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Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State agency submittals are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814-2190, or by e-mail at topsale.jim@epa.gov. Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 2, 2010.

W.C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. 2010-31740 Filed 12-16-10; 8:45 am]

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DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505-AC04

Department of the Treasury Acquisition Regulation

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury is proposing to amend the Department of the Treasury Acquisition Regulation (DTAR) to: update, revise, or remove, as applicable, outdated text and references; add new text to maintain consistency with the Federal Acquisition Regulation (FAR); incorporate Treasury-specific policy associated with current FAR requirements; reflect the Treasury's organization and delegation of authorities; and make minor editorial changes.

DATES: *Comment due date:* February 15, 2011.

ADDRESSES: Treasury invites comments on the topics addressed in this proposed rule. Comments may be submitted to Treasury by any of the following methods: by submitting electronic comments through the federal government e-rulemaking portal, <http://www.regulations.gov>, by e-mail to fernando.tonolete@do.treas.gov mailto; by fax to (202) 622-2273, or by sending paper comments to Department of the Treasury, Office of the Procurement Executive, *Attn:* Fernando Tonolete, 1500 Pennsylvania Avenue, NW., Met. Square Room 6B517, Washington, DC 20220.

In general, Treasury will post all comments to www.regulations.gov without change, including any business or personal information provided, such as names, addresses, e-mail addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622-0990. All comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Fernando Tonolete, Procurement Analyst, Office of the Procurement Executive, at (202) 622-6416.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of the Treasury is in the process of reviewing and updating all of its acquisition policies. As part of this policy review, the Office of the Procurement Executive (OPE) is updating and using as point of reference

the Department of the Treasury Acquisition Regulation (DTAR) 2002 Edition, first published on June 14, 2002, and currently posted at: <http://www.access.gpo.gov/nara/cfr/>. Only regulatory guidance is being published for public comment. Once adopted as a final rule, the DTAR will be maintained separately and combined with Department of the Treasury Acquisition Procedures (DTAP) for expediency of use by Treasury staff. The DTAR and combined DTAR/DTAP will be posted at: <http://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/ProcurementPolicy-Regulations.aspx>.

B. This Proposed Rule

The following describes Treasury's proposed changes to 48 CFR Chapter 10:

Subpart 1001.3 AGENCY ACQUISITION REGULATIONS was added to restate the policy that the DTAR applies throughout the Department of the Treasury except for the US Mint, and that OPE is responsible for the DTAR's evaluation, review and issuance.

Subpart 1001.4 DEVIATIONS FROM THE FAR was added, stating that the Senior Procurement Executive (SPE) is authorized to approve individual contract and class deviations from the FAR and DTAR.

Subpart 1001.6 CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES was added to link by reference and insert in this subpart DTAR 1052.201-70 on Contracting Officer's Technical Representative (COTR) appointment and authority, with the requirement that substantially the same clause be included in all solicitations and contracts.

Editorial and clarification changes were made to section 1001.104 to make it easier for contractors, offerors and Treasury contracting staff to read and use.

Sections 1001.301, 1001.304, 1001.403, 1001.404, 1002.70, 1052.201-70, and 1052.219-73 supplement the FAR by providing paragraph specific designations, delegations of authority within Treasury and/or changed names of offices due to reorganization.

Under Part 1002 DEFINITIONS OF WORDS AND PHRASES definitions were added for:

- All Bureaus and their corresponding acronyms
- Contracting Activity
- Head of Contracting Activity (HCA)
- Head of the Agency

Full definitions were likewise added for the following abbreviations:

- BCPO
- COTR
- HCA
- OPE
- OSDBU
- SPE

Part 1003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST was removed because its applicability is deemed closer to internal Treasury policy and procedure, as opposed to one having an impact on external contracting activity. It has been relocated to the companion Department of the Treasury Acquisition Procedures (DTAP).

Part 1004 ADMINISTRATIVE MATTERS was removed because the requirement concerning contract employees meeting the investigative requirements of the Treasury Security Manual to access classified information is no longer within the DTAR's purview.

Part 1005 PUBLICIZING CONTRACT ACTIONS was removed because the OFPP and SBA pilot program on Acquisition of Services from Small Business has lapsed and has not been extended.

Part 1009 CONTRACTOR QUALIFICATIONS was added to link and insert in this subpart DTAR 1052.210.70 on Contractor Publicity, with the requirement that substantially the same clause be included in all solicitations and contracts.

31 U.S.C. 333(a) prohibits the use of Treasury names, abbreviations, or symbols, in connection with, or as a part of, any advertisement, solicitation, business activity, or product, in a manner that may imply endorsement by Treasury. Substantially the same clause at DTAR 1052.210-70 on Contractor Publicity must be inserted in all solicitations and contracts.

Part 1011 DESCRIBING AGENCY NEEDS was removed because the stipulation that BCPOs can act on behalf of the Head of the Agency in requiring offerors to make the required demonstrations of market acceptance is outdated and/or no longer applies.

Part 1016 TYPES OF CONTRACTS was added to specify that Bureaus must appoint a Task and Delivery Ombudsman to review complaints from contractors, and in the absence of such a designation, the Bureau Competition Advocate will serve in that capacity.

Editorial and clarification changes were made to sections 1019.202-70-4, 1019.202-70-5, 1019.202-70-8, 1019.202-70-9, 1019.202-70-10, 1019.202-70-11, 1019.202-70-12, 1019.202-70-14, 1019.202-70-16, 1019.811-3 to make it easier for

contractors, offerors and Treasury contracting staff to read and use. Furthermore, these provisions, except for 1019.811-3, are being consolidated into a single new section 1019.202-70.

In subdivision 1019.202-70(d), the reference limiting the program to prime contractors is being changed to "contractors."

In subdivision 1019.202-70(e), the title limiting the program to prime contractors is being changed to apply to any "contractor." In addition, this subdivision authorizes incentives in negotiated contract actions. Incentives of up to 5% may apply to non-price factors and, if used, must be included in the solicitation indicating that this adjustment may occur. SBA regulations allow for the development of incentives as a tool for increasing the number of participating mentoring firms.

Subdivision 1019.202-70(h) is being revised to comply with the FAR by adding two additional firm types qualifying as protégés—owned or controlled by a veteran or a qualified 8(a) concern.

Subsection 1019.705-4, paragraph (a)(1) is being removed, since Treasury Directive P 76-01B no longer applies.

Subsection 1028.307-1 requires contractors to submit plans for buying group insurance to the Contracting Officer; and the internal procedure to obtain advice from Legal Counsel was removed.

As of January 6, 2007, the General Services Board of Contract Appeals (GSBCA) was replaced by the Civilian Board of Contract Appeals (CBCA) as the authorized representative of the Secretary of the Treasury for appeals involving contract disputes. Section 1033.201 is being revised to reflect this change.

