Eligible offer means an offer that (1) is otherwise responsive to the solicitation; and (2) contains a fully prepared Statement of Qualifications (see paragraph (d) of this provision), which upon review is determined by the Government to meet the requirements of Section 136 for assignment of preference as a U.S. person.

Preference means subtraction by the Government of ten percent (10%) from the total evaluated price of an offer.

U.S. person means a company, partnership, or joint venture that the Government determines, after consideration of all available information, including but not limited to that provided by the offeror in response to the solicitation, to be qualified for assignment of preference pursuant to Section 136.

(c) *Representation*. The offeror represents as part of its offer that it is, is not eligible for preference as a U.S. person. [*Complete a Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person if the offeror represents that it is eligible*. See *paragraph (d) of this provision*.]

Warning: Any material misrepresentation made in the Statement of Qualifications may be the basis for disqualification of an offeror and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). The Government will determine offeror qualifications primarily on the basis of information submitted in the Statement of Qualifications, including Attachments thereto, but the Government may, at its discretion, rely on information contained elsewhere in the offeror's proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person (22 U.S.C. 4864)*. An offeror that represents that

it is eligible for preference as a U.S. person must provide the following information. This Statement of Qualifications must be a complete and certified document, and submitted as a separate Volume 5, with all necessary attachments, as defined in Section L of this solicitation.

Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person (22 U.S.C. 4864)

Name and address of U.S. person or organization providing this information:

Introduction. Section 136 of the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, Public Law 101–246 (22 U.S.C. 4864), as amended, provides that a ''United States person'' or a ''qualified United States joint venture'' must meet certain requirements, listed in the Act, to be eligible for the statutory preference. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person entitled to preference under Section 136, guidance is hereby provided. Only those prospective offerors submitting a properly completed and certified Volume 5 with their initial proposals will be considered in the determination of eligibility for assignment of preference as a U.S. person or U.S. joint venture person. For ease of reference, statutory language is quoted immediately before the definitions that apply to it. Space for the required information is provided immediately following each definition.

NOTE: The Statement of Qualifications shall provide information correctly applicable to the U.S. person whose qualifications are being certified, and shall not include information pertaining to corporate affiliates or subsidiaries. Organizations that wish to use the experience or financial resources of another organization or individual, including parent companies, subsidiaries, or local, national or offshore organizations, must do so by way of a joint venture. The contract resulting from this solicitation shall not allow subcontracting. A prospective offeror may be a sole proprietorship, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a de facto joint venture with no written agreement. To be considered a ''qualified joint venture person,'' the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. joint venture person listed in Section 136. By signing this proposal, the U.S. person co-venturer agrees to be individually responsible for performance of the contract, notwithstanding the terms of any joint venture agreement.

1. *Section 136(d)(1):* ''The term 'United States person' means a person which—(A) is incorporated or legally organized under the laws of the United States, including the laws of any State, locality, or the District of Columbia.''

Definitions for purposes of Section 136 determinations of eligibility—

Incorporated means the state of legal recognition as an artificial person that may be afforded to a business entity pursuant to the laws of any United States jurisdiction or component thereof.

Legally organized means the state of legal recognition that may be afforded to a business entity that is other than a corporation pursuant to the laws of any United States jurisdiction or component thereof. This is the least form of legal recognition that will qualify an offeror for this preference. Only those prospective offerors that have legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction under which they are doing business will qualify as legally organized. A natural person who is a United States citizen acting in his or her entrepreneurial capacity will be deemed to be a ''person legally organized'' within the scope of this definition, provided that the prospective offeror holds all required licenses to do business in the jurisdiction where he or she is located.

United States means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealth of Puerto Rico and the Northern Mariana Islands.

Question 1. The organization seeking eligibility under Section 136 is incorporated or is legally organized under the laws of what jurisdiction?

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2. *Section 136(d)(1):* ''The term 'United States person' means a person that—(B) has its principal place of business in the United States.''

Definitions for purposes of Section 136 determinations of eligibility—

Principal place of business means the geographic location of the main office or seat of management of the prospective offeror. For purposes of this Statement, a prospective offeror shall identify only one principal place of business, and such location shall include at least the offices of the chief operating officer and headquarters staff. The named location must be a United States jurisdiction in which the prospective offeror may bring suit and be sued and in which service of process shall be accepted.

