**OFFICE OF MANAGEMENT AND BUDGET**

**Office of Federal Procurement Policy**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 14, 28, 36, and 52**

**[FAR Case 2026–010, Docket No. FAR–2026–0010, Sequence No. 1]**

**RIN 9000–AO83**

# Federal Acquisition Regulation: Revolutionary Federal Acquisition Regulation Overhaul Parts 14, 28, 36, and 52

**AGENCY:** Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB); Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council or FAR Council) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement. The E.O. directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The FAR Council is issuing twelve proposed rules that collectively will streamline the FAR in its entirety. This rule proposes revisions to FAR parts 14, 28, 36, and 52.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before October 19, 2026, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2026–010 to the Federal eRulemaking portal at *https://www.regulations.gov.* Follow the instructions for sending comments.

*Instructions:* Please submit comments only and cite ''FAR Case 2026–010'' in all correspondence related to this case. Include your name, company name (if any), and ''FAR Case 2026–010'' on any attached document. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

*Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov/FAR-2026-010.*

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact *FARpolicy@gsa.gov* or call 202–969–4075 and cite ''FAR Case 2026–010.'' For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite ''FAR Case 2026–010.''

**SUPPLEMENTARY INFORMATION:**

## I. Background

E.O. 14275, Restoring Common Sense to Federal Procurement (April 15, 2025), resets the foundation for Federal buying by requiring the FAR Council to produce a streamlined FAR that is simpler, clearer, and structured for speed. According to the E.O., the FAR has evolved from its original purpose (*i.e.,* to establish uniform procedures across executive departments and agencies), into an excessive and overcomplicated regulatory framework and bureaucracy. While meant to ''deliver, on a timely basis, the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives,'' the FAR has become an expensive barrier to achieving those objectives. As a result, the E.O. directed the FAR Council and OMB to create an agile, effective, and efficient regulation that contains only provisions required by statute or essential to sound procurement.

To implement E.O. 14275, OMB issued Memorandum M–25–26, Overhauling the Federal Acquisition Regulation, which announced the ''Revolutionary FAR Overhaul'' (RFO) and created a roadmap for producing simpler regulation aligned to statute, rewritten in plain language, and including nonstatutory requirements that are necessary to conducting a sound procurement. The memorandum described a new streamlined vision for the FAR, to be maintained alongside nonregulatory governmentwide guidance to provide a common-sense authoritative foundation for nimble response and delivery of mission capability.

This new vision represents a paradigm shift where over-engineered regulations designed for paperwork and compliance are replaced with streamlined regulations focused on core stewardship principles and nonregulatory guidance that will be used in concert with the streamlined FAR focused on proven buying strategies, critical thinking, market awareness (including to expand awareness of goods, products, and materials offered in the United States), and risk literacy to enhance workforce problem-solving. The significant reduction of unnecessary mandates is intended to clarify and reinforce the contracting officer's discretion to determine the best way to apply policies and practices. The newly established, nonregulatory guidance, which has been inspired by acquisition innovation advocates, category managers, other experienced practitioners, and many years of feedback from the contractor community—is expected to facilitate contracting officers' use of their discretion more efficiently and effectively to make smarter buying decisions.

OMB Memorandum M–25–26 also directed the FAR Council to complete the regulatory overhaul in two phases, each with robust public input. The FAR Council conducted its phase one effort in fiscal year 2025 by issuing model class deviations to replace each part in the FAR until such time as formal rulemaking occurred. This proposed rule is one of a series that constitute the FAR Council's phase two effort to obtain public comment through formal rulemaking.

## II. Discussion and Analysis

A summary of proposed changes to existing FAR parts 14, 28, and 36 and their corresponding provisions and clauses in part 52 follows:

### *A. General*

#### 1. General RFO Updates

This proposed rule generally reorganizes the FAR parts into phases of acquisition and simplifies the text into plain language, where possible. The plain language efforts include changes to active voice, edits to improve readability, and reorganization to present information more logically. None of the plain language edits are intended to change existing FAR requirements. The rewriting of the entire FAR also required edits to harmonize the changes being proposed such as updating the cross-references. This aligns with the Federal plain language guidelines as directed by the Plain Writing Act of 2010 (5 U.S.C. 301 note).

2. Standardization of Prescriptions

This rule proposes revisions to standardize prescriptions for provisions and clauses. These changes are intended to provide better clarity around the applicability of provisions and clauses such as whether they apply to commercial products and services.

3. Use of ''Must'' Instead of ''Shall''

Additional revisions are being proposed throughout the FAR text and FAR provisions and clauses to replace the use of the term ''shall'' with ''must'' or ''will,'' as appropriate, to impose requirements.

4. Non-Statutory Requirements

Section 4 of the E.O. required amendments to the FAR to ensure it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security. The FAR Council reviewed all non-statutory requirements to determine if they are still relevant and essential to sound procurement in today's contracting environment based on the criteria from section 4 of the E.O. The proposed rule retains non-statutory requirements that further one or more of the elements of sound procurements, including those requirements that serve as guardrails to protecting taxpayer interests and promote taxpayer confidence in the procurement system. Non-statutory requirements that were beneficial but not essential were retained in the non-regulatory guidance documents. Other non-statutory requirements that did not meet these standards, were removed. The Council considered the extent to which regulation is the most efficient means for capturing the benefit of the policy. For example, most ''how to'' requirements were found to be more appropriately suited for non-regulatory coverage which better enables a contracting officer to use discretion in determining the application of a strategy to a given situation and limits the risk of overapplication, which can create wasteful burden on the contracting parties.

As part of the RFO, the FAR Council has created a number of non-regulatory resources, including the FAR Companion, which provides insight from experienced practitioners across the government on using more streamlined practices and processes. The migration of significant coverage to non-regulatory guidance is intended to ensure that the benefits of the policy are not outweighed by the compliance burden of a more rigidly written regulation that is prone to application in an overly broad manner. This approach was explained to the public in a set of ''frequently asked questions'' that were posted on the Revolutionary FAR Overhaul homepage shortly after the initiative was launched.

*B. Summary of Changes to FAR Part 14, Sealed Bidding*

The proposed rule, if finalized, would revise FAR part 14 to simplify and streamline the policies and procedures pertaining to sealed bidding. These proposed revisions align with the broader RFO initiatives and do not substantively change the policy or procedures in the part. Several types of streamlining are highlighted below with specific examples for further illustration.

1. Restructuring and Eliminating Redundancy

The proposed rule, if finalized, would remove the general uniform contract format text since it was duplicative of existing text in FAR part 15 but it would retain use instructions for sealed bidding; it would move the text regarding publicizing contract actions to FAR part 5; it would move the text regarding protests against award to FAR part 33; it would remove permissive, nonstatutory price-related factors; and it would remove outdated regulations regarding facsimile bids and bid envelopes.

2. Pre-Bid Conference

The proposed rule, if finalized, would remove the text permitting pre-bid conferences at FAR 14.207. While pre-bid conferences are value added in certain circumstances, it is unnecessary for the FAR to give permission to the contracting officer to use a pre-bid conference or define its purpose.

*C. Summary of Changes to FAR part 28, Bonds and Insurance*

The proposed rule, if finalized, would revise FAR part 28 to simplify and make administrative corrections. The proposed revisions align with the broader RFO initiatives and would not substantively change policy or procedures.

*D. Summary of Changes to FAR part 36, Construction and Architect-Engineering Contracts*

The proposed rule, if finalized, would revise FAR part 36 to simplify and streamline the policies and procedures pertaining to construction contracting and architect-engineering contracting. The proposed revisions align with the broader RFO initiatives. Several types of streamlining are highlighted below with specific examples for further illustration.

1. Restructuring

In addition to the acquisition lifecycle phasing, the proposed rule includes extensive restructuring to improve readability. The existing FAR part 36 text originated from 1946 committee recommendations to standardize acquisition policies and procedures between departments. As such, many of the regulations for construction contracts and architect-engineer contracts were comingled. As part of the restructuring, the proposed rule would separate construction regulations from architect-engineer regulations. Further proposed revisions include the removal of duplicative text and removal of unnecessary provisions and clauses. For example, the proposed rule would remove the existing FAR text regarding publicizing contract actions from FAR part 36 and would point the contracting officer to FAR part 5.

2. Eliminating Extraneous Content

Several paragraphs within FAR part 36 contained nonstatutory suggestive or permissive text. For example, the text at FAR 36.212 provides suggestive/permissive guidance that the contracting officer may conduct a preconstruction conference. Removal of this text and the associated clause at FAR 52.236–26, Preconstruction Conference, would not prohibit nor limit the contracting officer from establishing a requirement for an optional or mandatory preconstruction conference; rather, it would shift the requirement to the solicitation stage. By identifying the requirement for a preconstruction conference within the invitation for bid, the Government would be providing industry with the clarity needed to accurately estimate administrative costs. The FAR Council has recommended this removed text for inclusion in the reference FAR Companion guide.

The proposed rule would also remove FAR provision 52.236–1, Performance of Work by the Contractor. The E.O. 14275, Restoring Common Sense to Federal Procurement, directs the removal of regulations restricting competition. This clause is proposed for removal as it is believe to restrict competition on fixed-price contracts because not all construction prime contractors perform certain scopes of work.

In addition, the proposed rule would remove the clause FAR 52.236–4, Physical Data, because the intent of the clause is served by the FAR clause 52.236–3, Site Investigation and Conditions Affecting the Work. The identification of data provided to bidders should already be included within the invitation for bid. The text of FAR clause 52.236–3 states, ''. . .including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract'', which further supports the data provided by the Government should already be part of the invitation for bid.

The proposed rule would remove nonstatutory text at FAR 36.519 and the associated FAR clause 52.236–19, Organization and Direction of the Work. Additionally, the mandate for full-time resident direction by an owner or senior officer represents a nonstatutory overreach. While contractors may currently seek approval for alternative oversight, Government intervention in internal organizational structures remains unnecessary and contradicts FAR 52.236–6, Superintendence by the Contractor.

The existing FAR text at 36.210 provides the contracting officer the opportunity to plan for prospective bidders to inspect the work site, examine data provided by the Government, etc., for the purposes of preparing and submitting a more informed and complete and accurate bid. Since there is no statute prohibiting such action, there is no need for the permissive text in the regulation. Further, the associated provision at FAR 52.236–27, Site Visit, is also unnecessary as the invitation for bid can clearly articulate the same information. The proposed removal of this text and the associated provision would not prohibit nor limit the contracting officer from providing the opportunity or requirement for offerors to visit the site or examine Government provided information.

The proposed rule would also remove FAR 36.520 and the associated provision at FAR 52.236–28, Preparation of Offers—Construction. This provision is redundant as it merely instructs offerors to comply with the solicitation terms to avoid rejection—a fundamental requirement already established in the invitation for bid and general procurement law.

*E. Summary of Changes to FAR Part 52, Contract Clauses*

1. Plain Language Update

As part of the broader plain language initiative, the term ''shall'' has been replaced with ''must'' throughout all affected clauses and prescriptions in this rulemaking to promote clarity and consistency. These updates will streamline contract drafting and compliance, reduce ambiguity, and save time for both contracting officers and contractors.

2. Clarification of FAR Clause Applicability to Commercial Products and Commercial Services

This rule clarifies the applicability of FAR part 52 clause prescriptions to commercial acquisitions to ensure consistent treatment across the FAR. Conforming revisions were made to prescriptions associated with FAR parts 14, 28, and 36 to accurately reflect when clauses apply to commercial products and commercial services. Affected prescriptions include those at 14.207, 14.208, 28.102–3, 28.103–4, 28.106–4, 28.203–4, 28.204–4, 28.309, 28.311–1, 28.312, 28.313, and 36.101–7.