Part 1034 MAJOR SYSTEM ACQUISITION was added to incorporate the concept of Earned Value Management (EVM). This part consists of multiple pages of detailed text with a full explanation of the core EVM concept which encompasses the following subject areas:

- EVM Policy
- ANSI/EIA Standard-748 criteria
- Acquisition Strategy
- Integrated Baseline Reviews
- Relevant Solicitation Provisions and Contract Clauses

Sections 1034.001, 1034.004, 1034.201, 1034.202, 1034.203, 1052.234-2, 1052.234-3, 1052.234-4, 1052.234-70, 1052.234-71, and 1052.234-72 contain EVM requirements to include informational text, provisions and clauses to be inserted in solicitations and awards with

development, modernization or enhancement (DME) efforts. Projects with DME must be managed using an Earned Value Management System (EVMS) that is compliant with the American National Standards Institute/Engineering Industrial Alliance (ANSI/EIA) Standard 748 (current version). Treasury has established two types of EVM reporting: "Full" EVM reporting—32 ANSI/EIA criteria, and "Core" EVM Reporting—10 ANSI criteria that are a subset of ANSI/EIA 748, which apply to dollar thresholds described in Section 1034.201.

Part 1036 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS was added to provide authorization for bureaus to utilize either or both of the short processes described at FAR 36.602-5 for selecting firms for Construction and Architect-Engineer Services contracts that are not expected to exceed the simplified acquisition threshold.

Subsection 1036.602-5, Treasury authorizes the option of using either short selection process for AE contracts not exceeding the simplified acquisition threshold.

Part 1042 CONTRACT ADMINISTRATION AND AUDIT SERVICES was added to provide text references to contract administration and audit procedures codified in FAR 42.1503 under the authority of 41 U.S.C. 418b.

Editorial and clarification changes were made to sections 1052.201.570, 1052.219-72, and 1052.219-73 to make it easier for contractors, offerors and Treasury contracting staff to read and use.

Section 1052.210-70 CONTRACTOR PUBLICITY was added to address the need for the Contracting Officer's explicit written consent prior to a contractor using equipment or services provided under the contract for news releases or commercial advertising.

Clause 1052.219-75, MENTOR REQUIREMENTS AND EVALUATION is being added to evaluate mentor protégé accomplishments or withdrawal under the agreements; provide notification requirements for withdrawing from program; and provide a notice of the availability of a bonus incentive not to exceed 5% of the relative importance of non-price factors.

Clauses 1052.234-2, 1052.234-3, 1052.234-4, 1052.234.70, 1052.234-71 and 1052.234-72 collectively refer to the EVM concept and were added to explain various stages of the Earned Value Management system.

C. Procedural Matters*Executive Order 12866*

This proposed rule is not a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this proposed rule. It is hereby certified that the changes included in this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act

The revisions are not considered substantive; revisions only update and reorganize existing coverage. Further, the revisions to the Mentor-Protégé program, although having some economic impact on participating small entities, are not expected to affect a substantial number of small entities. The program is designed for mentoring firms to provide developmental assistance to protégés in the areas of management, personnel, organization, technical capability, financial strength, and training/certifications. As a result, the approximately 44 participating small entities may experience short-term gains including an increase in the areas of revenue, number of contract awards, personnel, technical capabilities, and business relationships. Long-term, program participation should provide increased access to prime or subcontractor opportunities at the Treasury. Subsequently, this program serves to improve the Department of the Treasury's small business goal attainment. The U.S. Department of the Treasury invites comments from small businesses to examine the impact proposed on such entities.

Paperwork Reduction Act

The information collections contained in this proposed rule have been previously approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and assigned OMB control numbers 1505-0081; 1505-0080; and 1505-0107. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: November 30, 2010.

Thomas A. Sharpe, Jr.,
Senior Procurement Executive, Office of the Procurement Executive.

Accordingly, the Department of the Treasury proposes to revise 48 CFR Chapter 10 in its entirety, to read as follows:

CHAPTER 10—DEPARTMENT OF THE TREASURY**Subchapter A—General****PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATION (DTAR) SYSTEM**

Part

- 1001 Department of the Treasury Acquisition Regulation (DTAR) System
1002 Definitions of Words and Terms

Subchapter B—Acquisition Planning

- 1009 Contractor Qualifications

Subchapter C—Contracting Methods and Contract Types

- 1016 Types of Contracts

Subchapter D—Socioeconomic Programs

- 1019 Small Business Programs

Subchapter E—General Contracting Requirements

- 1028 Bonds and Insurance
1032 Contract Financing
1033 Protests, Disputes, and Appeals

Subchapter F—Special Categories of Contracting

- 1034 Major System Acquisition
1036 Construction and Architect-Engineer Contracts

Subchapter G—Contract Management

- 1048 Value Engineering

Subchapter H—Clauses and Forms

- 1052 Solicitation Provisions and Contract Clauses

Subchapter A—General**PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATION (DTAR) SYSTEM****Subpart 1001.1—Purpose, Authority, Issuance**

Sec.

- 1001.101 Purpose.
1001.104 Applicability.
1001.105 Issuance.
1001.105-1 Publication and code arrangement.
1001.105-2 Arrangement of regulations.
1001.105-3 Copies.
1001.106 OMB Approval under the Paperwork Reduction Act.

Subpart 1001.3—Agency Acquisition Regulations

- 1001.301 Policy.
1001.304 Agency control and compliance procedures.

Subpart 1001.4—Deviations From the FAR

- 1001.403 Individual Deviations.
1001.404 Class Deviations.

Subpart 1001.6—Career Development, Contracting Authority and Responsibilities

- 1001.670 Contract clause.

Authority: 41 U.S.C. 418b.

Subpart 1001.1—Purpose, Authority, Issuance**1001.101 Purpose.**

This subpart establishes Chapter 10, the Department of the Treasury Acquisition Regulation (DTAR), within Title 48 of the Federal Acquisition Regulation (FAR) System. The DTAR contains policies and procedures that supplement FAR coverage and directly affect the contractual relationship between the Department of the Treasury and its business partners (*e.g.*, prospective offerors/bidders and contractors). When FAR coverage is adequate, there will be no corresponding DTAR coverage.

1001.104 Applicability.

The DTAR applies to all acquisitions of supplies and services, which obligate appropriated funds. For acquisitions made from non-appropriated funds, the Senior Procurement Executive will determine the rules and procedures that will apply. The DTAR does not apply to the acquisitions of the U.S. Mint.

1001.105 Issuance.**1001.105-1 Publication and code arrangement.**

The DTAR and its subsequent changes will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). The DTAR will be issued as 48 CFR Chapter 10.