Question 2(a). The organization seeking eligibility has its principal office in what city and state?

Question 2(b). What kind of tax return was or will be filed, and in what jurisdiction, during the current calendar year? The jurisdiction identified herein need not be the same jurisdiction identified in Question 2(a).

(i) Jurisdiction:

(ii) Type of return (e.g., income tax, franchise tax, etc.). Include all that apply:

3. *Section 136(d)(1):* ''The term 'United States person' means a person which—(C) has been incorporated or legally organized in the United States—(i) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to the contract under subsection (c) of this section.''

Definitions for purposes of Section 136 determinations of eligibility—

Has been incorporated or legally organized means that the organization can show continuity as an ongoing business. Organizations that have changed only their names meet the continuity requirement of this subsection. Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principal business activities will have the burden of proving that there have been ongoing operations by the same business entity for the required period of time. If the successor entity has acquired all of the assets and liabilities of the predecessor entity and the predecessor entity has no further existence, the successor may claim the incorporation or legal organization date of the predecessor. In any other circumstance, the prospective offeror must show that the law of the jurisdiction in which it operates regards the prospective offeror as the complete successor in interest of the predecessor entity for purpose of contractual obligations.

Issuance date means the date in Block 5 of the Standard Form 33 accompanying this solicitation.

Years means calendar years measured from day of the month to day of the month. For example, January 1, 2002 through December 31, 2002 is one calendar year, as is July 1, 2002 through July 1, 2003.

Question 3:

(i) On what date was the organization seeking eligibility incorporated or legally organized?

(ii) If this date is less than two years before the issuance date, on the basis of what documentation does the organization seeking eligibility claim that it has been in business for the requisite period of time?

(Identify, and forward copies as an Attachment to this Statement).

4. *Section 136(d)(1):* ''The term 'United States person' means a person which—(D) has performed within the United States or overseas security services similar in complexity to the contract being bid.''

Definitions for purposes of Section 136 determination of eligibility—

Complexity means the physical size or extent of the effort, as described in Section B and Exhibit A of this solicitation; combined with the required quality of the effort as described in Sections C and H of this solicitation.

Overseas means within any jurisdiction that is not a part of the United States as defined below.

Performed means contracts that have been fully completed by the prospective offeror and accepted by the other party to the transaction. Contracts still in progress have been performed for purposes of this definition if performance in complexity to the contract being bid has been ongoing for at least one year. Contracts need not have been with the U.S. Government.

Security services means work of a kind as to fall within or compare closely with those described in the Statement of Work in Section C of this solicitation. An entity whose only security services experience was performed by its legally distinct parent or subsidiary organization will not be considered to have security services experience.

Within the United States means within the legal geographic boundaries of a United States jurisdiction that is the place where the subject matter (e.g., services) of the contract or other arrangement was in fact completed. The place where the contract or other arrangement was negotiated or signed is not relevant to this definition.

Question 4: Describe in an Attachment to this Statement (*see* L.1.3.5), the qualifying similar contracts or other arrangements performed by the prospective offeror. Provide required information on a sufficient number of arrangements to show that similar services have been performed overseas or in the United States. The description must consist of the following information on each arrangement, which shall be submitted as an Attachment to this Statement:

Location: (city and state or country).

Type of service: (for example, stationary guards, roving patrol, quick-reaction force, etc.).

Complexity: (type of facilities guarded, and number or extent of facilities, number of guards, etc.).

5. *Section 136(d)(1):* ''The term 'United States person' means a person which—(E) with respect to the contract under subsection (c) of this section, has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C).''

Definitions of purposes of Section 136 determination of eligibility—

3 years of the 5-year period before the date specified in subparagraph (C) means the three to five calendar year period immediately preceding the issuance date of this solicitation.

Total business volume means the U.S. dollar value of the gross income or receipts reported by the prospective offeror on its annual federal income tax returns.

Years means calendar years.

Question 5: Describe in an Attachment to this Statement (*see* L.1.3.5), for at least three of the five twelve-month income tax periods (fiscal years) defined below, the gross receipts of the organization seeking eligibility.

(i) The fiscal year ending during the calendar year that includes the date of this solicitation.

(ii) The fiscal year ending in the calendar year immediately prior to the calendar year that includes the date of this solicitation.