3. Part 52 Renumbering

As a result of the RFO, the FAR Council is considering establishing a new FAR subpart in part 52 and relocating and renumbering all provisions and clauses under this new subpart. This means, if FAR subpart 52.4 was used, all provisions and clauses would begin with 52.4 instead of 52.2. This change is anticipated to prevent confusion and increase compliance by creating a clear distinction between versions of a provision or clause prior to the RFO. Other benefits include avoiding potential clause numbering conflicts and information system and data collection impacts. The FAR Council welcomes comments on the potential impact of such a change on contractors, Government personnel, and other stakeholders.

**III. Applicability to Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold and for Commercial Products and Commercial Services**

The following sections address the applicability of provisions and clauses prescribed in FAR parts 14, 28, and 36 to solicitations and contracts valued at or below the simplified acquisition threshold (SAT) and those for the acquisition of commercial products, commercially available off-the-shelf (COTS) items, and commercial services. Prescriptions for provisions and clauses in these parts have been updated to reflect applicability to commercial acquisitions.

*A. Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold*

This proposed rule, if finalized, does not alter the prescriptions of provisions and clauses included in this proposed rule to change their applicability to contracts and subcontracts valued at or below the SAT.

*B. Contracts and Subcontracts for Commercial Products, Commercially Available Off-The-Shelf Items, and Commercial Services.*

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and gives the FAR Council the authority to determine to apply a law to contracts or subcontracts for the acquisition of commercial products and commercial services. 41 U.S.C. 1907 exempts contracts for commercially available off-the-shelf (COTS) items from certain provisions of law unless the Administrator for Federal Procurement Policy determines that doing so would not be in the best interest of the Federal Government.

Section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) required the FAR Council and the Administrator of Federal Procurement Policy to review prior determinations under 41 U.S.C. 1906 and 41 U.S.C. 1907, as well as the applicability of provisions and clauses to contracts and subcontracts for commercial products, COTS items, and commercial services that do not implement statute or Executive order, and propose amendments to the FAR to eliminate or exempt such requirements from commercial acquisitions, unless there are specific reasons to retain particular requirements.

In accordance with section 839 of the NDAA for FY 2019 and their authorities under 41 U.S.C. 1906 and 1907, the FAR Council reviewed the applicability of the provisions and clauses associated with the FAR parts covered by this proposed rule.

The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposed determination regarding the applicability of the provisions and clauses to solicitations and contracts for commercial products, COTS items, and/or commercial services. In making proposed applicability determinations, the FAR Council considered factors such as whether the provision or clause advances national security or economic security, contributes to the resilience of contractors and subcontractors in the Federal marketplace, or advances uniformity and clarity in the performance of basic functions that are essential to sound procurement.

Accordingly, this proposed rule, if finalized, would revise provision and clause prescriptions to clearly reflect applicability to commercial acquisitions as outlined in the table. An ‘‘X’’ in the following table indicates the provision or clause will apply to that category of commercial acquisition, as prescribed:

| Provision/clause No. | Title | Commercial products | Commercial services | COTS items |
|---|---|---|---|---|
| 52.214–3 | Amendments to Invitations for Bids | X | X | X |
| 52.214–4 | False Statements in Bids | X | X | X |
| 52.214–5 | Submission of Bids | X | X | X |
| 52.214–6 | Explanation to Prospective Bidders | X | X | X |
| 52.214–7 | Late Submissions, Modifications, and Withdrawals of Bids | X | X | X |
| 52.214–10 | Contract Award-Sealed Bidding | X | X | X |
| 52.214–12 | Preparation of Bids | X | X | X |
| 52.214–14 | Place of Performance-Sealed Bidding | X | X | X |
| 52.214–15 | Period for Acceptance of Bids | X | X | X |
| 52.214–16 | Minimum Bid Acceptance Period | X | X | X |
| 52.214–18 | Preparation of Bids-Construction | | X | |
| 52.214–19 | Contract Award-Sealed Bidding-Construction | | X | |
| 52.214–20 | Bid Samples | X | X | X |
| 52.214–20 Alt I | Bid Samples | X | X | X |
| 52.214–20 Alt II | Bid Samples | X | X | X |
| 52.214–21 | Descriptive Literature | X | X | X |
| 52.214–21 Alt I | Descriptive Literature | X | X | X |
| 52.214–22 | Evaluation of Bids for Multiple Awards | X | X | X |
| 52.214–23 | Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding. | | | |
| 52.214–24 | Multiple Technical Proposals | | | |
| 52.214–25 | Step Two of Two-Step Sealed Bidding | | | |
| 52.214–26 | Audit and Records-Sealed Bidding | | | |
| 52.214–27 | Price Reduction for Defective Certified Cost or Pricing Data-Modifications-Sealed Bidding. | X | X | |
| 52.214–28 | Subcontractor Certified Cost or Pricing Data-Modifications-Sealed Bidding. | | | |
| 52.214–28 Alt I | Subcontractor Certified Cost or Pricing Data-Modifications-Sealed Bidding. | | | |
| 52.214–29 | Order of Precedence-Sealed Bidding | | | |
| 52.214–34 | Submission of Offers in the English Language | X | X | X |
| 52.214–35 | Submission of Offers in U.S. Currency | X | X | X |
| 52.228–1 | Bid Guarantee | X | X | X |
| 52.228–2 | Additional Bond Security | X | X | |
| 52.228–3 | Workers’ Compensation Insurance (Defense Base Act) | | X | |
| 52.228–4 | Workers’ Compensation and War-Hazard Insurance Overseas | | | |
| 52.228–5 | Insurance-Work on a Government Installation | | | |
| 52.228–7 | Insurance-Liability to Third Persons | | | |
| 52.228–8 | Liability and Insurance-Leased Motor Vehicles | X | X | |
| 52.228–9 | Cargo Insurance | | X | |
| 52.228–10 | Vehicular and General Public Liability Insurance | | X | |
| 52.228–11 | Individual Surety—Pledge of Assets | X | X | |
| 52.228–12 | Prospective Subcontractor Requests for Bonds | | X | |
| 52.228–13 | Alternative Payment Protections | | X | |
| 52.228–14 | Irrevocable Letter of Credit | X | X | |
| 52.228–15 | Performance and Payment Bonds-Construction | | X | |
| 52.228–16 | Performance and Payment Bonds-Other Than Construction | X | X | |
| 52.228–16 Alt I | Performance and Payment Bonds-Other Than Construction | X | X | |
| 52.228–17 | Individual Surety—Pledge of Assets (Bid Guarantee) | X | X | |
| 52.236–2 | Differing Site Conditions | | X | |
| 52.236–3 | Site Investigation and Conditions Affecting the Work | | X | |
| 52.236–5 | Material and Workmanship | | X | |
| 52.236–6 | Superintendence by the Contractor | | X | |
| 52.236–7 | Permits and Responsibilities | | X | |
| 52.236–8 | Other Contracts | | X | |
| 52.236–9 | Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. | | X | |
| 52.236–10 | Operations and Storage Areas | | X | |
| 52.236–11 | Use and Possession Prior to Completion | | X | |
| 52.236–12 | Cleaning Up | | X | |
| 52.236–13 | Accident Prevention | | X | |
| 52.236–13 Alt I | Accident Prevention | | X | |
| 52.236–14 | Availability and Use of Utility Services | | X | |
| 52.236–15 | Schedules for Construction Contracts | | X | |
| 52.236–16 | Quantity Surveys | | X | |
| 52.236–16 Alt I | Quantity Surveys | | X | |

| Provision/clause No. | Title | Commercial products | Commercial services | COTS items |
|---|---|---|---|---|
| 52.236–17 | Layout of Work | | X | |
| 52.236–18 | Work Oversight in Cost-Reimbursement Construction Contracts | | | |
| 52.236–21 | Specifications and Drawings for Construction | | X | |
| 52.236–21 Alt I | Specifications and Drawings for Construction | | X | |
| 52.236–21 Alt II | Specifications and Drawings for Construction | | X | |
| 52.236–22 | Design Within Funding Limitations | | | |
| 52.236–23 | Responsibility of the Architect-Engineer Contractor | | | |
| 52.236–24 | Work Oversight in Architect-Engineer Contracts | | | |
| 52.236–25 | Requirements for Registration of Designers | | | |

The FAR Council also reviewed subcontract flow down requirements in clauses associated with the FAR parts covered by this proposed rule. The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposal regarding whether those clauses flow down to subcontracts for commercial products, COTS items, and/or commercial services. This proposed rule, if finalized, would revise the subcontract paragraphs in these clauses to clearly state whether the clause flows down to commercial subcontracts, as outlined in the table. An ''X'' in the following table indicates the provision or clause will apply to subcontracts for that category of commercial subcontracts, as described in the clause:

| Clause No. | Title | Commercial products | Commercial services | COTS items |
|---|---|---|---|---|
| 52.214–26 | Audit and Records-Sealed Bidding | | | |
| 52.214–28 | Subcontractor Certified Cost or Pricing Data-Modifications | | | |
| 52.214–28 Alt I | Subcontractor Certified Cost or Pricing Data-Modifications | | | |
| 52.228–3 | Workers' Compensation Insurance (Defense Base Act) | | X | |
| 52.228–4 | Workers' Compensation and War-Hazard Insurance Overseas. | | | |
| 52.228–5 | Insurance-Work on a Government Installation | | | |
| 52.236–13 | Accident Prevention | | X | |
| 52.236–13 Alt I | Accident Prevention | | X | |

## IV. Expected Impact of the Rule

The intended impact of the RFO, as stated in E.O. 14275, is to restore the Government's ability to ''deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives.'' Each of the RFO rulemakings is designed to contribute to this impact by emphasizing mission first, by aligning acquisition activities directly to achieving the agency's overarching objectives and serving the public interest and elevating the importance of fiscal responsibility. The proposed RFO rules focus on three goals in particular: (1) timely acquisition and delivery, (2) lower cost and accountability in all spending, and (3) increased competition.

*Timeliness.* Timely acquisition and delivery are essential for mission success. To this end, RFO rules propose to eliminate mandates that unnecessarily interfere with agency discretion to determine the best way to procure products and services. The proposed RFO rules highlight more clearly streamlined and simplified authorities that allow buyers to use their time more efficiently and are expected to reduce time between solicitation and award. The proposed RFO rules are expected to make it easier for contracting officers to leverage commercial practices that are familiar to the commercial marketplace. This is expected to make it easier for sellers to engage and respond to Government solicitations more rapidly.

*Lower cost.* E.O. 14271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracts (April 15, 2025), directs the Government to utilize, to the maximum extent practicable, the commercial marketplace and the innovations of private enterprise to provide better, more cost-effective services to taxpayers, as envisioned by the Federal Acquisition Streamlining Act. The procurement of custom products and services where a suitable or superior commercial solution would have fulfilled the Government's needs has resulted in avoidable waste to the detriment of American taxpayers.

To address these concerns, consistent with associated responsibilities in section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), the FAR Council reviewed prescriptions for provisions and clauses to ensure all prescriptions are clear regarding their applicability to acquisitions for commercial products and services. Currently, many prescriptions do not specify applicability to commercial acquisitions and leave the applicability determination to contracting officer interpretation. By specifically stating when a provision or clause can be applied to commercial acquisitions, proposed RFO rules should decrease the likelihood of inclusion of provisions and clauses in commercial acquisitions that are not required by law and drive greater consistency in the terms and conditions used in these contracts. In turn, these changes should increase the participation of commercial sellers, who are unwilling or unable to manage the cost of complying with noncommercial requirements, and also improve taxpayer access to affordable commercial solutions.

Some RFO rules propose to delete requirements placed on commercial or noncommercial sellers that are not related to performance of the contract, drive up cost without attendant performance benefits, and may misdirect efforts away from innovation, investment and economic growth. Greater emphasis on timeliness should reduce bidders' carrying costs, enabling them to pass those savings on to customers through lower prices.