1001.105-2 Arrangement of regulations.

(a) *References and citations.* The DTAR is divided into the same parts, subparts, sections, subsections, and paragraphs as the FAR except that 10 or 100 will precede the DTAR citation so that there are four numbers to the left of the first decimal. Reference to DTAR material must be made in a manner similar to that prescribed by FAR 1.105-2(c).

1001.105-3 Copies.

Copies of the DTAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

1001.106 OMB Approval under the Paperwork Reduction Act.

OMB has assigned the following control numbers that must appear on

the upper right corner of the face page of each solicitation, contract, modification, and order: OMB Control No. 1505-0081 (Offeror submissions), OMB Control No. 1505-0080 (Contractor submissions), OMB Control No. 1505-0107 (Protests). OMB regulations and OMB's approval and assignment of control numbers are conditioned upon Treasury bureaus not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

Subpart 1001.3—Agency Acquisition Regulations

1001.301 Policy.

(a)(1) The DTAR (48 CFR Chapter 10) is issued for Treasury implementation in accordance with the authority cited in FAR 1.301(b). The DTAR supplements the Federal Acquisition Regulation by establishing uniform policies for all acquisition activities throughout the Department of the Treasury, except for the United States Mint.

1001.304 Agency control and compliance procedures.

(a) The DTAR is under the direct oversight and control of Treasury's Office of the Procurement Executive (OPE), which is responsible for the evaluation, review, and issuance of all Department-wide acquisition regulations and guidance.

Subpart 1001.4—Deviations from the FAR

1001.403 Individual deviations.

The SPE is authorized to approve individual contract FAR and DTAR deviations.

1001.404 Class deviations.

(a) The SPE is authorized to approve class FAR and DTAR deviations.

Subpart 1001.6—Career Development, Contracting Authority and Responsibilities

1001.670 Contract clause.

Contracting Officers must insert a clause substantially similar to the clause in section 1052.201-70, Contracting Officer's Technical Representative (COTR) Appointment and Authority, in all solicitations and contracts. Exceptions to the requirement for

inclusion of the COTR clause and the appointment of a COTR may be made at the discretion of the BCPO.

PART 1002—DEFINITIONS OF WORDS AND TERMS

Sec.

Subpart 1002.1—Definitions

1002.101 Definitions.

1002.70 Abbreviations.

Authority: 41 U.S.C. 418b.

Subpart 1002.1—Definitions

1002.101 Definitions.

Bureau means any one of the following Treasury organizations:

(1) Alcohol and Tobacco Tax and Trade Bureau (TTB);
(2) Bureau of Engraving & Printing (BEP);

(3) Bureau of Public Debt (BPD);

(4) Departmental Offices (DO);

(5) Financial Crimes Enforcement

Network (FinCEN);

(6) Financial Management Service (FMS);

(7) Inspector General (OIG);

(8) Internal Revenue Service (IRS);

(9) Office of the Comptroller of the Currency (OCC);

(10) Office of Thrift Supervision (OTS);

(11) Special Inspector General for the Troubled Asset Relief Program (SIGTARP);

(12) Treasury Inspector General for Tax Administration (TIGTA); or

(13) U.S. Mint.

Bureau Chief Procurement Officer (BCPO) means the senior acquisition person at each headquarters office or bureau. Within the Internal Revenue Service, this may be the Director, Procurement or the Deputy Director, Procurement.

Contracting Activity means an organization within a bureau or the Departmental Offices, having delegated acquisition authority.

Head of Contracting Activity (HCA) means the Senior Procurement Executive for Departmental Offices, the Deputy Commissioner for Operations Support for the Internal Revenue Service, and the heads of each bureau, as listed in section 1.b.(1) of Department of the Treasury Directive 12-11.

Head of the Agency means the Assistant Secretary for Management and Chief Financial Officer as designated by Treasury Order 101-30.

Legal Counsel means the Treasury or bureau office providing legal services to the contracting activity.

Senior Procurement Executive (SPE) for the Department of the Treasury is the Director, Office of the Procurement Executive.

1002.70 Abbreviations.

BCPO Bureau Chief Procurement Officer
COTR Contracting Officer's Technical Representative

HCA Head of the Contracting Activity

OPE Office of the Procurement Executive

OSDBU Office of Small and Disadvantaged Business Utilization

SPE Senior Procurement Executive

Subchapter B—Acquisition Planning

PART 1009—CONTRACTOR QUALIFICATIONS

Subpart 1009.2—Qualifications Requirements

Sec.

1009.204-70 Contractor Publicity.

Authority: 41 U.S.C. 418b.

Subpart 1009.2—Qualifications Requirements

1009.204-70 Contractor Publicity.

31 U.S.C. 333(a) prohibits the use of Treasury names, abbreviations, or symbols, in connection with, or as a part of, any advertisement, solicitation, business activity, or product, in a manner that may imply endorsement by Treasury. Bureaus shall insert a clause substantially the same as 1052.210-70 Contractor Publicity in all solicitations and contracts.

Subchapter C—Contracting Methods and Contract Types

PART 1016—TYPES OF CONTRACTS

Subpart 1016.5—Indefinite-Delivery Contracts

Sec.

1016.505 Ordering.

Authority: 41 U.S.C. 418b.

Subpart 1016.5—Indefinite-Delivery Contracts

1016.505 Ordering.

(b)(6) Bureaus shall designate a Task and Delivery Ombudsman in accordance with bureau procedures. In the absence of a designation, the Bureau Competition Advocate will serve in that capacity.

Subchapter D—Socioeconomic Programs

PART 1019—SMALL BUSINESS PROGRAMS

Subpart 1019.2—Policies

Sec.

1019.202 Specific policies.

1019.202-70 Treasury's Mentor-Protégé Program.

Subpart 1019.7—The Small Business Subcontracting Program.

1019.705 Responsibilities of the Contracting Officer Under the Subcontracting Assistant Program.

1019.705-4 Reviewing the Subcontracting Plan.

Subpart 1019.8—Contracting With the Small Business Administration (The 8(a) Program)

1019.811 Preparing the contracts.

1019.811-3 Contract clauses.

Authority: 41 U.S.C. 418b.

Subpart 1019.2—Policies

1019.202 Specific policies.

1019.202-70 The Treasury Mentor Protégé Program.

(a) [Reserved]

(b) [Reserved]

(c) *Non-affiliation.* For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in paragraph (m) of this section, from such mentor firm under the Mentor-Protégé Program.

(d) *General policy.* (1) Eligible contractors, not included on the “List of Parties Excluded from Federal Procurement and Nonprocurement Programs,” that are approved as mentors will enter into agreements with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors or subcontractors.