(iii) The fiscal year ending in the calendar year two years before the calendar year that includes the date of this solicitation.

(iv) The fiscal year ending in the calendar year three years before the calendar year that includes the date of this solicitation.

(v) The fiscal year ending in the calendar year four years before the calendar year that includes the date of this solicitation.

An entity will be deemed to have met this requirement if the total cumulative business volume for the three years presented exceeds the contract price at time of award under this solicitation for the full term for which prices are solicited, including any option periods.

6. *Section 136(d)(1):* ''The term 'United States person' means a person which '' (F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; and (F)(ii) employs United States citizens in more than half of its permanent full-time positions in the United States.''

Definitions for purposes of Section 136 determinations of eligibility—

Full-time (positions) means those personnel positions in which the occupants are expected to and ordinarily work for 40 or more hours per week.

In the United States refers to those personnel positions that are encumbered as of the date of this solicitation and that the prospective offeror maintains in geographic locations within the jurisdictions defined above as constituting the United States.

Permanent (positions) means personnel positions that are intended to be indefinite as to length of employment, as opposed to limited, seasonal, or project-length personnel appointments.

Permanent, full-time positions means that portion of the prospective offeror's workforce that continues to be employed without regard to the ordinary fluctuations of production or projects.

Principal management positions means those personnel positions including at least the chief executive officer (if any) and the chief operating officer (whether by title or by function) of the organization seeking eligibility, together with all those management officials who constitute the highest levels of management authority within the organization. In the case of a partnership, all general partners are deemed to hold principal management positions. In the case of a corporation, those officers of the corporation who are principally responsible for the day-to-day operation of the corporation. Members of corporation boards of directors do not occupy ''principal management positions'' simply by virtue of their service on the board. In all cases, the term ''principal management positions'' also includes the position or positions held by the individual or individuals in the United States who will have primary corporate management oversight responsibility for this contract if the prospective contractor is awarded the contract.

United States citizen means natural persons with United States citizenship by virtue either of birth or of naturalization.

Question 6(a): The organization seeking eligibility shall list all of its principal management positions and identify the current occupant of each listed position by name and citizenship. Provide the information as an Attachment to this Statement in the following format:

(i) Principal management positions in the United States:

Chief Executive Officer (if any):

_____

(name)

_____

(citizenship)

Chief Operating Officer:

_____

(name)

_____

(citizenship)

(ii) For each additional corporate officer having principal responsibility for the day-to-day operations of the corporation, list position, name, and citizenship.

_____

Position:

_____

Name:

_____

Citizenship:

(iii) Individual(s) in the United States expected to have primary management oversight responsibility for contract if it is awarded:

_____

(name)

_____

(citizenship)

Question 6(b): Number of permanent, full-time, currently encumbered personnel positions that are located in the United States (good faith estimates acceptable): _____

Question 6(c): Number of United States citizens currently employed in permanent, full-time positions that are located in the United States (good faith estimates acceptable): _____

7. *Section 136(d)(1):* ''The term 'United States person' means a person which—(G) has the existing technical and financial resources in the United States to perform the contract.''

Definitions for purposes of Section 136 determinations of eligibility—

Existing technical and financial resources means technical and financial capability within the United States to mobilize adequate staffing, equipment and organizational arrangements to perform the contract. Adequate technical resources may be demonstrated by presenting an organization chart, and résumés of current officers and employees in the United States who possess skills and expertise necessary to provide management and oversight of the work. Other indicia will be considered if offered to demonstrate that the prospective offeror has available resources in the United States adequate to provide home office management and oversight of the work. Adequate financial resources may be demonstrated by proof of possession of a combination of net worth, bank lines of credit, or bank guarantees. If lines of credit or bank guarantees are used to demonstrate adequate financial resources, they must be from entities within the United States.

Question 7: Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States (*see* L.1.3.5).

8. *Section 136(d)(2):* ''The term 'qualified United States joint venture person' means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.''

Definitions for purposes of Section 136 determinations of eligibility—

Assets means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers. To be qualified for U.S. preference, 51 percent of the assets of the joint venture must be owned by the U.S. person co-venturer(s).

Joint venture means a formal or de facto association of two or more persons or entities to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skills, and knowledge. To be acceptable, all members of a joint venture must be jointly and severally liable for full performance and resolution of matters arising out of the contract.