*Increased competition.* Since enactment of the Competition in

Contracting Act of 1984 (Title VII of Pub. L. 98–369), competition has been the cornerstone of the Federal acquisition system. The benefits of competition are well established: competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. Competition also drives contractor resilience and positions the U.S. market to develop a strategic advantage for the nation.

According to data in the System for Award Management, roughly 45 percent of contract dollars were awarded in FY 2025 either without competition or with competition that received only one offer. Of equal concern, the Federal marketplace has seen a significant decline over the past 20 years in the number of businesses—especially small businesses—participating in the Federal supplier base. Studies suggest that high compliance costs lead to the misallocation of resources away from more profitable activities and discourage innovation, investment, and economic growth (Council of Economic Advisers, Executive Office of the President. June 2025. The Economic Benefits of Current Deregulatory Policies. *https://www.whitehouse.gov/wp-content/uploads/2025/03/The-Economic-Benefits-of-Current-Deregulatory-Efforts.pdf*). This may shelter incumbent contractors and stifle competition, reducing startup activity and job formation.

The RFO rules seek to increase participation in agency competitions and the resilience of the Federal supplier base which includes commercial entities, small businesses, manufacturers, and nontraditional suppliers. The RFO will achieve this outcome by removing regulatory mandates that are not rooted in statute or essential to sound procurement, promoting greater reliance on practices that reduce transaction costs, and improving the quality of communications with offerors and potential offerors. Access to a broader range of solutions in a more dynamic marketplace will drive better return for each taxpayer dollar spent and increase taxpayer confidence in the Federal acquisition system.

The Government has conducted a regulatory impact analysis (RIA) for the RFO rulemaking inclusive of this proposed rule for FAR parts 14, 28, and 36. The RIA includes a discussion of the anticipated effects of the rulemakings as follows:

1. FAR Part 14

The changes to FAR part 14 are not expected to have a significant impact on contractors or subcontractors. The proposed changes to FAR part 14 are primarily internal Government procedures.

This proposed rule simplifies and streamlines the sealed bidding policies without changing fundamental requirements. The consolidation of content and elimination of redundant and permissive text will reduce the time contracting officers spend navigating regulations.

These proposed revisions will reduce administrative burden through clearer, more concise regulations; potentially faster processing of sealed bidding acquisitions; eventually reduced risk of procedural errors.

While the changes are primarily internal to Government, industry may experience ancillary benefits associated with Government process improvements (*e.g.,* increased shared understanding through plain language adjustments, faster processing with improved clarity).

For these reasons, this proposed rule is expected to make it somewhat less burdensome on contracting officers and industry once they have after the initial learning curve. Ultimately, the changes should make sealed bidding acquisitions easier.

2. FAR Part 28

The changes to FAR part 28 are not expected to have a significant impact on contractors or subcontractors. The proposed changes to FAR part 28 are primarily internal Government procedures and implement administrative corrections that align with the broader RFO initiatives.

3. FAR Part 36

The proposed changes to FAR part 36 simplify and streamline construction and architect-engineer policies without changing fundamental requirements. This reorganization, consolidation of content, and elimination of redundant and unnecessary text will reduce the time contracting officers spend navigating regulations and will also promote competition.

The proposed rule removes the non-statutory FAR clause 52.236–1, Performance of Work by the Contractor. This clause restricts competition because not all contractors self-perform work. By removing this competition restricting clause, the Government should eventually experience greater competition, which should result in lower prices.

This proposed rule removes the duplicative text regarding publicizing contract actions throughout the existing FAR part 36 text and now points the contracting officer to FAR part 5. By removing this existing duplicative text and consolidating it to FAR part 5, the Government will eliminate time spent by contracting officers bouncing between the two parts.

The proposed rule removes non-statutory text at FAR 36.519 and the associated clause 52.236–19, Organization and Direction of the Work. This clause imposes an unnecessary burden by requiring contractors to establish and maintain project specific organizational. Additionally, the mandate for full-time resident direction by an owner or senior officer represents a non-statutory overreach. While contractors may currently seek approval for alternative oversight, Government intervention in internal organizational structures remains unnecessary and contradicts FAR 52.236–6, Superintendence by the Contractor. Removing this clause eliminates the unnecessary costs associated with unnecessary project specific reports and eliminates potential cost-padding for senior leadership oversight and streamlines contractor operations.

The proposed rule removes the permissive text at FAR 36.522 and its associated clause, 52.236–26, Preconstruction Conference. This removal does not impede a contracting officer's authority to mandate such a conference; rather, it shifts the requirement to the solicitation stage. By identifying the need for a preconstruction conference within the invitation for bid, the Government provides industry with the clarity needed to accurately estimate administrative costs. This ensures the Government pays only for defined requirements rather than anticipatory contingencies.

The proposed rule further eliminates the permissive language at FAR 36.210 and the associated provision 52.236–27, Site Visit. Because no statute prohibits contracting officers from allowing site inspections or data examinations, the existing regulatory text is redundant; the authority to offer these opportunities exists inherently. Removing this provision does not restrict a contracting officer's ability to mandate or facilitate site visits but rather removes unnecessary verbiage that merely restates an existing authority.

The proposed rule removes FAR 36.520 and the associated provision 52.236–28, Preparation of Offers—Construction. This provision is redundant as it merely instructs offerors to comply with the solicitation terms to avoid rejection—a fundamental requirement already established in the invitation for bid and general procurement law. Eliminating this text streamlines the regulation by removing unnecessary restatements of the requirement for bid responsiveness.

The proposed rule reduces administrative burden through clearer, more concise regulations; potentially faster processing of construction and architect-engineer contract awards; and reduced risk of procedural errors.

For these reasons, this rule is expected to make it easier for contracting officers to accomplish award of construction and architect-engineer contracts. However, this change is not expected to create measurable direct cost savings for the Government or contractors as these proposed changes to FAR part 36 are primarily internal Government procedures.

## V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## VI. Executive Order 14192

This rule is subject to E.O. 14192, Unleashing Prosperity Through Deregulation. This proposed rule, if finalized as proposed, is anticipated to be an E.O. 14192 deregulatory action. See discussion in the ''Expected Impact of the Rule'' section of this preamble.

## VII. Regulatory Flexibility Act

This proposed rule, if finalized, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601–612. However, an Initial Regulatory Flexibility Analysis (IRFA) is as follows:

*1. Reasons for the action.*

Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement, directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The E.O. directs the first comprehensive end-to-end overhaul of the FAR in its 40-year history. The E.O. establishes the policy that the FAR should ''contain only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests.'' In response to E.O. 14275, the Office of Management and Budget issued memorandum M–25–26, Overhauling the Federal Acquisition Regulation. The Memo directed the FAR Council to complete a ''revolutionary overhaul'' of the FAR. Therefore, the FAR Council is issuing twelve proposed rules that collectively will streamline the FAR in its entirety.

*2. Objectives of, and legal basis for, the rule.*

The revolutionary FAR overhaul (RFO) rewrite represents a paradigm shift in Federal acquisition. It emphasizes streamlining, clarity, and accessibility, while ensuring that the regulation focuses only on statutory mandates and foundational procurement principles. The RFO is designed to simplify compliance for contracting professionals, improve acquisition speed and agility, and reinforce mission outcomes over process formalities.

The basis for the RFO is E.O. 14275. The authority for promulgation of the FAR is 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

*3. Description of and an estimate of the number of small entities to which the rule will apply.*

All small entities who want to contract with the Federal Government will have to familiarize themselves with the reorganized, streamlined, and revised FAR, including the content of this rulemaking. As of January 2026, there are 401,196 entities registered in the System for Award Management (SAM) that were small for at least one North American Industry Classification System (NAICS) code they had selected.

a. FAR Part 14

The proposed revisions to FAR part 14 simplify and streamline the policies and procedures pertaining to sealed bidding by reorganizing the text into the acquisition lifecycle, and by removing or relocating FAR text that is outdated, redundant, or otherwise unnecessary. These revisions align with the broader RFO initiatives and do not substantively change the policy or procedures in the part.

b. FAR Part 28

The proposed revision to FAR part 28 simplifies and makes administrative corrections. These revisions align with the broader RFO initiatives and do not substantively change policy or procedures.

c. FAR Part 36

The proposed revisions to FAR part 36 simplify, streamline, restructure, and remove extraneous policies and procedures pertaining to construction contracting and architect-engineering contracting. The revisions align with the broader RFO initiatives.

d. FAR Part 52

This change clarifies the applicability of provisions and clauses to commercial applications in clauses associated with updates to prescriptions in FAR parts 14, 28, and 36. In addition to these clarifications, the rule includes plain language edits, such as improvements to readability, updates to active voice, and replacement of the term ''shall'' with ''must,'' to promote consistency across prescriptions and clauses. Any costs are negligible and limited to internal policy updates. Therefore, the changes are not expected to have a significant economic impact on a substantial number of small entities.

*4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.*

This proposed rule, if finalized, does not contain any new reporting, recordkeeping or other compliance requirements.

a. FAR Part 14

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 14. The revisions are structural and editorial in nature and do not impose additional compliance obligations on contractors. Small entities may need to review the reorganized content and update internal procedures, but no new reporting or recordkeeping requirements are introduced.

b. FAR Part 28

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 28. The revisions do not create new compliance obligations; they simply improve clarity and eliminate redundancy.

c. FAR Part 36

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 36. The revisions reduce administrative burden by simplifying documentation requirements and do not introduce new compliance activities.

d. FAR Part 52

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 52. The updates clarify the applicability of prescriptions and clauses to commercial acquisitions and make conforming revisions to clauses associated with FAR parts 14, 28, and 36. These changes are editorial and organizational in nature and do not impose new compliance obligations.

*5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.*

The proposed rule, if finalized, would not duplicate, overlap, or conflict with other Federal rules.

*6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the rule on small entities.*

The FAR Council has not, at this stage, identified any significant alternatives that would minimize the impact of the rule on small entities, while also implementing the requirements of E.O. 14275. The FAR Council will consider any significant alternatives identified by commenters for the final rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. The FAR Council invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

The FAR Council will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite ''5 U.S.C. 610 (FAR Case 2026–010)'' in correspondence.

## VIII. Paperwork Reduction Act

This rule includes information collections under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Following are the specific collections associated with each FAR part in this rule as previously approved by OMB followed by how each collection would be affected by the proposed rule. If a FAR part is not listed below, then there are no information collections associated with the part.

*A. FAR Part 14*

- *OMB Control No. 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—FAR Sections Affected:* 52.214–28, 52.215–12, 52.215–13, 52.215–20, and 52.215–21. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.
- *OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit—FAR Section(s) Affected:* 52.212–5(d), 52.214–26, 52.215–2. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.
- *OMB Control No. 9000–0037, Presolicitation Notice and Response—FAR Sections Affected:* 14.205; 15.201(c); and 36.213–2. The changes under this proposed rule, if finalized, would remove the information collection in its entirety. The collection would be discontinued.
- *OMB Control No. 9000–0047, Place of Performance—FAR Sections Affected:* 52.214–14, and 52.215–6. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

*B. FAR Part 28*

- OMB Control No. 9000–0001, Certain Federal Acquisition Regulation Part 28 Requirements (SF 24, 25, 25–A, 25–B, 28, 34, 35, 273, 274, 275, 1414 through 1418; Sections: 52.228–1, 52.228–2, 52.228–11, 52.228–13 through 52.228–17). The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.
- OMB Control No. 9000–0135, Prospective Subcontractor Requests for Bonds; FAR 52.228–12. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

*C. FAR Part 36*

- OMB Control No. 9000–0037, Presolicitation Notice and Response. See details in section VIII.A of this preamble.
- OMB Control No. 9000–0064, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements; FAR Sections Affected: 52.236–5, 52.236–15, and 52.236–19. The changes under this proposed rule, if finalized, would revise this information collection and the paperwork burden previously approved by OMB due to the removal of the clause at FAR 52.236–19.