(2) A firm’s status as a protégé under a Treasury contract shall not have an effect on the firm’s eligibility to seek other contracts or subcontracts.

(e) *Incentives for contractor participation.* (1) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), Treasury is authorized to provide appropriate incentives in negotiated contractual actions to encourage subcontracting opportunities consistent with the efficient and economical performance of the contract. Proposed mentor-protégé efforts will be considered during the evaluation of such negotiated, competitive offers. Contracting Officers may provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the non-price factors. If this incentive is used, the Contracting Officer shall include language in the solicitation indicating that this adjustment may occur.

(2) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance (if any) under such an existing arrangement, will be considered by the Contracting Officer in:

(i) Evaluating the quality of a proposed subcontracting plan under FAR 19.705-4; and

(ii) Evaluating the contractor compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705-5(a)(1).

(3) The Office of Small and Disadvantaged Business Utilization (OSDBU) Mentoring Award is a non-monetary award that will be presented (annually on a fiscal year basis or as often as is 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 Director, OSDBU.

(f) [Reserved]

(g) *Mentor firms.* A mentor firm may be either a large or small business, eligible for award of a Government contract that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors. Mentors will be encouraged to enter into arrangements with protégés in addition to firms with whom they have established business relationships.

(h) *Protégé firms.* (1) For selection as a protégé, a firm must be:

(i) A small business, women-owned small business, small disadvantaged business, small business owned and controlled by veteran or service disabled veteran, or qualified HUBZone small business, or a qualified 8(a) concern;

(ii) Qualified as a small business under the NAICS code for the services or supplies to be provided by the protégé under its subcontract to the mentor; and

(iii) Eligible for award of Government contracts.

(2) Except small disadvantaged businesses and qualified HUBZone small business firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (h)(1) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. In paragraph (h)(1)(i) of this section, small disadvantaged business, or qualified HUBZone small business status eligibility and documentation requirements are determined according to FAR 19.304 and 19.1303, respectively.

(3) Protégés may not have multiple mentors unless approved, in writing, by the Director, OSDBU. Protégés participating in other agency mentor protégé programs in addition to the Treasury Mentor-Protégé 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 will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1019.202-70(h). Mentor firms may have multiple protégés.

(2) The selection of protégé firms by mentor firms may not be protested. Any question regarding the size or eligibility status of an entity selected by a mentor to be a protégé must be referred solely to Treasury’s OSDBU for resolution. Treasury, at its discretion, may seek an advisory opinion from the Small Business Administration (SBA).

(j) *Application process for mentor firms to participate in the program.* (1) Firms interested in becoming a mentor firm may apply in writing to Treasury’s OSDBU. The application will be evaluated based upon the description of the nature and extent of technical and managerial support proposed as well as the extent of other developmental assistance in the form of equity investment, loans, joint-venture support and traditional subcontracting support.

(k) *OSDBU review and approval process of agreement.* (1) OSDBU will review the information specified in 1019.202-70(l). The OSDBU review will be completed no later than 30 calendar days after receipt.

(2) Upon completion of the review, the mentor may implement the developmental assistance program.

(3) An approved agreement will be incorporated into the mentor firm’s contract(s) with Treasury.

(4) If OSDBU disapproves the agreement, the mentor may provide additional information for reconsideration. Upon finding deficiencies that OSDBU considers correctable, OSDBU will notify the mentor and provide a list of defects. Any additional information or corrections requested will be provided within 30 calendar days. The review of any supplemental material will be completed within 30 calendar days after receipt by OSDBU. When submission of additional data is required during a proposal evaluation for a new contract award, shorter timeframes for submission, review and re-evaluation for approval may be authorized by OSDBU.

(5) 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 Treasury.

(l) *Agreement contents.* The contents of the agreement will contain:

(1) Names and addresses of mentor and protégé firms and a point of contact

within both firms who will oversee the agreement;

(2) Procedures for the mentor firm to notify the protégé firm, OSDBU and the Contracting Officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Mentor-Protégé Program;

(3) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor must notify OSDBU and the Contracting Officer immediately upon receipt of such notice from the protégé;

(4) Each proposed mentor-protégé relationship must include information on the mentor's ability to provide developmental assistance to the protégé and how that assistance will potentially increase contracting and subcontracting opportunities for the protégé firm;

(5) A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, to include a description of the potential subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégés' developmental success;

(6) A listing of the types and dollar amounts of subcontracts that may be awarded to the protégé firm;

(7) Program participation term;

(8) Termination procedures;

(9) Plan for accomplishing work should the agreement be terminated; and

(10) Other terms and conditions, as appropriate.

(m) *Developmental assistance.* The forms of developmental assistance a mentor can provide to a protégé include:

(1) Management guidance relating to financial management, organizational management, overall business management/planning, business development, and 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 mutually beneficial assistance.

(n) *Obligation.* (1) Mentor or protégé firms may voluntarily withdraw from the Mentor-Protégé Program. However, such withdrawal shall not excuse the contractor from compliance with contract requirements.

(2) At the conclusion of each year in the Mentor-Protégé Program, the contractor and protégé must formally brief the Department of the Treasury team regarding program

accomplishments as they pertain to the approved agreement. Individual briefings may be conducted, at the request of either party. Treasury will consider the following:

(i) Specific actions taken by the mentor, during the evaluation period, to increase the participation of protégés as suppliers to the Federal 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 Department of the Treasury.

(v) Mentor and protégé firms must submit an evaluation to 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 Mentor-Protégé Program, whichever comes first.

(o) [Reserved]

(p) *Solicitation provisions and contract clauses* (1) Insert the provision at 1052.219-73, Department of the Treasury Mentor-Protégé Program, in all unrestricted solicitations exceeding \$500,000 (\$1,000,000 for construction) that offer subcontracting possibilities.

(2) Insert the clause at 1052.219-75, Mentor Requirements and Evaluation, in contracts where the contractor is a participant in the Treasury Mentor-Protégé Program.

Subpart 1019.8—Contracting With the Small Business Administration (The 8(A) Program)

1019.811 Preparing the contracts.

1019.811-3 Contract clauses.

(d)(3) Insert the clause at 1052.219-18, Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation), for paragraph (c) of FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in all solicitations and contracts that exceed \$100,000 and are processed under 1019.8.

(f) Insert the clause at 1052.219-72, Section 8(a) Direct Awards, in solicitations and contracts that exceed \$100,000 and are processed under 1019.8 for paragraph (c) of FAR 52.219-11, Special 8(a) Contract Conditions; FAR 52.219-12, Special 8(a) Subcontract Conditions; and FAR 52.219-17, Section 8(a) Award.

Subchapter E—General Contracting Requirements

PART 1028—BONDS AND INSURANCE

Subpart 1028.3—Insurance

Sec.