Question 8(a): The prospective offeror is is not a joint venture.

Question 8(b): If the prospective offeror is a joint venture, the U.S. person participant is:

_____

(name)

_____

(address)

Question 8(c): If the prospective offeror is a joint venture, the names and countries of citizenship for all co-venturers are as follows:

_____

(name)

_____

(citizenship)

_____

(name)

_____

(citizenship)

_____

(name)

_____

(citizenship)

Question 8(d): If the prospective offeror is a joint venture, the U.S. person will own at least 51 percent of the assets of the joint venture.

_____

I so certify: (name)

_____

(position)

_____

(title)

(e) *Signature:* By signing this document, the offeror indicates that to the best of his or her knowledge, all of the representations and certifications provided in response to the questions contained in this Statement of Qualifications are accurate, current, and complete and that the offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements.

_____

(End of provision)

[69 FR 19343, Apr. 13, 2004, as amended at 76 FR 20251, Apr. 12, 2011]

652.239–70 Information Technology Security Plan and Accreditation.

As prescribed in 639.107–70(a), insert the following provision:

INFORMATION TECHNOLOGY SECURITY PLAN AND ACCREDITATION (SEP 2007)

All offers/bids submitted in response to this solicitation must address the approach for completing the security plan and certification and accreditation requirements as required by the clause at 652.239–71, Security Requirements for Unclassified Information Technology Resources.

(End of provision)

[72 FR 51569, Sept. 10, 2007]

652.239–71 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 639.107–70(b), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (SEP 2007)

(a) *General.* The Contractor shall be responsible for information technology (IT) security, based on Department of State (DOS) risk assessments, for all systems connected to a Department of State (DOS) network or operated by the Contractor for DOS, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to DOS's information that directly supports the mission of DOS. The term ''information technology'', as used in this clause, means any equipment, including telecommunications equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This includes both major applications and general support systems as defined by OMB Circular A–130. Examples of tasks that require security provisions include:

(1) Hosting of DOS e-Government sites or other IT operations;

(2) Acquisition, transmission or analysis of data owned by DOS with significant replacement cost should the Contractor's copy be corrupted; and

(3) Access to DOS general support systems/major applications at a level beyond that granted the general public; e.g., bypassing a firewall.

(b) *IT Security Plan.* The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall comply with applicable Federal laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and DOS policies and procedures, as they may be amended from time to time during the term of this contract that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) National Institute of Standards and Technology (NIST) Guidelines (see NIST Special Publication 800–37, Guide for the Security Certification and Accreditation of Federal Information Technology Systems (*http://csrc.nist.gov/publications/nistpubs/800-37/SP800–37-final.pdf*)); and

(3) Department of State information security sections of the Foreign Affairs Manual (FAM) and Foreign Affairs Handbook (FAH) (*http://foia.state.gov/Regs/Search.asp*), specifically:

(i) 12 FAM 230, Personnel Security;

(ii) 12 FAM 500, Information Security (sections 540, 570, and 590);

(iii) 12 FAM 600, Information Security Technology (section 620, and portions of 650);

(iv) 5 FAM 1060, Information Assurance Management; and

(v) 5 FAH 11, Information Assurance Handbook.

(c) *Submittal of IT Security Plan.* Within 30 days after contract award, the Contractor shall submit the IT Security Plan to the Contracting Officer and Contracting Officer's Representative (COR) for acceptance. This plan shall be consistent with and further detail the approach contained in the contractor's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer and COR, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) *Accreditation.* Within six (6) months after contract award, the Contractor shall submit written proof of IT security accreditation for acceptance by the Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. Accreditation must be in accordance with NIST Special Publication 800–37. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The Contractor shall comply with the accepted accreditation documentation.

(e) *Annual verification.* On an annual basis, the Contractor shall submit verification to the Contracting Officer that the IT Security Plan remains valid.

(f) *Warning notices.* The Contractor shall ensure that the following banners are displayed on all DOS systems (both public and

private) operated by the Contractor prior to allowing anyone access to the system:

Government Warning

WARNINGWARNING**WARNING**

Unauthorized access is a violation of U.S. law and Department of State policy, and may result in criminal or administrative penalties. Users shall not access other user's or system files without proper authority. Absence of access controls IS NOT authorization for access! DOS information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

WARNINGWARNING**WARNING**

(g) *Privacy Act notification*. The Contractor shall ensure that the following banner is displayed on all DOS systems that contain Privacy Act information operated by the Contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93–579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to $5,000, or both.