The revised annual burden is estimated as follows:

*Respondents:* 3,762.

*Total Annual Responses:* 13,258.

*Total Burden Hours:* 21,331.

- OMB Control No. 9000–0157, Architect-Engineer Qualifications (SF 330). The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

*D. Comments Regarding Paperwork Burden.*

The FAR Council will publish a separate first notice in accordance with the Paperwork Reduction Act seeking comments on the changes to these collections of information affected by this rule.

## IX. Severability

If any portion (*e.g.,* section, clause, sentence) of this rule is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of this rule, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of this rule are independent and serve distinct purposes. Even if one aspect were rendered invalid, the other benefits of the rule would still be applicable.

**List of Subjects in 48 CFR 14, 28, 36, and 52**

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, OFPP, DoD, GSA, and NASA propose amending 48 CFR parts 14, 28, 36, and 52 as set forth below:

■ 1. Revise parts 14, 28, and 36 to read as follows:

## PART 14—SEALED BIDDING

**Authority:** 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

#### 14.000 Scope of part.

This part prescribes—

(a) The basic requirements of contracting for supplies and services (including construction) by sealed bidding;

(b) The information to be included in the invitation for bids (IFB);

(c) Procedures concerning the submission of bids;

(d) Requirements for opening bids, evaluating bids, awarding contracts; and

(e) Procedures for two-step sealed bidding.

#### 14.001 Definitions.

As used in this part:

*Acceptable evidence* means a verifiable record, either physical or electronic, that provides a clear and authenticated account of the exact time a submission was received by the Government, which includes:

(1) The time/date stamp of that installation on the bid wrapper;

(2) Other documentary evidence of receipt maintained by the installation (*e.g.,* receiving reports, mailroom logs, or internal logs);

(3) Oral testimony or statements of Government personnel; or

(4) Electronic metadata, electronic audit trails, server gateway logs, or delivery receipts generated by the bidder's or the Government's email system.

*Government control* means the point at which a bid has been delivered, either physically or electronically, into the custody of the Government, such that the bidder can no longer modify or exercise dominion over the submission.

## Subpart 14.1—General.

#### 14.101 Using sealed bidding.

(a) Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards.

(b) Use sealed bidding whenever the conditions in 6.101(b)(1) are met.

(c) Use firm-fixed-price contracts when using sealed bidding or fixed-price contracts with economic price adjustment clauses when some flexibility is necessary and feasible.

## Subpart 14.2—Presolicitation.

#### 14.201 Preparation of invitations for bids.

#### 14.201–1 Format.

(a) Prepare IFB and contracts using parts I, II, III, and IV of the uniform contract format (see 15.109) to the maximum extent practicable.

(b) The uniform contract format is not required when contracting for—

(1) Construction (see part 36);

(2) Shipbuilding (including design, construction, and conversion), ship overhaul, and ship repair;

(3) Subsistence items;

(4) Supplies or services requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format; or

(5) Firm-fixed-price or fixed-price with economic price adjustment acquisitions that use the simplified contract format.

(c)(1) The contracting officer may use the simplified contract format in lieu of the uniform contract format.

(2) The contracting officer has flexibility in preparation and organization of the simplified contract format. The following format should be used to the maximum extent practicable:

(i) Use Standard Form (SF) 1447, Solicitation/Contract, as the first page of the IFB.

(ii) Include the following for each line item:

(A) Line item number.

(B) Description of supplies or services, or data sufficient to identify the requirement.

(C) Quantity and unit of issue.

(D) Unit price and amount.

(E) Packaging and marking requirements.

(F) Inspection and acceptance, quality assurance, and reliability requirements.

(G) Place of delivery, performance and delivery dates, period of performance, and f.o.b. point.

(H) Other item-peculiar information as necessary (*e.g.,* individual fund citations).

(iii) Include the clauses required by this regulation. Additional clauses must be incorporated only when necessary to the particular acquisition.

(iv) List of documents and attachments (include if necessary).

(v) Representations and instructions:

(A) Insert the IFB provisions that require representations, certifications, or the submission of other information by offerors.

(B) Insert the IFB provisions required by 14.207. Include any other information/instructions necessary to guide offerors.

(C) Insert all price related factors and any significant price related subfactors for award.

(D) Upon award, retain the representations and instructions in the contract file.

#### 14.202 Uniform contract format.

#### 14.202–1 Part I-Schedule.

Prepare the Schedule as follows:

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

(1) For sealed bidding the SF 33 or the SF 1447 may be used. When the SF 1447 is used as the IFB document, insert the information in subdivisions (a)(2)(i) and (a)(2)(iv) of this section in block 9 of the SF 1447.

(2) If the SF 33 or the SF 1447 are not used, include the following on the first page of the IFB:

(i) Name, address, and location of issuing activity, including room and building where bids must be submitted.

(ii) Invitation for bids number.

(iii) Date of issuance.

(iv) Time specified for receipt of bids.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Requirement for a bidder to provide its name and complete address, including street, city, county, State, and ZIP code.

(viii) A statement that bidders should include in the bid the address to which payment should be mailed, if that address is different from that of the bidder.

(b) *Section B, Supplies or services and prices.*

(1) See 15.109–1(b)

(2) Optional Form 336, Continuation Sheet, may be used.

(c) *Section C, Description/ specifications.*

See 15.109–1(c).

(d) *Section D, Packaging and marking.*

See 15.109–1(d).

(e) *Section E, Inspection and acceptance.*

See 15.109–1(e).

(f) *Section F, Deliveries or performance.*

See 15.109–1(f).

(g) *Section G, Contract administration data.*

See 15.109–1(g).

(h) *Section H, Special contract requirements.*

See 15.109–1(h).

**14.202–2 Part II Contract Clauses.**

Section I, Contract clauses (see 15.109–2).

**14.202–3 Part III Documents, exhibits, and other attachments.**

Section J, List of documents, exhibits, and other attachments (see 15.109–3).

**14.202–4 Part IV Representations and instructions.**

Prepare the representations and instructions as follows:

(a) Section K, Representations, certifications, and other statements of bidders (see 15.109–4(a)).

(b) Section L, Instructions, conditions, and notices to bidders (see 15.109–4(b)). Insert in this section solicitation provisions, other information, instructions not required elsewhere to guide bidders, include the time and place for bid openings.

(c) Section M, Factors for award. Identify the price related factors other than the bid price that will be considered in evaluating bids and awarding the contract.

**14.203 Requirements.**

(a) An IFB must clearly, accurately, and completely describe the Government requirements.

(b) Restrictive specifications or requirements that might unduly limit the number of bidders are prohibited.

(c) Include all documents and information (whether attached or incorporated by reference) prospective bidders will need for the purpose of bidding.

(d) State in the IFB that bids will be evaluated without discussions (see 52.214–10 and, for construction contracts, 52.214–19).

(e) When considering establishing qualification requirements, see and follow subpart 9.2.

**14.204 Economic purchase quantities (supplies).**

Comply with the economic purchase quantity planning requirements for supplies in part 7. See part 7 for instructions regarding use of the provision at 52.207–4, Economic Purchase Quantity—Supplies, and for guidance on handling responses to that provision.

**14.205 Bid samples.**

(a) Do not require bidders to furnish bid samples unless—

(1) Characteristics of the product cannot be described adequately in the specification or purchase description;

(2) Necessary to determine the responsiveness of the bid. Do not use samples to determine a bidder's ability to produce the required items; and

(3) Products must be suitable from the standpoint of balance, facility of use, general ''feel'', color, pattern, or other characteristics that cannot be described adequately in the specification.

(b) If the contracting officer requires bid samples, the IFB must state—

(1) The number and, if appropriate, size, and description of the bid samples required; and

(2) List all the characteristics for which the bid samples will be examined.

(c)(1) Contracting officers may waive bid sample requirements when a bidder offers a product previously or currently contracted for or tested by the Government and found to comply with specification requirements conforming in every material respect with those in the current IFB. (See 14.207(j)(2)).

(2) Where samples required by a Federal, Military, or other formal specification are not considered necessary and a waiver of the sample requirements of the specification is authorized, include a statement in the invitation that notwithstanding the requirements of the specification, samples are not required.

(d) Bid samples furnished with a bid that are not required by the invitation generally will not be considered as qualifying the bid and will be disregarded. However, the bid sample will not be disregarded if it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid. If the qualification does not conform to the IFB, see 14.306–3(d).

(e)(1) Return samples that are not destroyed in testing to bidders at their request and expense, unless otherwise specified in the invitation.

(2) Request disposition instructions from bidders.

(3) Samples are ordinarily returned collect to the address from which received if disposition instructions are not received within 30 days. Small items may be returned by mail, postage prepaid.

(4) Transmit samples that are intended for inspection purposes in connection with deliveries to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished.

(5) Where samples are consumed or their usefulness is impaired by tests, dispose as scrap unless the bidder requests their return.

**14.206 Descriptive literature.**

(a) Do not require bidders to furnish descriptive literature unless it is needed before award to determine whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(b) Document in the contract file the justification why product acceptability cannot be determined without the submission of descriptive literature, except when the contract specifications require submission.

(c)(1) If the invitation will require descriptive literature, the IFB must clearly state—

(i) What descriptive literature the bidders must furnish;

(ii) The purpose for requiring the literature;

(iii) The extent of its consideration in the evaluation of bids; and

(iv) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the invitation.

(2) If bidders must furnish descriptive literature, see 14.207(k).

(d)(1) The contracting officer may waive the requirement for descriptive literature if—

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

(ii) The contracting officer determines that the product offered complies with the specification requirements of the current IFB. When the contracting officer waives the requirement, see 14.207(k)(2).

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, include a statement in the invitation that, despite the requirements of the specifications, descriptive literature is not required.

(3) If the IFB provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature furnished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) If descriptive literature is furnished when it is not required by the IFB, follow the procedures at 14.205(d).

**14.207 Solicitation provisions.**

(a) The provisions prescribed in this section apply to preparation and submission of bids in general. See other FAR parts for provisions and clauses related to specific acquisition requirements.

(b) Insert in all IFBs, including those for commercial products and commercial services, the provisions at—

(1) 52.214–3, Amendments to Invitations for Bids; and

(2) 52.214–4, False Statements in Bids.

(3) 52.214–5, Submission of Bids.

(4) 52.214–6, Explanation to Prospective Bidders.

(5) 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids.

(c) Insert the provision at 52.214–10, Contract Award—Sealed Bidding in IFBs, including those for commercial products and commercial services, but excluding those for construction.

(d) Insert the provision at 52.214–12, Preparation of Bids in IFBs to which the uniform contract format applies, including those for commercial products and commercial services.

(e) Insert the provision at 52.214–14, Place of Performance—Sealed Bidding, in IFBs, including those for commercial products and commercial services but excluding those in which the place of performance is specified by the Government.

(f) Insert the provision at 52.214–15, Period for Acceptance of Bids, in IFBs, including those for commercial products and commercial services, that are not issued on SF 33 or SF 1447 except IFBs—

(1) For construction work, which includes construction that is a commercial service; or

(2) That the Government specifies a minimum acceptance period.

(g) Insert the provision at 52.214–16, Minimum Bid Acceptance Period, in IFBs, including those for commercial products and commercial services, except for construction, if the contracting officer determines that a minimum acceptance period must be specified.

(h) Insert the provision at 52.214–18, Preparation of Bids—Construction, in IFBs for construction contracts, including those for construction that is a commercial service.

(i) Insert the provision at 52.214–19, Contract Award—Sealed Bidding—Construction, in IFBs for construction work, including for construction that is a commercial service.

(j)(1) Insert the provision at 52.214–20, Bid Samples, in IFBs, including those for commercial products and commercial services, if bid samples are required.