1028.307 Insurance under cost-reimbursement contracts.

1028.307-1 Group insurance plans.

1028.310 Contract clause for work on a Government installation.

1028.310-70 Contract clause.

1028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1028.311-2 Agency solicitation provisions and contract clauses.

Authority: 41 U.S.C. 418b.

Subpart 1028.3—Insurance

1028.307 Insurance under cost-reimbursement contracts.

1028.307-1 Group insurance plans.

(a) Plans shall be submitted to the CO.

(b) [Reserved]

1028.310 Contract clause for work on a Government installation.

1028.310-70 Contract clause.

(a) Insert a clause substantially similar to 1052.228-70, "Insurance Requirements," in all solicitations and contracts that contain the clause at FAR 52.228-5.

1028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1028.311-2 Agency solicitation provisions and contract clauses.

Insert a clause substantially similar to 1052.228-70, "Insurance Requirements," in all solicitations and contracts that contain the clause at FAR 52.228-7.

PART 1032—CONTRACT FINANCING

Subpart 1032.1—Non-Commercial Item Purchase Financing

Sec.

1032.113 Customary contract financing.

Subpart 1032.2—Commercial Item Purchase Financing

1032.202 General.

1032.202-1 Policy.

Authority: 41 U.S.C. 418b.

Subpart 1032.1—Non-Commercial Item Purchase Financing

1032.113 Customary contract financing.

The specified arrangements are considered customary within Treasury.

Subpart 1032.2—Commercial Item Purchase Financing

1032.202 General.

1032.202–1 Policy.

(b)(2) Commercial interim payments and commercial advance payments may also be made when the contract price is at or below the simplified acquisition threshold.

PART 1033—PROTESTS, DISPUTES, AND APPEALS

Subpart 1033.2—Disputes and Appeals

Sec.

1033.201 Definitions.

Authority: 41 U.S.C. 418b.

Subpart 1033.2—Disputes and Appeals

1033.201 Definitions.

Agency Board of Contract Appeals means the Civilian Board of Contract Appeals (CBCA). The CBCA is the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of Contracting Officers filed by contractors pursuant to FAR Subpart 33.2. Appeals are governed by the Rules of Procedure of the CBCA.

Subchapter F—Special Categories of Contracting

PART 1034—MAJOR SYSTEM ACQUISITION

Subpart 34.0—General

Sec.

1034.001 Definitions.

1034.004 Acquisition strategy.

Subpart 34.2—Earned Value Management System

1034.201 Policy.

1034.202 Integrated Baseline Reviews.

1034.203 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 418b.

Subpart 34.0—General

1034.001 Definitions.

Core Earned Value Management is a process for ensuring that the contractor's self-validated earned value management system is capable of producing earned value management data and meets, at a minimum, the following core ANSI/EIA Standard-748 criteria:

(1) (ANSI #1) Define the authorized work elements for the program. A work breakdown structure (WBS), tailored for effective internal management control, is commonly used in this process.

(2) (ANSI #2) Identify the program organizational structure including the major subcontractors responsible for

accomplishing the authorized work, and define the organizational elements in which work will be planned and controlled.

(3) (ANSI #3) Provide for the integration of the company's planning, scheduling, budgeting, work authorization, and cost accumulation processes with each other, and as appropriate, the program WBS and the program organizational structure.

(4) (ANSI #6) Schedule the authorized work in a manner that describes the sequence of work and identifies significant task interdependencies required to meet the needs of the program.

(5) (ANSI #7) Identify physical products, milestones, technical performance goals, or other indicators that will be used to measure progress.

(6) (ANSI #8) Establish and maintain a time-phased budget baseline, at the control account level, against which program performance can be measured. Initial budgets established for performance measurement will be based on either internal management goals or the external customer negotiated target cost including estimates for authorized but vaguely defined work. Budget for far-term efforts may be held in higher-level accounts until an appropriate time for allocation at the control account level. On government contracts, if an over-target baseline is used for performance measurement reporting purposes, prior notification must be provided to the customer.

(7) (ANSI #16) Record direct costs in a manner consistent with the budgets in a formal system controlled by the general books of account.

(8) (ANSI #22) At least on a monthly basis, generate the following information at the control account and other levels as necessary for management control using actual cost data from, or reconcilable with, the accounting system:

(i) Comparison of the amount of planned budget and the amount of budget earned for work accomplished. This comparison provides the schedule variance.

(ii) Comparison of the amount of the budget earned and the actual (applied where appropriate) direct costs for the same work. This comparison provides the cost variance.

(9) (ANSI #27) Develop revised estimates of cost at completion based on performance to date, commitment values for material, and estimates of future conditions. Compare this information with the performance measurement baseline to identify variances at completion important to management and any applicable

customer reporting requirements, including statements of funding requirements.

(10) (ANSI #28) Incorporate authorized changes in a timely manner, recording the effects of such changes in budgets and schedules. In the directed effort prior to negotiation of a change, base such revisions on the amount estimated and budgeted to the program organizations.

Development, Modernization, Enhancement (DME) is the portion of an IT investment/project which deals with developing and implementing new or enhanced technology in support of an agency's mission.

Major acquisitions for development are defined as contracts, awarded in support of one or more Major IT investments with DME activities, which meet the contract threshold for fully applying FAR 34.2 procedures.

Performance-based acquisition management means a documented, systematic process for program management, which includes integration of program scope, schedule and cost objectives, establishment of a baseline plan for accomplishment of program objectives, and use of earned value techniques for performance measurement during execution of the program. A performance-based acquisition (as defined in FAR 37.101) or an acquisition with a defined quality assurance plan that includes performance standards/measures should be the basis for monitoring the contractor.

1034.004 Acquisition strategy.

(a) A program manager's acquisition strategy written at the system or investment level in accordance with FAR 7.103(e) shall include at a minimum:

(1) The relationship of each individual acquisition (Contract, Delivery Order, Task Order, or Interagency Agreement) to the overall investment requirements and management structure;

(2) What work is being performed in-house (by government personnel) versus contracted out for the investment;

(3) A description of the effort, by acquisition, and the plans to include required clauses in the acquisitions;

(4) A timetable of major acquisition award and administration activities, including plans for contract transitions;

(5) An investment/system surveillance plan;

(6) Financial and human resource requirements to manage the acquisition processes through the investment lifecycle;

(7) Consideration of optimal contract types, including considerations of performance based approaches, small business utilization, Section 508, etc.; and

(8) Assurances that the acquisition strategy section and supporting acquisition plans will maximize competition, including enabling downstream competition through avoidance of vendor “lock in”.

(b) The acquisition strategy shall be approved by a chartered interdisciplinary acquisition team that includes a representative of the procurement organization designated in accordance with bureau procedures.