(h) *Privileged or limited privileged access*. Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for DOS or interconnected to a DOS network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(i) *Training*. The Contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB circular A–130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on rules of behavior.

(j) *Government access*. The Contractor shall afford the Government access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of DOS data or to the function of information technology systems operated on behalf of DOS, and to preserve evidence of computer crime.

(k) *Subcontracts*. The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(l) *Notification regarding employees*. The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment when that employee has access to DOS information systems or data.

(m) *Termination*. Failure on the part of the Contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

[72 FR 51569, Sept. 10, 2007]

652.242–70 Contracting Officer's Representative (COR).

As prescribed in 642.272(a), 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; 69 FR 19345, Apr. 13, 2004]

652.242–71–652.242–72 [Reserved]

652.242–73 Authorization and Performance.

As prescribed in 642.272(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 642.272(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, as amended at 69 FR 19345, Apr. 13, 2004]

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]

652.245–70 Status of Property Management System.

As prescribed in 645.107–70(a), insert the following provision:

STATUS OF PROPERTY MANAGEMENT SYSTEM (DEC 2013)

(a) When used in this provision, government-furnished property, government property, and contractor-acquired property are as defined in FAR 45.101.

(b) Offerors shall include in their quote or offer:

(1) Whether the offeror's property management system that will be used on this contract to track government-furnished property and/or contractor-acquired property has been determined to be adequate by a Federal property manager;

(2) The name, address, telephone number and email address of both the–

(i) Cognizant Administrative Contracting Officer (ACO) responsible for review and determination of adequacy of the contractor's property system; and

(ii) The cognizant contractor government property manager;

(3) The voluntary consensus standard or industry leading practices and standards to be used in the management of government property, or existing property management plans, methods, practices or procedures for accountability of property.

(End of provision)

[78 FR 76076, Dec. 16, 2013]

652.245–71 Special Reports of Government Property.

As prescribed in 645.107–70(b), insert the following clause:

SPECIAL REPORTS OF GOVERNMENT PROPERTY (FEB 2015)

(a) *Definitions.* As used in this clause:

Disposition means government property that has been removed from use on the contract.

Highway motor vehicle means any vehicle, self propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers. (41 CFR 102–34.35).

(b) The Contractor shall establish and maintain a property management system that is in accordance with the clause at FAR 52.245–1, Government Property. This clause supplements these requirements by specifying the U.S. Department of State capitalized property reporting requirements.

(c) The Contractor shall submit electronically one report on an annual basis and three other reports on a quarterly basis for the following:

(1) Where highway motor vehicles or aircraft, regardless of cost, are provided by the Government or acquired by the Contractor for the account of the Government;

(2) Where software exceeding $500,000 in value, including labor cost to develop, is provided by the Government or acquired by the Contractor for the account of the Government; or

(3) Where personal property greater than $25,000 (not in paragraph (c)(1) of this clause) is provided by the Government or acquired by the Contractor for the account of the Government. The personal property must be complete within itself; does not lose its identity or become a component part of other property when put into use; and is of a durable nature with an estimated useful life expectancy to exceed two years.

(d) The Contractor shall submit all annual and quarterly reports in the following format, except as stated in paragraph (e) of this clause:

(1) Property shall be grouped by the following property classifications:

(i) Highway motor vehicles;

(ii) Communications equipment;

(iii) Information technology (formerly called automated data processing) equipment;

(iv) Reproduction equipment;

(v) Security equipment;

(vi) Software;

(vii) Software-in-development;

(viii) Medical equipment;

(ix) Aircraft property; and

(x) Other depreciable personal property.