(2) If it appears that the conditions in 14.205(c)(1) will apply and the contracting officer anticipates granting waivers and—

(i) If the nature of the required product does not necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate I; or

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate II.

(3) See 14.205(c)(2) regarding waiving the requirement for all bidders.

(k)(1) Insert the provision at 52.214–21, Descriptive Literature, in IFBs including those for commercial products and commercial services, if—

(i) Descriptive literature is required to evaluate the technical acceptability of an offered product and

(ii) The required information will not be readily available unless it is submitted by bidders.

(2) Use the basic clause with its Alternate I if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current IFB.

(3) See 14.206(d)(2) regarding waiving the requirement for all bidders.

(l) Insert the provision at 52.214–22, Evaluation of Bids for Multiple Awards, in IFBs, including those for commercial products and commercial services, if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(m) Insert the provision at 52.214–23, Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, other than those for commercial products or commercial services, in solicitations for technical proposals in step one of two-step sealed bidding.

(n) Insert the provision at 52.214–24, Multiple Technical Proposals, other than those for commercial products or commercial services, in solicitations for technical proposals in step one of two-step sealed bidding if the contracting officer permits the submission of multiple technical proposals.

(o) Insert the provision at 52.214–25, Step Two of Two-Step Sealed Bidding, in IFBs, other than those for commercial products or commercial services, issued under step two of two-step sealed bidding.

(p) Insert the provision at 52.214–34, Submission of Offers in the English Language, in solicitations that include any of the clauses prescribed in part 25, including those for commercial products and commercial services. It may be included in other solicitations when the contracting officer decides that it is necessary.

(q) Insert the provision at 52.214–35, Submission of Offers in U.S. Currency, in solicitations, including those for commercial products and commercial services, that include any of the clauses prescribed in part 25, unless the contracting officer includes the clause at 52.225–17, Evaluation of Foreign Currency Offers, as prescribed in part 25. It may be included in other solicitations when the contracting officer decides that it is necessary.

**14.208 Contract clauses.**

(a) Insert the clause at 52.214–26, Audit and Records—Sealed Bidding, in solicitations and contracts, other than those for commercial products and commercial services, if the contract amount is expected to exceed the threshold at part 15 for submission of certified cost or pricing data.

(b)(1) Insert the clause at 52.214–27, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf items) and commercial services, if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at part 15.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it must be in writing.

(c) Insert the clause at 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts, other than those for commercial products and commercial services, if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at part 15.

(1) This clause may also be included upon request of a contractor in connection with a prime contract entered into before July 1, 2018 by modifying the contract without requiring consideration to replace clause 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, with its Alternate I.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it must be in writing.

(d) Insert the clause at 52.214–29, Order of Precedence—Sealed Bidding, in solicitations and contracts, other than those for commercial products and commercial services, to which the uniform contract format applies.

**14.209 Soliciting bids.**

(a) See subpart 5.1 for presolicitation notices.

(b) See subpart 5.2 for publicizing the IFB.

(c) Specify in the IFB whether bids will be accepted by paper submission, or electronic transmission method, or both.

(d) If the IFB has been issued and it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to make a correction, such changes must be accomplished by amendment of the IFB using Standard Form 30, Amendment of Solicitation/ Modification of Contract. Amendments must—

(1) Be issued before the time set for bid opening;

(2) If determined necessary by the contracting officer, consider the amount of time remaining until bid opening and the need for an extension to the bid opening date;

(3) Be published in the GPE, if the IFB was published in the GPE, as a solicitation amendment;

(4) If applicable, be displayed in the bid room;

(5) Provide all prospective bidders equal access to the amendment providing the information necessary to submit bids; and

(6) Require acknowledgment of each amendment within each bidder's bid.

(e) When electronic bids are specified, include in the IFB the acceptable methods and the necessary information that allows bidders to submit bids that are compatible with Government systems.

(f) When a contracting office is located in the United States, any IFB sent to a prospective bidder located outside the United States must be sent by electronic data interchange or air mail if security classification permits.

(g)(1) The master IFB is provided to potential sources who are requested to retain it for continued and repetitive use.

(2) Subsequent individual IFB must reference the date of the current master IFB and identify any changes.

(3) When using a master IFB—

(i) Make available copies of the master IFB on request; and

(ii) Provide the cognizant contract administration activity a current copy of the master IFB.

(h) Retain records of IFB and records of bids as a record of each invitation a contracting office issues and each abstract or record of bids. The file for each invitation must show the—

(1) Distribution that was made;

(2) Date the invitation was issued; and

(3) Names and addresses of prospective bidders who requested the invitation and were not included on the original IFB list must be added to the list and made a part of the record.

(i) An IFB may be cancelled by the contracting officer when clearly in the public interest;

(1) Where there is no longer a requirement for the supplies or services; or

(2) Where amendments to the IFB would be of such magnitude that a new IFB is desirable.

(j) If an IFB is cancelled prior to the date and time specified in 14.301—

(1) Identify the IFB number and short title or subject matter;

(2) Briefly explain the reason for the cancellation; and

(3) Where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of supplies or services involved.

**14.210 Submission of bids.**

(a) Allow prospective bidders a reasonable time to prepare and submit bids in response to all invitations, consistent with the needs of the Government.

(b) Provide at least 30 calendar days when a presolicitation notice is required (see subpart 5.1).

(c) Require bidders to submit sealed bids to be opened publicly at the time and place stated in the IFB.

**14.211 Two-Step sealed bidding.**

**14.211–1 General.**

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

(a) Step one consists of the request for submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is submitted with step one. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word technical has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in part 9.

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

**14.211–2 Conditions for use.**

(a) Unless other factors require the use of sealed bidding, the contracting officer may use two-step sealed bidding rather than negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive

without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) There is sufficient time to use the two-step method.

(5) The contracting officer intends to award a firm-fixed-price contract or a fixed-price contract with economic price adjustment.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multiyear contracting;

(2) Government property to be made available to the successful bidder;

(3) A total small business set-aside (see part 19);

(4) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see part 19);

(5) The use of a set-aside for service-disabled veteran-owned small business concerns (see part 19);

(6) The use of a set-aside for economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program (see part 19); or

(7) A first or subsequent production quantity is being acquired under a performance specification.

**14.211–3 Procedures.**

(a) *Step one.*

(1) Post a presolicitation notice for technical proposals in accordance with part 5. The request must include, as a minimum, the following:

(i) A description of the supplies or services required.

(ii) A statement of intent to use the two-step method.

(iii) The requirements of the technical proposal.

(iv) The evaluation criteria, to include all factors and any significant subfactors.

(v) A statement that the technical proposals must not include prices or pricing information.

(vi) The date, or date and hour, by which the technical proposal must be received.

(vii) A statement that, in the second step—

(A) The contracting officer will consider awards based upon bids that have acceptable technical proposals, either initially or as a result of discussions; and

(B) Each bid must be based on the bidder's own technical proposals.

(viii) A statement that—

(A) Bidders should submit technical proposals that are acceptable without additional explanation or information;

(B) The Government may make a final determination regarding a technical proposal's acceptability solely on the basis as submitted; and

(C) The Government may proceed with the second step without requesting further information from any bidder; however, the Government may request additional information from bidders about their technical proposals that it considers reasonably susceptible of being made acceptable and may discuss bids with their bidders.

(ix) A statement that a notice of unacceptability will be forwarded to the bidder upon completion of the technical proposal evaluation and final determination of unacceptability.

(x) A statement either that each bidder may only submit one technical proposal or, if authorized, multiple technical proposals. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple technical proposals. If multiple technical proposals are authorized, see 14.207(n).

(2) Include information on delivery or performance requirements that may assist bidders in determining whether or not to submit a technical proposal. Indicate that the information is not binding on the Government and that the invitation issued under step two will include actual delivery or performance requirements.

(3) Upon receipt—

(i) Safeguard technical proposals against disclosure to unauthorized persons;

(ii) Accept and handle data marked in accordance with part 15 and 27; and

(iii) Remove any reference to price or cost.

(4) Establish a time period for evaluating technical proposals. The period may vary with the complexity and number of technical proposals involved. However, the evaluation should be completed quickly.

(5)(i) Base evaluations on the criteria in the request for technical proposals but not consideration of responsibility as defined in part 9. Categorize technical proposals as—

(A) Acceptable;

(B) Reasonably susceptible of being made acceptable; or

(C) Unacceptable.

(ii) Categorize any proposal that modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals as unacceptable.

(6)(i) The contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort and delay to make additional technical proposals acceptable and thereby increase competition would not be in Government's interest. If this is not the case, request bidders whose technical proposals may be made acceptable to submit additional clarifying or supplementing information. Identify the nature of the deficiencies in the technical proposal or the nature of the additional information required. The contracting officer may also arrange negotiations for this purpose. Do not discuss a technical proposal with any bidder other than the submitter.

(ii) When requesting additional information, establish an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their technical proposals. The contracting officer may extend the due date for such submissions at their discretion. If the additional information is incorporated into a technical proposal within the established time, and the contracting officer determines that the technical proposal is acceptable, update its category to acceptable.

(7) When a technical proposal is found unacceptable (either initially or after negotiations), promptly notify the bidder of the basis of the determination and that a revision of the technical proposal will not be considered. Upon written request, debrief unsuccessful bidders (see 15.206).

(8) Late technical proposals are governed by 14.301.

(9) If it is necessary to discontinue two-step sealed bidding, include a statement of the facts and circumstances in the contract file. Notify each bidder in writing. When step one results in no acceptable technical proposals or only one acceptable technical proposal, the acquisition may be continued by negotiation.

(b) *Step two.*

(1) Follow sealed bidding procedures except that IFB in step two must—

(i) Be issued only to those bidders that submitted acceptable technical proposals in step one;

(ii) Include the provision prescribed in 14.207(o);

(iii) Clearly state that the bidder must comply with the specifications and the bidder's technical proposal; and

(iv) Not be solicited through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted.

(2) List the names of firms that submitted acceptable proposals in step one through the GPE for the benefit of prospective subcontractors (see 5.101).

## Subpart 14.3—Evaluation and award

### 14.301 Submission, modification, or withdrawal of bids.

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals not later than the exact time set for opening of bids. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b) Bids may be modified or withdrawn by any method authorized by the IFB.

(c) The receiving official receiving a paper bid submission, modification or withdrawal must—

(1) Write on the envelope—

(i) The date and time of receipt and by whom; and

(ii) The IFB number; and

(2) Sign the envelope.

(3) Not disclose bid information before the time set for bid opening. See part 3 for requirements for protecting information including access to and disclosure thereof.

(d) A bidder or its authorized representative may withdraw a paper bid submission in person if, before the exact time set for opening of bids, the identity of the persons requesting withdrawal is established and that person signs a receipt for the bid.

(e) A bidder may withdraw an electronically submitted bid if notice is received in the office designated in the IFB not later than the exact time set for opening of bids. Upon withdrawal of an electronically transmitted bid, the data received must not be viewed and, to the maximum extent practical, must be purged from primary and backup data storage systems.

(f)(1) Any bid, modification, or withdrawal of a bid received at the Government office designated in the IFB after the exact time specified for receipt of bids is ''late'' and will not be considered unless—

(i) It is received before award is made; and

(ii) The contracting officer determines that accepting the late bid is in the Government's best interest and would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) The contracting officer will consider and may accept, a late modification of an otherwise successful bid, that makes its terms more favorable to the Government, at any time it is received.

(g) If an emergency or unanticipated event (*e.g.,* weather emergencies, government-wide or agency-specific network outages, server crashes, or cybersecurity-related blocking of authorized file types) interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB, and urgent Government requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on the first work day on which normal Government processes resume.