Subpart 34.2—Earned Value Management System

1034.201 Policy.

(a) An Earned Value Management System (EVMS) is required for major acquisitions for development/modernization/enhancement (DME) in accordance with OMB Circular A–11. This includes prototypes and tests to select the most cost effective alternative during the Planning Phase, the work during the Acquisition Phase, and any developmental, modification or upgrade work done during the Operational/ Steady State Phase. EVMS is to be applied to contractor efforts regardless of contract type. The Contracting Officer

shall procure the Contractor-developed component(s) of major project(s) that have been vetted through the Treasury governance process and the acquisition has been identified by the program manager as requiring the Contractor’s use of an EVMS. In addition to major acquisitions for development, the Department of the Treasury may also require the Contractor’s use of an EVMS for other acquisitions. The following thresholds apply to DME costs at the Contract Line Item Number (CLIN) level for performance-based acquisitions and to DME costs at the acquisition level (Contract, Task Order, or IAG) for non-performance-based contracts:

Contract, task order, IAG, or CLIN value	Reporting requirements for IT investments	Applicable ANSI/EIA criteria	Level of EVMS validation/ acceptance	IBR required	Level of EVMS surveillance (contractor)
> \$50 M	Full	32	CFA ¹ Acceptance ..	Yes	CFA Surveillance unless another interested party alternative is requested by the Bureau and approved by the Treasury CIO. Treasury/Bureau Surveillance.*
Between \$20M and \$50 M.	Full	32	Contractor Self-Validation.	Yes	
< \$20M	Core	10	Contractor Self-Validation.	Independent Baseline Validation IBR (Core).	

* In accordance with Bureau Annual Surveillance Strategy.
¹ CFA—Cognizant Federal Agency (See FAR 42.003).

For the purpose of this Subpart, CLIN may be interpreted as a single Contract Line Item Number, Contract Line Item Number with Sub-CLINs, or Multiple Contract Line Item Numbers included in a single DME effort. Do not break down any DME effort below the aggregation of the requirement to avoid use of the actual threshold prescriptions.

(b) *Acquisition Planning.* All written acquisition plans shall include the following:

(1) A determination from the requirements official as to whether the program is a major acquisition as defined under OMB Circular A–11 and FAR Part 34;

(2) If so, whether the program is required to include EVM and if the Contractor is required to use an EVMS;

(3) If so, whether the program official is EVM trained and qualified or has support from someone who is EVM trained and certified; and

(4) Whether a Full Integrated Baseline Review (IBR) will be completed within 90 days when the acquisition DME value is \$20 Million or more, or a Core Integrated Baseline Review when the acquisition DME value is less than \$20 Million.

(c) Solicitations and Awards. Unless a waiver has been granted (See Paragraph (e), below), all solicitations and awards for major investments with DME valued

at \$20 Million or more require EVMS from the Contractor and its Subcontractor as follows:

(1) FAR Clause 52.234–4, Earned Value Management System; and, as appropriate, 1052.234–4, Earned Value Management System Alternate I (See 1034.203 below), must contain a requirement that the Contractor and its subcontractors have:

(i) AN EVMS that has been determined as meeting the Full criteria of ANSI/EIA Standard-748 compliance (valued at \$20 Million or more);

(ii) An EVMS that has been determined as meeting the Core criteria of ANSI/EIA Standard-748 compliance (valued at below \$20 Million, See 5. DTAR Special Solicitation Provisions and Contract Clauses, 1052.234–2 and 1052.234–3); or

(iii) That the Contractor deliver a plan to provide EVM data that meets the standard.

(2) Provide for the completion of an IBR, or, as appropriate, for subcontracts with DME less than \$20 million, an IBR (Core) that meets the Government standard, and r provide periodic reporting of the EVM data.

(3) All EVM determinations as set forth in paragraphs 3(c)(i)(A) and (B), above, shall be documented in the pre-award and contract files, as appropriate.

(d) *Program Management.* For those acquisitions to which EVM applies, the program manager (PM)/(COTR) shall:

(1) Ensure that EVM requirements are included in the acquisition Statement of Objectives (SOO), Performance Work Statement (PWS), or Statement of Work (SOW);

(2) Determine whether the Contractor’s EVMS (and that of its subcontractors) is ANSI/EIA Standard 748 compliant, or determine whether the Contractor’s plan to provide EVM data meets the required standard; and

(3) Validate and approve the IBR/IBR (Core) and the subsequently issued EVM reports. These program management requirements shall be included in the Contracting Officer’s written appointment letter to the COTR.

(e) Waivers. In accordance with Bureau policy, a waiver(s) to the guidance described within the Department of the Treasury Earned Value Management Guide (Treasury EVM Guide) may be granted by the Departmental Treasury CIO based on Bureau documented and Bureau CIO approved requests. Examples of waiver justifications may include, but are not limited to:

- (1) Urgency of work to be performed;
- (2) Limited duration of work to be performed;

- (3) Cost of adding EVMS requirement to a contract versus benefit achieved;
- (4) Percentage of DME costs vis-à-vis the life cycle investment costs; and
- (5) Level of risk.

1034.202 Integrated Baseline Reviews.

(a) When an EVMS is required, and depending on the DME CLIN value threshold, the Government will conduct a Full IBR or a Core IBR.

(b) The purpose of the Full IBR and the Core IBR is to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in offerors'/contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks.

(c) Both the IBR and the IBR (Core) are joint assessments by the offeror or Contractor, and the Government, of the—

(1) Ability of the project's technical plan to achieve the objectives of the scope of work;

(2) Adequacy of the time allocated for performing the defined tasks to successfully achieve the project schedule objectives;

(3) Ability of the Performance Measurement Baseline (PMB) to successfully execute the project and attain cost objectives, recognizing the relationship between budget resources, funding, schedule, and scope of work;

(4) Availability of personnel, facilities, and equipment when required, to perform the defined tasks needed to execute the program successfully; and

(5) The degree to which the management process provides effective and integrated technical/schedule/cost planning and baseline control.

(d) An IBR/IBR (Core) may be held either pre- or post-award; however, the post-award IBR/IBR (Core) must be completed within 90 days after award, or the Contracting Officer shall obtain a copy of the Program Manager's written review of the requirement and assessment of the IBR/IBR (Core) timing based on the risk associated with the acquisition. While a post-award IBR is preferred, a pre-award IBR will be acceptable. Note: The IBR (Core) may be included within the Quality Assurance Surveillance Plan (QASP).

(e) The solicitation and award shall include the process and schedule for EVMS validation as meeting the ANSI/EIA 748 through EVMS Compliance Recognition documents or a Compliance Evaluation Review where a compliance document does not exist, and periodic systems surveillance.