(2) Data elements for each unit of property shall include:

(i) Contract number: Federal Government contract or purchase order number;

(ii) Task Order number;

(iii) Property classification: From classification listed in paragraph (d)(1) of this clause;

(iv) Denotation as either government-furnished property (GFP) or contractor-acquired property (CAP) (If from another DOS contract, or government agency, please specify);

(v) Noun name of property (*i.e.*, generator);

(vi) Description of property;

(vii) Manufacturer;

(viii) Model;

(ix) Serial number;

(x) National Stock Number if applicable

(xi) Unique-item identifier or equivalent: such as barcode label (tag number) or system-assigned number. For highway motor vehicles, this must be the vehicle identification number (VIN);

(xii) Date received: Date contractor took possession;

(xiii) Date placed in service;

(xiv) Acquisition cost (As defined in FAR clause 52.245–1(a)): Use estimated fair-market value for property transferred or donated, at the time acquired, if actual cost is unknown;

(xv) Estimated useful life in years: The period during which the property is expected to provide the service for which it was intended. This should normally be equivalent to the depreciation schedule;

(xvi) Current location of the property: Country and city;

(xvii) Disposal Date;

(xviii) Disposal Method;

(e) The Contractor shall submit a full property report, as described in this clause, including affirmation, for the report covering the first quarter of the base contract. Thereafter, submission of reports shall follow the time frames outlined in paragraph (h) below. Quarterly property reports, other than the annual report, may be either full property reports or only updates to the full property report. Quarterly reports do not require affirmations even when the Contractor chooses to submit a full property report. Affirmations are only required for the report covering the first quarter of the contract and the annual report for each subsequent option year of the contract. If the Contractor submits a full property report, dispositions subsequent to any previous report must also be identified in the report. If a Contractor submits a quarterly report in the form of an update, the update shall include acquisitions and dispositions.

(f) The Contractor shall provide any required affirmation in the following format. The affirmation shall be signed by the Contractor's managerial personnel (as defined in FAR clause 52.245–1):

''I hereby affirm that a physical inventory of the government property (as defined in Federal Acquisition Regulation (FAR) 45.101) of Department of State contract number (*insert contract number*) has been completed as of (*insert date*), the inventory has been reconciled to our records and the property information in our report, and that to the best of my knowledge and belief, this inventory is accurate, current, and complete.

Signed:

_____

Printed:

_____

Title:

_____

Date:

_____

(g) In addition to the information required above, the Contractor shall include in all property reports:

(1) The current degree to which properly qualified Government personnel have evaluated the Contractor's property management system as being an adequate property management system;

(2) The name, mailing address, telephone number, and email address of the qualified Government person(s) who performed the evaluation of the Contractor's property management system; and

(3) The cognizant contractor government property manager.

(h) Reports shall cover the following time periods and are due on the following dates:

Report	Period covered	Due date
1st Quarter Report	For 1st quarter ending December 31	January 15.
2nd Quarter Report (Annual Property Report)	For 2nd quarter ending March 31	April 30.
3rd Quarter Report	For 3rd quarter ending June 30	July 15.
4th Quarter Report	For 4th quarter ending September 30	October 8.

(i) The Contractor shall send a copy of all reports to the individuals listed below. The Contractor shall submit reports in electronic format as an attachment to an email. The affirmation described in paragraph (f) of this clause shall be in Adobe Acrobat (.pdf) format (including the signature), while the inventories, both quarterly and annual, shall be in Microsoft Excel format (Adobe Acrobat and Microsoft Excel versions shall be compatible with versions used by DOS). Send all reports to:

(1) The contracting officer;

(2) The Property Administrator;

(3) The contracting officer's representative (COR);

(4) *Propertyreports@state.gov;*

(5) *RM-FPRA-PROP@state.gov;* and

(6) All individuals listed below (if any): [*contracting officer shall list individuals, if any*].

(j) The Contractor shall cooperate by responding timely to all follow up questions and requests for supporting documentation whether requested by the Department or external auditors.

(End of clause)

[78 FR 76076, Dec. 16, 2013, as amended at 80 FR 6925, Feb. 9, 2015]

652.247–70 Notice of Shipments.

As prescribed in 647.305–70, insert the following clause:

NOTICE OF SHIPMENTS (FEB 2015)

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. Redesignated and amended at 80 FR 6924, 6925, Feb. 9, 2015]

652.247–71 Shipping Instructions.

As prescribed in 647.305–71, insert the following clause:

SHIPPING INSTRUCTIONS (FEB 2015)

(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. Redesignated and amended at 80 FR 6924, 6925, Feb. 9, 2015]

PART 653—FORMS

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653.000 Scope of part.

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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.
653.219–71 DOS form DS–4053, Department of State Mentor-Protégé Program Application.