(h) Promptly notify any bidder if its bid, modification, or withdrawal was received late, and must inform the bidder whether its bid will be considered, unless contract award is imminent, and the notices prescribed in 14.309 would suffice.

(i) Late bids and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned.

(j) If available, the following must be included in the contract files for each late bid, modification, or withdrawal:

(1) The date and hour of receipt.

(2) A statement, with supporting rationale, regarding whether the bid was considered for award.

(3) The envelope, wrapper, or other evidence of the date of receipt.

### 14.302 Receipt of an unreadable electronic bid.

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the IFB cannot be ascertained, immediately notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

### 14.303 Bid opening.

(a) All bids (including modifications) received before the time set for the opening of bids must be secured in a locked bid box, a safe, or in a secure restricted-access electronic bid box (*i.e.,* secure password protected file folder on a controlled access Government computer network).

(b) The bid opening officer must inform those present at the public bid opening that the time set for the opening of bids has arrived.

(c)(1) The bid opening officer must personally and publicly open all bids received before the exact time set for opening of bids and if practical, read the bids aloud to all present.

(2) The public may not attend bid openings for classified acquisitions. No public record must be made of bids or bid prices received in response to classified IFB.

(d) The contracting officer may postpone the public bid opening if determined in writing that there is reason to believe—

(1) An important segment of bidders has been delayed in the mail;

(2) That there are delays in the communications system specified for transmission of bids;

(3) That circumstances beyond the control of the bidders have delayed their timely submission, (*e.g.,* flood, fire, accident, weather, strikes, or Government equipment blackout or malfunction); or

(4) That emergency or unanticipated events has interrupted normal Governmental processes so that the scheduled opening of bids is impractical.

(e) Publicly post a determination to postpone a bid opening under paragraph (d) of this section. If practical before issuance of a formal amendment of the invitation, communicate the determination to the prospective bidders likely to attend the scheduled bid opening.

(f) In the case of paragraph (d)(4) of this section, and when urgent Government requirements preclude amendment of the IFB, the time specified for opening of bids will be deemed to be extended to the same time of day specified in the IFB on the first workday on which normal Government processes resume. In such cases, the time of actual bid opening must be deemed to be the time set for bid opening for the purpose of determining ''late bids'' under section 14.301. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

(g) The bid opening officer must complete and certify the accuracy of the Standard Form 1409, Abstract of Offers, or Optional Form 1419, Abstract of Offers—Construction (or automated equivalent) as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids may be limited to item numbers and bid prices. The contracting activity may use the extra columns and SF 1410, Abstract of Offers—Continuation, and OF 1419A, Abstract of Offers—Construction, Continuation Sheet, to label and record such information as necessary.

(h) Abstracts of offers for unclassified acquisitions must be available for public inspection.

**14.304 Mistakes in bids.**

**14.304–1 General.**

(a) After the opening of bids, examine all bids for mistakes.

(b) The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation. The authority does not permit correction of bids to make them responsive.

(c) If the contracting officer identifies an apparent mistake or has reason to believe that a mistake exists request the bidder verify its bid, calling attention to the suspected mistake.

(d) If the bidder asserts a mistake in its bid, the matter must be processed in accordance with this section and 14.304. Such actions must be taken before award.

**14.304–2 Apparent clerical mistakes.**

The contracting officer may correct any clerical mistake, apparent on its face in the bid, before award. The contracting officer first must obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are obvious—

(a) Misplacement of a decimal point;

(b) Incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

(c) Reversal of the price f.o.b. destination and price f.o.b. origin; and

(d) Mistake in designation of unit.

**14.304–3 Other mistakes disclosed before award.**

(a) A bidder may request in writing permission from the contracting officer to correct a mistake after providing clear and convincing evidence that establishes both the existence of the mistake, and the bid actually intended.

(1) If the contracting officer accepts the clear and convincing evidence and the correction does not cause the bidder to outbid other lower bids, the contracting officer may allow the correction.

(2) If the correction causes the bidder to outbid one or more otherwise lower bids, the head of the agency may make a determination to permit the correction only if the mistake and intended bid are obvious from the final bid documents.

(b) If a bidder requests permission to withdraw a bid rather than correct it, the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and the bid, both as uncorrected and as corrected, is the lowest received, the head of the agency may make a determination to correct the bid and not permit its withdrawal.

(c) If, under paragraph (a) or (b) of this section—

(1) The evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or

(2) The evidence reasonably supports the existence of a mistake but is not clear and convincing, an official above the contracting officer, unless otherwise provided by agency procedures, may make a determination permitting the bidder to withdraw the bid.

(d) If the evidence does not warrant a determination under paragraph (a), (b), or (c) of this section, the head of the agency may make a determination that the bid be neither withdrawn nor corrected.

(e) Heads of agencies may delegate their authority to make the determinations under paragraphs (a), (b), (c), and (d) of this section to a central authority, or a limited number of authorities as necessary, in their agencies, without power of redelegation.

(f) Before issuance of the determinations in this section, legal counsel within the respective agency must provide concurrence.

(g) Process Government suspected or alleged mistakes in bids as follows:

(1) A mere statement by the administrative officials that they are satisfied that an error was made is insufficient.

(2) Immediately request that the bidder verify its bid.

(i) Actions taken to verify bids must be sufficient to reasonably assure the contracting officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder.

(ii) To assure that the bidder will be put on notice of a suspected mistake by the contracting officer, the bidder should be advised as appropriate—

(A) That its bid is so much lower than the other bids or the Government's estimate as to indicate a possibility of error;

(B) Of important or unusual characteristics of the specifications;

(C) Of changes in requirements from previous purchases of a similar item; or

(D) Of any other information, proper for disclosure, that leads the contracting officer to believe that there is a mistake in bid.

(3) If the bid is verified, consider the bid as originally submitted.

(4) If the time for acceptance of bids is likely to expire before a decision can be made, request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids.

(5) If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid must be considered as originally submitted (but see paragraph (g)(8) of this section).

(6) If the bidder alleges a mistake, advise the bidder to make a written request to withdraw or modify the bid. The request must be supported by statements (sworn statements, if possible) and must include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(7) When the bidder furnishes evidence supporting an alleged mistake, refer the case to the appropriate authority together with the following data:

(i) A signed copy of the bid involved.

(ii) A copy of the IFB and any specifications or drawings relevant to the alleged mistake.

(iii) An abstract or record of the bids received.

(iv) The bidder's written request to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.

(v) A written statement by the contracting officer providing—

(A) A description of the supplies or services involved;

(B) The expiration date of the bid in question and of the other bids submitted;

(C) Specific information as to how and when the mistake was alleged;

(D) A summary of the evidence submitted by the bidder;

(E) In the event only one bid was received, a quotation of the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services;

(F) Any additional pertinent evidence; and

(G) A recommendation to consider the bid as submitted or to authorize the bidder to withdraw or modify its bid.

(8) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, consider the bid as submitted unless—

(i) The amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable; or

(ii) There are other indications of error which are so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. Document all attempts made to obtain the information required and the action taken with respect to correct the bid.

(h) Each agency must maintain records of all determinations made in accordance with this section, the facts involved, and the action taken in each case. Include copies of all such determinations in the file.

(i) Nothing contained in this section prevents an agency from submitting doubtful cases to the Comptroller General for advance decision.

**14.305 Cancellation of invitations after opening.**

(a) Unless there is a compelling reason to reject all bids and cancel the invitation after the opening, award to the responsible bidder who submitted the lowest responsive bid.

(b) Invitations may be cancelled after opening when, consistent with paragraph (a) of this section, the agency head determines in writing that—

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies or services being contracted for are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see part 3 for reports to be made to the Department of Justice);

(8) No responsive bid has been received from a responsible bidder;

(9) A cost comparison as prescribed in OMB Circular A–76 shows that performance by the Government is more economical; or

(10) For other reasons, cancellation is clearly in the public's interest.

(c) If award is delayed beyond the bidders' acceptance periods, request bidders extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for resoliciting.

(d) Under some circumstances, completion of the acquisition after cancellation of the IFB may be appropriate.

(1) If the IFB has been cancelled for the reasons specified in paragraphs (b)(6) through (8) of this section, and the agency head has authorized, in the determination in paragraph (b) of this section, the completion of the acquisition through negotiation, proceed in accordance with paragraph (e) of this section.

(2) If the IFB has been cancelled for the reasons specified in paragraphs (b)(1), (2), (4), (5), or (10) of this section, or for the reasons in paragraphs (b)(6), (7), or (8) of this section and completion through negotiation is not authorized under paragraph (d)(1) of this section, proceed with a new acquisition.

(e) When the agency head has determined, in accordance with paragraph (d)(1) of this section, that an IFB should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate (in accordance with part 15, as appropriate) and make award without issuing a new IFB provided—

(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

**14.306 Evaluation.**

**14.306–1 Responsiveness of bids.**

(a) To be considered for award, a bid must comply in all material respects with the IFB.

(b) Bids must be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if—

(1) The bidder accepts all the terms and conditions of the invitation; and

(2) Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

(c) Bids submitted by electronic commerce may be considered only if the electronic commerce method was specifically stipulated or permitted by the IFB.

(d) If any sample fails to conform to the characteristics listed in the invitation, the respective bid will be rejected as nonresponsive.

**14.306–2 Responsible bidder—reasonableness of price.**

(a) Prior to award determine that—

(1) The apparent awardee(s) is responsible (see subpart 9.1); and

(2) The prices offered are reasonable and not materially unbalanced.

(b) The price analysis techniques in part 15 should be used as guidelines for determining reasonableness and if prices offered are materially unbalanced.

(c) In each case the determination must be made in the light of all prevailing circumstances. Particular care must be taken in cases where only a single bid is received.

**14.306–3 Rejection of individual bids.**

(a) Reject bids that fail to conform to the basic requirements of the IFB.

(b) Unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation, reject bids that do not conform to the requirements.

(c) Reject bids that fail to conform to the delivery schedule or permissible alternates stated in the invitation.

(d) If the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, reject the bid. For example, bids must be rejected in which the bidder—

(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;

(2) Fails to state a price and indicates that price will be the price in effect at time of delivery;

(3) States a price but qualifies it as being subject to the price in effect at time of delivery;

(4) When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate IFB;

(5) Requires the Government to determine that the bidder's product

meets applicable Government specifications; or

(6) Limits rights of the Government under any contract clause.

(e) A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(f) The contracting officer may reject any bid if they determine in writing that it is unreasonable as to the total price of the bid or the prices for individual line items as well.

(g) The contracting officer may reject any bid if the prices for any line items or subline items are materially unbalanced (see 15.404–6).

(h) Reject any bid received from a person or concern that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date unless determined in writing that there is a compelling reason for such action (see subpart 9.4).

(i) Unless a bid is received from a small business concern (see part 19 with respect to certificates of competency), reject low bids received from concerns determined to be not responsible pursuant to part 9.

(j) Reject a bid when a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the IFB, except as otherwise provided in part 28.

(k) Preserve the originals of all rejected bids, and any written findings with respect to such rejections with the contract file.

(l) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by 41 U.S.C. 6305 or 31 U.S.C. 3727.

### 14.306–4 Rejection of all bids.

When it is determined necessary to reject all bids, notify each bidder that all bids have been rejected and provide the reason for such action.

### 14.306–5 Restrictions on disclosure of descriptive literature.

When a bid is accompanied by descriptive literature, and the bidder imposes a restriction that prevents the public disclosure of such literature, the restriction may render the bid nonresponsive. The restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid that relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid.