1034.203 Solicitation provisions and contract clauses.

(a) For major investment acquisitions that included a DME effort value of greater than \$50 Million, the Contracting Officer shall follow the requirements provided at FAR Subpart 34.203.

(b) For major investment acquisitions that include a DME effort with a value between \$20–\$50 Million:

(1) The Contracting Officer shall insert the FAR provision at FAR 52.234–2, Notice of Earned Value Management System—Pre-Award IBR, with the clause at 1052.234–2, Notice of Earned Value System—Pre-Award Alternate I in solicitations and awards that require the contractor to use an EVMS and for which the Government requires an IBR prior to award.

(2) The Contracting Officer shall insert the FAR provision at FAR 52.234–3, Notice of Earned Value Management System—Post-Award IBR, with 1052.234–3, Notice of Earned Value System—Post-Award Alternate I in solicitations and awards that require the contractor to use and Earned Value Management System (EVMS) and for which the Government requires an IBR after award.

(3) The contracting officer shall insert the FAR clause at FAR 52.234–4, Earned Value Management System, with 1052.234–4, Earned Value Management System Alternate I, in solicitations and awards that require a contractor to use an EVMS.

(c) For major acquisitions that include a DME effort with a value of less than \$20 Million:

(1) The Contracting Officer shall insert the provision 1052.234–70, Notice of Earned Value Management System—Pre-Award IBR (Core), in solicitations for awards that require the contractor to use an Earned Value Management System (EVMS) and for which the Government requires an IBR prior to award.

(2) The Contracting Officer shall insert the provision 1052.234–71, Notice of Earned Value Management System—Post-Award IBR (Core), in solicitations for contracts that require the contractor to use an Earned Value Management System (EVMS) and for which the Government requires an IBR after award.

(3) The Contracting Officer shall insert the clause 1052.234–72, Core Earned Value Management System, in solicitations and awards that require a contractor to use an EVMS.

PART 1036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1036.6—Architect-Engineer Services

Sec.

1036.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Authority: 41 U.S.C. 418b.

Subpart 1036.6—Architect-Engineer Services

1036.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Bureaus are authorized to use either process.

Subchapter G—Contract Management

PART 1042—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.

1042.1500 Procedures.

Authority: 41 U.S.C. 418b.

1042.1500 Procedures.

Contracting Officers are responsible for preparing interim and final past performance evaluations.

Subchapter H—Clauses and Forms

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1052.2—Texts of Provisions and Clauses

Sec.

1052.201–70 Contracting Officer's Technical Representative (COTR) Appointment and Authority.

1052.210–70 Contractor Publicity.

1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).

1052.219.72 Section 8(a) Direct Awards.

1052.219–73 Department of the Treasury Mentor-Protégé Program.

1052.219–75 Mentor Requirements and Evaluation.

1052.228–70 Insurance Requirements.

1052.234–2 Notice of Earned Value Management System—Pre-Award IBR—Alternate I.

1052.234–3 Notice of Earned Value Management System—Post-Award IBR—Alternate I.

1052.234–4 Earned Value Management System—Alternate I.

1052.234–70 Notice of Earned Value Management System—Pre-Award IBR (Core).

1052.234–71 Notice of Earned Value Management System—Post-Award IBR (Core).

1052.234–72 Core Earned Value Management System.

Authority: 41 U.S.C. 418b.

Subpart 1052.2—Texts of Provisions and Clauses

1052.201–70 Contracting Officer's Technical Representative (COTR) appointment and authority.

As prescribed in 1001.670–6, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) APPOINTMENT AND AUTHORITY (Date TBD)

(a) The COTR is _____ [insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COTR identified above, or a representative designated in writing. The term "technical direction" includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COTR does not have authority to issue technical direction that:

(1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;

(2) Constitutes a change as defined in the clause entitled "Changes";

(3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;

(4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;

(5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or

(6) Directs, supervises or otherwise controls the actions of the contractor's employees.

(d) Technical direction may be oral or in writing. The COTR must confirm oral direction in writing within five workdays, with a copy to the Contracting Officer.

(e) The Contractor shall proceed promptly with performance resulting from the technical direction issued by the COTR. If, in the opinion of the contractor, any direction of the COTR or the designated representative falls within the limitations of (c) above, the contractor shall immediately notify the Contracting Officer no later than the beginning of the next Government work day.

(f) Failure of the Contractor and the Contracting Officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled "Disputes."

(End of Clause)

1052.210–70 Contractor publicity.

As prescribed in 1009.204–70, insert the following clause:

CONTRACTOR PUBLICITY (Date TBD)

The Contractor, or any entity or representative acting on behalf of the

Contractor, shall not refer to the equipment or services furnished pursuant to the provisions of this contract in any news release or commercial advertising, or in connection with any news release or commercial advertising, without first obtaining explicit written consent to do so from the Contracting Officer. Should any reference to such equipment or services appear in any news release or commercial advertising issued by or on behalf of the Contractor without the required consent, the Government shall consider institution of all remedies available under applicable law, including 31 U.S.C. 333, and this contract. Further, any violation of this provision may be considered during the evaluation of past performance in future competitively negotiated acquisitions.

(End of Clause)

1052.219–18 Notification of competition limited to eligible 8(a) concerns—Alternate III (Deviation) (May 1998).

In accordance with 1019.811–3(d)(3), substitute the following for the paragraph (c) in FAR 52.219–18:

(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.

1052.219–72 Section 8(a) direct awards.

As prescribed in 1019.811–3(f), insert the following clause:

8(A) BUSINESS DEVELOPMENT PROGRAM AWARDS (June 2003)

(a) This purchase/delivery/task order or contract is issued by the contracting activity directly to the 8(a) program participant/contractor pursuant to the Partnership Agreement between the Small Business Administration (SBA) and the Department of the Treasury. However, the Small Business Administration is the prime contractor and 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) Business Development program. The cognizant SBA district office is:

[To be completed by the contracting officer at the time of award]

(b) The contracting officer is responsible for administering the purchase/delivery/task order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase/delivery/task order or contract, to include providing the cognizant SBA district office with a signed copy of the purchase/delivery/task order or contract award within 15 days of the award. However, the 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 contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the contracting officer, simultaneously 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 control; and,

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of Clause)

1052.219–73 Department of the Treasury Mentor-Protégé Program.

As prescribed in 1019.202–70.(p), insert the following clause:

DEPARTMENT OF THE TREASURY MENTOR-PROTÉGÉ PROGRAM (June 2003)

(a) Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protégé Program. Mentor firms provide small business protégés with developmental assistance to enhance their 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.

Developmental assistance includes technical, managerial, financial, and other mutually beneficial assistance to aid protégés. Contractors interested in participating in the Program are encouraged to contact the Department of the Treasury Office of Small and Disadvantaged Business Utilization for further information.