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.

[53 FR 26180, July 11, 1988, as amended at 69 FR 19345, Apr. 13, 2004; 72 FR 45696, Aug. 15, 2007]

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]

653.219–71 DOS form DS–4053, Department of State Mentor-Protégé Program Application.

As prescribed in 619.102–70(i), DS–4053 is prescribed for use in applying for an agreement under the Department of State Mentor-Protégé Program.

[69 FR 19345, Apr. 13, 2004]

PARTS 654–699 [RESERVED]

FINDING AIDS

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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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523.303 Heading revised; (c) added 36248
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452 Authority citation revised 7480
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570.102 Amended 1533
570.108 (a) amended 1533
570.701 Table amended 1533
552.270–13 Clause amended 68336

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606.304 (a)(2) amended 24707
606.501—606.570 (Subpart 606.5) Heading revised 24707
606.501 (b) amended 24707
608.405—608.405–3 (Subpart 608.4) Added 24707
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609.405–1 Amended 51125
609.405–70 Redesignated as 649.101–70 and transferred to Part 649 51125
609.406–3 (a), (b)(2) through (7), (c)(2) and (d) revised 51126
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652.200—652.247–72 (Subpart 652.2) Heading revised 24707
652.232–72 Introductory text amended 24707

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504.604 Removed 47
516.506 (b) revised; (d) redesignated as (e); new (d) added 2250
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636.513 Revised; interim 58353
637.102–71 Added; interim 58353
642.101 (Subpart 642.1) Added 58351
652.236–70 Revised; interim 58353

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509.105–1 Revised 56740
512 Authority citation revised 7634
512.216 (Subpart 512.2) Added 7634
512.301 (e) added 7634
513.202 (Subpart 513.2) Added 7634
515.408 (c) introductory text amended 3279
532.705—532.706–3 (Subpart 532.7) Added 7634
538.7200—538.7204 (Subpart 538.72) Added 3280
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552.238–82 Clause amended 3280
552.238–82 (d)(4) revised 40684

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501.104 (d) removed 33859
501.105–1 (a) revised; (c) and (d) removed 33860
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511.404 Revised 3716
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515.209–70 Amended 17039
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519.7000—519.7017 (Subpart 519.70) Removed 1411
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536.102 Added 69632
536.213—536.270 (Subpart 536.2) Revised 3717
536.515 Introductory text and (a) amended; (c) added 69632
536.521 Revised 69632
536.570—536.570–13 (Subpart 536.5) Revised 3717
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536.7101—536.7107 (Subpart 536.71) Added 69633
538 Technical correction 44750
538.270 Heading revised 17039
538.271 Heading revised; (a) and (b) amended 17039
538.272 Heading revised; (a) and (b) amended 17039
538.273 Regulation at 73 FR 54338 confirmed 14625
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538.7002 Regulation at 73 FR 54338 confirmed 14625
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538.7004 Regulation at 73 FR 54339 confirmed 14625
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543 Authority citation revised 3718
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552.236–71 Added 3722
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552.236–72 Added 3722
552.236–73 Removed; new section redesignated from 552.236–82; new introductory text revised 3722
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552.236–75 Removed; new section added 3722
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552.238–115 Added 17054
552.243–71 Clause amended 3723

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501.106 Table amended; eff. 10–19–20 50958
504.1103 (a) amended 38337
516.506 (a) amended; (b) and (d) removed; (c) and (e) redesignated as new (b) and (c); eff. 10–19–20 50959
522.804–2 Revised 38337
522.805 (b) and (c) revised 38337
532.905 70 (a) amended; (b) revised; (c) and (d) removed; eff. 11–30–20 61872
552.204–9 Clause amended 38337
552.216–73 Introductory text and Alternate I amended; eff. 10–19–20 50959
552.216–74 Removed; eff. 10–19–20 50959
552.216–75 Introductory text amended; eff. 10–19–20 50959
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552.238–77 Revised 1128
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552.238–82 (b)(3) and Alternate I amended 1128
570.106 (a) through (d) and (f) amended 38337
570.106–1 (a), (b)(2)(ii), and (c) amended 38337
570.306 (c)(4) amended 38337
570.802 (b) removed; (c) and (d) redesignated as new (b) and (c); eff. 10–19–20 50958