### 14.306–6 All or none qualifications.

Except where prohibited by the IFB, an 'all or none' qualification by a bidder does not render the bid nonresponsive. Do not permit bidders to withdraw or modify all or none qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

### 14.306–7 Minor informalities or irregularities in bids.

A minor informality or irregularity is merely a matter of form and not of substance or some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. Either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include failure of a bidder to—

(a) Return the number of copies of signed bids required by the invitation;

(b) Furnish required information concerning the number of its employees;

(c) Sign its bid, but only if—

(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

(2) The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by written, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;

(d) Acknowledge receipt of an amendment to an IFB, but only if—

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation and the bidder submitted a bid on the item; or

(2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.

### 14.306–8 Prompt payment discounts.

Prompt payment discounts must not be considered in the evaluation of bids.

### 14.306–9 Economic price adjustment.

(a) Bidder proposed economic price adjustment.

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

(2) If the bid is eligible for award, request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause (see part 16) that is subject to the same ceiling. If the bidder will not agree to an approved clause, the contracting officer may award based on the bid as originally submitted.

(3) Reject bids that contain economic price adjustments with no ceiling unless a clear basis for evaluation exists.

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

(2) Reject a bid as nonresponsive if a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation or limits the downward economic price adjustment provisions of the invitation.

(3) Reject a bid as nonresponsive if a bid indicates deletion of the economic price adjustment clause because the downward economic price adjustment provisions are thereby limited.

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

### 14.307 Award.

(a) Make contract award—

(1) By written or electronic notice,

(2) Within the time for acceptance specified in the bid or an extension, and

(3) To that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the

Government, considering only price and the price-related factors included in the invitation.

(b) When more than one award results from any single IFB, separate award documents must be executed.

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

(d) All provisions of the IFB, including any acceptable additions or changes made by a bidder in the bid, must be clearly and accurately set forth (either expressly or by reference) in the award document.

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

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

(3) Do not physically include Part IV in the contract. Award by acceptance of a bid on the award portion of Standard Form 33, Solicitation Offer and Award (SF 33), Standard Form 26, Award/Contract (SF 26), or Standard Form 1447, Solicitation/Contract (SF 1447), incorporates Section K, Representations, certifications, and other statements of bidders, in the resultant contract even though not physically attached.

(f) Any discount offered will form a part of the award and will be taken by the payment center if payment is made within the discount period specified by the bidder.

(1) As an alternative to indicating a discount in conjunction with the offer, bidders may prefer to offer discounts on individual invoices.

(2) See part 32, which prescribes the contract clause at 52.232–8, Discounts for Prompt Payment.

**14.308 Award of equal low bids.**

(a) Award contracts in the following order of priority when two or more low bids are equal in all respects:

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

(2) Other small business concerns.

(3) Other business concerns.

(b) If two or more bidders remain equally eligible after application of paragraph (a) of this section, conduct a drawing, limited to those bidders. If time permits, give the bidders involved an opportunity to attend the drawing. The drawing must be witnessed by at least three persons, and the contract file must contain the names and addresses of the witnesses and the person supervising the drawing.

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

**14.309 Information to bidders.**

**14.309–1 Award of unclassified contracts.**

(a) At a minimum (subject to any restrictions in part 9)—

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

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

(b) For acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see part 25), agencies must include in notices given unsuccessful bidders from World Trade Organization Government Procurement Agreement or Free Trade Agreement countries—

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

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

**14.309–2 Award of classified contracts.**

In addition to 14.309–1, if classified information was furnished or created in connection with the IFB, advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The contracting officer may provide the name of the successful bidder and the contract price to unsuccessful bidders upon request. Information regarding a classified award must not be provided by telephone.

## Subpart 14.4—Postaward

**14.401 Mistakes after award.**

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, process the request using the procedures of part 33 and the following:

(a) When a mistake in a contractor's bid is not discovered until after award, correct the mistake by contract modification if it would be favorable to the Government without changing the essential requirements of the specifications.

(b) In addition to the cases contemplated in paragraph (a) of this section or as otherwise authorized by law, agencies are authorized to make a determination—

(1) To rescind a contract;

(2) To reform a contract to—

(i) Delete the items involved in the mistake; or

(ii) Increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB; or

(3) That no change will be made in the contract as awarded, if the evidence does not warrant a determination under paragraphs (1) or (2).

(c) Make determinations under paragraphs (b)(1) and (2) on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was—

(1) Mutual, or

(2) If unilaterally made by the contractor, so apparent as to have charged the contracting officer with notice of the probability of the mistake.

(d) Each proposed determination must be coordinated with legal counsel in accordance with agency procedures.

(e) Process mistakes alleged or disclosed after award as follows:

(1) Request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as—

(i) The contractor's file copy of the bid,

(ii) The contractor's original worksheets and other data used in preparing the bid,

(iii) Subcontractors' and suppliers' quotations, if any,

(iv) Published price lists, and

(v) Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

(2) The case file concerning an alleged mistake must contain the following:

(i) All evidence furnished by the contractor in support of the alleged mistake.

(ii) A signed statement by the contracting officer—

(A) Describing the supplies or services involved;

(B) Specifying how and when the mistake was alleged or disclosed;

(C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;

(D) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved, or in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services and the basis for the estimate;

(E) Setting forth the contracting officer's opinion whether a bona fide mistake was made and whether the contracting officer was, or should have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion;

(F) Setting forth the course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the manner by which the supplies or services will otherwise be acquired; and

(G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.

(iii) A signed copy of the bid involved.

(iv) A copy of the IFB and any specifications or drawings relevant to the alleged mistake.

(v) An abstract of written record of the bids received.

(vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the contracting officer and the contractor concerning the alleged mistake.

(vii) A copy of the contract and any related change orders or supplemental agreements.

(f) Each agency must include in the contract file a record of—

(1) All determinations made in accordance with this 14.401;

(2) the facts involved, and

(3) the action taken in each case.

### 14.402 Pricing modifications.

See subpart 15.4 for cost and price negotiation policies and procedures.

## PART 28—BONDS AND INSURANCE

Sec.



**Authority:** 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

### 28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against losses under contracts that result from the use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance.

### 28.001 Definitions.

As used in this part—

*Attorney-in-fact* means an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety.

*Bid* means any response to a solicitation, including a proposal under a negotiated acquisition.

*Bidder* means any entity that is responding or has responded to a solicitation, including an offeror under a negotiated acquisition.

*Bid guarantee* means a form of security assuring that the bidder (1) will not withdraw a bid within the period specified for acceptance, and (2) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time is allowed, after receipt of the specified forms.

*Bond* means a written instrument executed by a bidder or contractor (the ''principal''), and a second party (''the surety'' or ''sureties'') (except as provided in 28.204), to assure fulfillment of the principal's obligations to a third party (the ''obligee'' or ''Government''), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. The types of bonds and related documents are as follows:

(1) An advance payment bond secures fulfillment of the contractor's obligations under an advance payment provision.

(2) An annual bid bond is a single bond furnished by a bidder, in lieu of separate bid bonds, which secures all bids (on other than construction contracts) requiring bonds submitted during a specific Government fiscal year.

(3) An annual performance bond is a single bond furnished by a contractor, in lieu of separate performance bonds, to secure fulfillment of the contractor's obligations under contracts (other than

construction contracts) requiring bonds entered into during a specific Government fiscal year.

(4) A patent infringement bond secures fulfillment of the contractor's obligations under a patent provision.

(5) A payment bond assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

(6) A performance bond secures performance and fulfillment of the contractor's obligations under the contract.

*Consent of surety* means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

*Penal sum or penal amount* means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the Government in lieu of a corporate or individual surety for the bond.

*Reinsurance* means a transaction which provides that a surety, for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued.

## Subpart 28.1—Bonds and Other Financial Protections

### 28.100 Scope of subpart.

This subpart prescribes requirements and procedures for the use of bonds, alternative payment protections, and all types of bid guarantees.

### 28.101 Bid guarantees.

### 28.101–1 Policy on use.

(a) Do not require a bid guarantee unless a performance bond or a performance and payment bond is also required (see 28.102 and 28.103). Except as provided in paragraph (c) of this subpart, bid guarantees must be required whenever a performance bond or a performance and payment bond is required.

(b) All types of bid guarantees are acceptable for supply or service contracts (see annual bid bonds and annual performance bonds coverage in 28.001). Only separate bid guarantees are acceptable in connection with construction contracts. Agencies may specify that only separate bid bonds are acceptable in connection with construction contracts.

(c) The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government for a specific acquisition (*e.g.,* overseas construction, emergency acquisitions, sole-source contracts). Class waivers may be authorized by the agency head or designee.

### 28.101–2 Solicitation provision or contract clause.

(a) Insert a provision or clause substantially the same as the provision at 52.228–1, Bid Guarantee, in solicitations or contracts, including those for commercial products and commercial services, that require a bid guarantee or similar guarantee. For example, the contracting officer may modify this provision—

(1) For use in connection with construction solicitations when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101–1(b);

(2) For use in solicitations for negotiated contracts; or

(3) For use in service contracts containing options for extended performance.

(b) Determine the amount of the bid guarantee, at least 20 percent of the bid price and must not exceed $3 million, for insertion in the provision at 52.228–1 (see 28.102–2(a)). The amount must be adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

### 28.101–3 Authority of an attorney-in-fact for a bid bond.

(a) Any person signing a bid bond as an attorney-in-fact must include with the bid bond evidence of authority to bind the surety.

(b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.

(c) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney must be considered original signatures, seals and dates, without regard to the order in which they were affixed.

(d) The contracting officer must—

(1) Treat the failure to provide a signed and dated power of attorney at the time of bid opening as a matter of responsiveness; and

(2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.

(e)(1) If the contracting officer contacts the surety to validate the power of attorney, document the file providing, at a minimum, the following information:

(i) Name of person contacted.

(ii) Date and time of contact.

(iii) Response of the surety.

(2) If, upon investigation, the surety declares the power of attorney to have been valid at the time of bid opening, the contracting officer may require correction of any technical error.

(3) If the surety declares the power of attorney to have been invalid, do not allow the bidder to substitute a replacement power of attorney or a replacement surety.

(f) Determinations of non-responsibility based on the unacceptability of a power of attorney are not subject to the Certificate of Competency process of part 19 if the surety has disavowed the validity of the power of attorney.

### 28.101–4 Noncompliance with bid guarantee requirements.

(a) In sealed bidding, noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the situations described in paragraph (c) of this subsection when the noncompliance must be waived.

(b) In negotiation, noncompliance with a solicitation requirement for a bid guarantee requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract based on initial proposals without discussion, except in the situations described in paragraph (c) of this subsection when noncompliance must be waived. (See part 15 for conditions regarding making awards based on initial proposals.) If the conditions for awarding based on initial proposals are not met, deficiencies in bid guarantees submitted by offerors determined to be in the competitive range must be addressed during discussions and the offeror must be given an opportunity to correct the deficiency.

(c) Noncompliance with a solicitation requirement for a bid guarantee must be waived in the following circumstances unless the contracting officer determines in writing that acceptance of the bid would be detrimental to the Government's interest when—

(1) Only one offer is received. In this case, the contracting officer may require the furnishing of the bid guarantee before award;

(2) The amount of the bid guarantee submitted is less than required, but is

equal to or greater than the difference between the offer price and the next higher acceptable offer;

(3) The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity offered, is sufficient for a quantity for which the offeror is otherwise eligible for award. Any award to the offeror must not exceed the quantity covered by the bid guarantee;

(4) The bid guarantee is received late, and late receipt is waived under part 14;

(5) A bid guarantee becomes inadequate as a result of the correction of a mistake under part 14 (but only if the bidder will increase the bid guarantee to the level required for the corrected bid);

(6) An otherwise acceptable bid bond was submitted with a signed offer, but the bid bond was not signed by the offeror;

(7) An otherwise acceptable bid bond is erroneously dated or bears no date at all; or

(8) A bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number, and the name and location of the project involved, so long as it is acceptable in all other respects.