(End of Provision)

1052.219–75 Mentor Requirements and Evaluation.

As prescribed in 1019.202–70(p), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (Date TBD)

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's Office of Small and Disadvantaged Business Utilization (OSDBU) at the conclusion of the mutually agreed upon Program period, 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 the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.

(b) A mentor or protégé must 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 must notify the OSDBU and the contracting officer upon

receipt of a protégé's notice of withdrawal from the Program.

(c) Contracting officers may provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the non-price factors. If this incentive is used, the contracting officer shall include language in the solicitation indicating that this adjustment may occur.

(End of Clause)

1052.228-70 Insurance requirements.

As prescribed in 1028.310-70 and 1028.311-2, insert a clause substantially as follows: The contracting officer may specify additional kinds (*e.g.*, aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

INSURANCE (Date TBD)

In accordance with the clause entitled "Insurance—Work on a Government Installation" [or "Insurance—Liability to Third Persons"] in Section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) Worker's compensation and employer's liability. The contractor shall, as a minimum, meet the requirements specified at FAR 28.307-2(a).

(b) General liability. The contractor shall, at a minimum, meet the requirements specified at FAR 28.307-2(b).

(c) Automobile liability. The contractor shall, at a minimum, meet the requirements specified at FAR 28.307-2(c).

(End of Clause)

1052.234-2 Notice of Earned Value Management System—Pre-Award IBR—Alternate I (Date TBD).

As prescribed in DTAR 1034.203, substitute the following paragraph (a) for paragraph (a) of the basic FAR clause:

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports the offeror's self-validation that the EVMS complies with the ANSI Standard, as applicable.

(End of Provision)

1052.234-3 Notice of Earned Value Management System—Post-Award IBR—Alternate I (Date TBD)

As prescribed in DTAR 1034.203, substitute the following paragraph (a) for paragraph (a) of the basic FAR clause:

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports the offeror's self-validation that the EVMS complies with the ANSI Standard, as applicable.

(End of Provision)

1052.234-4 Earned Value Management System Alternate I (Date TBD)

As prescribed in DTAR 1034.203, substitute the following paragraph (a) for paragraph (a) of the basic FAR clause:

(a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) or has been determined through Contractor's self-validation to be compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.

(End of Clause)

1052.234-70 Notice of Earned Value Management System—Pre-Award IBR (Core) (Date TBD)

As prescribed in DTAR 1034.203, insert this provision in solicitations and awards that require the Contractor to use an earned value management system (EVMS) and for which the Government requires an IBR *prior to award*.

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports its self-validation that the EVMS used for this award complies with Core EVM criteria.

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts; Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(ii) Describe the management system and its application in terms of the EVMS guidelines;

(iii) Describe the proposed procedures for administration of the guidelines, as applied to subcontracts; and

(iv) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the contracting officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for an EVMS before contract award.

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the requirements in paragraph (a) of this provision.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontracts have not been selected subject to the guidelines. The prime

Contractor and the Government shall agree to subcontractors selected for application of the EVMS requirements.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designed by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of Provision)

1052.234-71 Notice of Earned Value Management System—Post-Award IBR (Core) (Date TBD)

As prescribed in DTAR 1034.203, insert this provision in solicitations and awards that require the contractor to use an earned value management system (EVMS) and for which the Government requires an IBR *after award*.

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed EVMS complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports its self-validation that the EVMS used for this award complies with Core EVM criteria.

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedures for administration of the guidelines, as applied to subcontracts; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the contracting officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for an EVMS before contract award.

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the requirements in paragraph (a) of this provision.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontracts have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS requirements.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designed by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of Provision)

1052.234-72 Core Earned Value Management System (Date TBD)

As prescribed in DTAR 1034.203, insert this clause in major investment solicitations and awards with DME that require a contractor to use an earned value management system (EVMS).

(a) The Contractor shall use an earned value management system (EVMS) that has either been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) or documentation that supports its validation that the EVMS used to manage this contract meets the following ANSI/EIA-748 criteria:

(1) (ANSI #1) Define the authorized work elements for the program. A work breakdown structure (WBS), tailored for effective internal management control, is commonly used in this process.

(2) (ANSI #2) Identify the program organizational structure including the major subcontractors responsible for accomplishing the authorized work, and define the organizational elements in which work will be planned and controlled.

(3) (ANSI #3) Provide for the integration of the company's planning, scheduling, budgeting, work authorization, and cost accumulation processes with each other, and as appropriate, the program WBS and the program organizational structure.

(4) (ANSI #6) Schedule the authorized work in a manner that describes the sequence of work and identifies significant task interdependencies required to meet the needs of the program.

(5) (ANSI #7) Identify physical products, milestones, technical performance goals, or

other indicators that will be used to measure progress.

(6) (ANSI #8) Establish and maintain a time-phased budget baseline, at the control account level, against which program performance can be measured. Initial budgets established for performance measurement will be based on either internal management goals or the external customer negotiated target cost including estimates for authorized but vaguely defined work. Budget for far-term efforts may be held in higher-level accounts until an appropriate time for allocation at the control account level. On Government contracts, if an over-target baseline is used for performance measurement reporting purposes, prior notification must be provided to the customer.

(7) (ANSI #16) Record direct costs in a manner consistent with the budgets in a formal system controlled by the general books of account.

(8) (ANSI #22) At least on a monthly basis, generate the following information at the control account and other levels as necessary for management control using actual cost data from, or reconcilable with, the accounting system:

(i) Comparison of the amount of planned budget and the amount of budget earned for work accomplished. This comparison provides the schedule variance.

(ii) Comparison of the amount of the budget earned and the actual (applied where appropriate) direct costs for the same work. This comparison provides the cost variance.

(9) (ANSI #27) Develop revised estimates of cost at completion based on performance to date, commitment values for material, and estimates of future conditions. Compare this information with the performance measurement baseline to identify variances at completion important to management and any applicable customer reporting requirements, including statements of funding requirements.

(10) (ANSI #28) Incorporate authorized changes in a timely manner, recording the effects of such changes in budgets and schedules. In the directed effort prior to negotiation of a change, base such revisions on the amount estimated and budgeted to the program organizations. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph

(b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVMS has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in paragraph (a), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary actions to meet the milestones in the Contractor's EVMS plan approved by the contracting officer.

(c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after contract award.

(d) The contracting officer may require an IBR upon the

(1) Exercise of significant options; or

(2) Incorporation of major modifications.

(e) Unless a waiver is granted by the CFA, Contractor-proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor shall provide access to all pertinent records and data requested by the contracting officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: [Insert list of applicable subcontractors].

(End of Clause)

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