**28.102 Performance and payment bonds and alternative payment protections for construction contracts.**

**28.102–1 General.**

(a) 40 U.S.C. chapter 31, subchapter III, Bonds (formerly known as the Miller Act), requires performance and payment bonds for any construction contract exceeding $150,000, except that this requirement may be waived—

(1) By the contracting officer for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such bonds; or

(2) As otherwise authorized by the Bonds statute or other law.

(b)(1) Pursuant to 40 U.S.C. 3132, for construction contracts greater than $35,000, but not greater than $150,000, select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

(i) A payment bond.

(ii) An irrevocable letter of credit (ILC).

(iii) *A tripartite escrow agreement.* The prime contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement must establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement or triggers the disputes resolution procedures if required.

(iv) *Certificates of deposit.* The contractor deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an acceptable form, executable by the contracting officer.

(v) A deposit of the types of security listed in 28.204–1 and 28.204–2.

(2) The contractor must submit to the Government one of the payment protections selected by the contracting officer.

(c) The contractor must furnish all bonds or alternative payment protection, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.

**28.102–2 Amount required.**

(a) *Definition.* As used in this subsection—

*Original contract price* means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Contracts exceeding $150,000.*

(1) *Performance bonds.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of performance bonds must equal—

(i) 100 percent of the original contract price; and

(ii) If the contract price increases, an additional amount equal to 100 percent of the increase.

(2) *Payment bonds.*

(i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Contracts exceeding $35,000 but not exceeding $150,000.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of the payment bond or the amount of alternative payment protection must equal—

(1) 100 percent of the original contract price; and

(2) If the contract price increases, an additional amount equal to 100 percent of the increase.

(d) *Securing additional payment protection.* If the contract price increases, the Government must secure any needed additional protection by directing the contractor to—

(1) Increase the penal sum of the existing bond;

(2) Obtain an additional bond; or

(3) Furnish additional alternative payment protection.

(e) *Reducing amounts.* The contracting officer may reduce the amount of security to support a bond, subject to the conditions of 28.203–3(c) or 28.204(b).

**28.102–3 Contract clauses.**

(a) Insert a clause substantially the same as the clause at 52.228–15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction, including those for construction that is a commercial service, but excluding those for commercial products, that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed $150,000. The contracting officer may revise paragraphs (b)(1) and/or (b)(2) of the clause to establish a lower percentage in accordance with 28.102–2(b). If the provision at 52.228–1 is not included in the solicitation, set a period of time for return of executed bonds.

(b) Insert the clause at 52.228–13, Alternative Payment Protections, in solicitations and contracts for construction, including those for construction that is a commercial service, when the estimated or actual value exceeds $35,000 but does not exceed $150,000. Complete the clause by specifying the payment protections selected (see 28.102–1(b)(1)) and the deadline for submission. The contracting officer may revise paragraph (b) of the clause to establish a lower percentage in accordance with 28.102–2(c).

**28.103 Performance and payment bonds for other than construction contracts.**

**28.103–1 General.**

(a) Generally, agencies must not require performance and payment bonds for other than construction contracts. However, performance and payment bonds may be used as permitted in 28.103–2 and 28.103–3.

(b) The contractor must furnish all bonds before receiving a notice to proceed with the work.

(c) No bond must be required after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.

**28.103–2 Performance bonds.**

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. The following situations may warrant a performance bond:

(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(3) Substantial progress payments are made before delivery of end items starts.

(4) Contracts are for dismantling, demolition, or removal of improvements.

(b) The Government may require additional performance bond protection when a contract price is increased.

(c) Determine the contractor's responsibility (see part 9) even though a bond has been or can be obtained.

**28.103–3 Payment bonds.**

(a) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Government's interest.

(b) When a contract price is increased, the Government may require additional bond protection in an amount adequate to protect suppliers of labor and material.

**28.103–4 Contract clause.**

Insert a clause substantially the same as the clause at 52.228–16, Performance and Payment Bonds—Other than Construction, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf items) and commercial services, that contain a requirement for both payment and performance bonds. Determine the amount of each bond for insertion in the clause. The amount must be adequate to protect the interest of the Government. Set a period of time (normally 10 days) for return of executed bonds. Use Alternate I when only performance bonds are required.

**28.104 Annual performance bonds.**

(a) Annual performance bonds only apply to nonconstruction contracts. They must provide a gross penal sum applicable to the total amount of all covered contracts.

(b) When the penal sums obligated by contracts are approximately equal to or exceed the penal sum of the annual performance bond, an additional bond will be required to cover additional contracts.

**28.105 Other types of bonds.**

The head of the contracting activity may approve using other types of bonds in connection with acquiring particular supplies or services. These types include advance payment bonds and patent infringement bonds.

**28.105–1 Advance payment bonds.**

Advance payment bonds may be required only when the contract contains an advance payment provision, and a performance bond is not furnished. Determine the amount of the advance payment bond necessary to protect the Government

**28.105–2 Patent infringement bonds.**

(a) Contracts providing for patent indemnity may require these bonds only if—

(1) A performance bond is not furnished; and

(2) The financial responsibility of the contractor is unknown or doubtful.

(b) The contracting officer must determine the penal sum.

**28.106 Administration.**

**28.106–1 Bonds and bond related forms.**

The following Standard Forms (SF's) and Optional Forms (OF's) must be used, except in foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. The bond forms must be used as indicated in the instruction portion of each form.

(a) SF 24, Bid Bond (see 28.101).

(b) SF 25, Performance Bond (see 28.102–1 and 28.106–3(b)).

(c) SF 25A, Payment Bond (see 28.102–1 and 28.106–3(b)).

(d) SF 25B, Continuation Sheet (for SFs 24, 25, and 25A).

(e) SF 28, Affidavit of Individual Surety (see 28.203).

(f) SF 34, Annual Bid Bond (see 28.001).

(g) SF 35, Annual Performance Bond (see 28.104).

(h) SF 273, Reinsurance Agreement for a Bonds Statute Performance Bond (see 28.202(a)(4)).

(i) SF 274, Reinsurance Agreement for a Bonds Statute Payment Bond (see 28.202(a)(4)).

(j) SF 275, Reinsurance Agreement in Favor of the United States (see 28.202(a)(4)).

(k) SF 1414, Consent of Surety (see 28.106–5).

(l) SF 1415, Consent of Surety and Increase of Penalty (see 28.106–3).

(m) SF 1416, Payment Bond for Other Than Construction Contracts (see 28.103–3 and 28.106–3(b)).

(n) SF 1418, Performance Bond for Other Than Construction Contracts (see 28.103–2 and 28.106–3(b)).

(o) OF 91, Release of Personal Property from Escrow (see 28.203–3).

**28.106–2 Substitution of surety bonds.**

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity, or as otherwise specified in agency regulation.

(b) When a new surety bond is approved, notify the principal and surety of the original bond of the effective date of the new bond.

**28.106–3 Additional bond and security.**

(a) When additional bond coverage is required and is secured in whole or in part by the original surety or sureties, agencies must use Standard Form 1415, Consent of Surety and Increase of Penalty. Standard Form 1415 is authorized for local reproduction.

(b) When additional bond coverage is required and is secured in whole or in part by a new surety or by one of the alternatives described in 28.204 in lieu of corporate or individual surety, agencies must use Standard Form 25, Performance Bond; Standard Form 1418, Performance Bond for Other Than Construction Contracts; Standard Form 25A, Payment Bond; or Standard Form 1416, Payment Bond for Other Than Construction Contracts.

**28.106–4 Contract clause.**

(a) Insert the clause at 52.228–2, Additional Bond Security, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf items) and commercial services, when bonds are required.

(b) In accordance with section 806(a)(3) of Public Law 102–190, as amended by sections 2091 and 8105 of Public Law 103–355 (10 U.S.C. 4601 note prec.), insert the clause at 52.228–

12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts other than those for commercial products and commercial services, except for construction that is a commercial service, when a payment bond will be furnished pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds (see 28.102–1).

**28.106–5 Consent of surety.**

(a) When any contract is modified, obtain the consent of surety if—

(1) An additional bond is obtained from other than the original surety;

(2) No additional bond is required and—

(i) The modification is for new work beyond the scope of the original contract; or

(ii) The modification does not change the contract scope but changes the contract price (upward or downward) by more than 25 percent or $50,000; or

(3) Consent of surety is required for a novation agreement (see part 42).

(b) When a contract for which performance or payment is secured by any of the types of security listed in 28.204 is modified as described in paragraph (a) of this subsection, no consent of surety is required.

(c) Agencies must use Standard Form 1414, Consent of Surety, for all types of contracts.

**28.106–6 Furnishing information.**

(a) The surety on the bond, upon its written request, may be furnished information on the progress of the work, payments, and the estimated percentage of completion, concerning the contract for which the bond was furnished.

(b) When a payment bond has been provided, upon request, furnish the name and address of the surety or sureties to any subcontractor or supplier who has furnished or been requested to furnish labor or material for the contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or materials and have not been paid.

(c) When a payment bond has been provided for a contract, the head of the agency or designee must furnish a certified copy of the bond and the contract for which it was given to any person who makes a request therefor and who furnishes an affidavit that the requestor has supplied labor or materials for such work and payment therefor has not been made or that the requestor is being sued on such bond. The person who makes the request must be required to pay such costs of preparation as determined by the head of the agency or designee to be reasonable and appropriate (see 40 U.S.C. 3133).

(d) Section 806(a)(2) of Public Law 102–190, as amended by sections 2091 and 8105 of Public Law 103–355 (10 U.S.C. 4601 note prec.), requires that the Federal Government provide information to subcontractors on payment bonds under contracts, including contracts for construction that is a commercial service. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Bonds statute, promptly provide to the requester, either orally or in writing, as appropriate, any of the following:

(1) Name and address of the surety or sureties on the payment bond.

(2) Penal amount of the payment bond.

(3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

**28.106–7 Withholding contract payments.**

(a) During contract performance, agencies must not withhold payments due contractors or assignees because subcontractors or suppliers have not been paid.

(b) If, after completion of the contract work, the Government receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or suppliers, withhold final payment. However, the surety must agree to hold the Government harmless from any liability resulting from withholding the final payment. The contracting officer will authorize final payment upon agreement between the contractor and surety or upon a judicial determination of the rights of the parties.

(c) For any withholding incident to the labor standards provisions of the contract, see part 22.

**28.106–8 Payment to subcontractors or suppliers.**

The contracting officer will only authorize payment to subcontractors or suppliers from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed notarized statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

## Subpart 28.2—Sureties and Other Security for Bonds

**28.200 Scope of subpart.**

This subpart prescribes procedures for the use of sureties and other security to protect the Government from financial losses.

**28.201 Requirements for security.**

(a) Agencies must obtain adequate security for bonds (including coinsurance and reinsurance agreements) required or used with a contract for supplies or services (including construction). Acceptable forms of security include—

(1) Corporate or individual sureties; or

(2) Any of the types of security authorized in lieu of sureties by 28.204.

(b) Solicitations must not preclude offerors from using the types of surety or other security permitted by this subpart, unless prohibited by law or regulation.

**28.202 Acceptability of corporate sureties.**

(a)(1) Corporate sureties offered for bonds furnished with contracts performed in the United States or its outlying areas must appear on the list contained in the Department of the Treasury's Listing of Approved Sureties (Treasury Department Circular 570), ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.''

(2) The penal amount of the bond should not exceed the surety's underwriting limit stated in the Treasury Department Circular 570. If the penal amount exceeds the underwriting limit, the bond will be acceptable only if—

(i) The amount which exceeds the specified limit is coinsured or reinsured; and

(ii) The amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

(3) Coinsurance or reinsurance agreements must conform to the Department of the Treasury (Treasury) regulations in 31 CFR 223.10 and 223.11. When reinsurance is contemplated, require reinsurance agreements to be executed and submitted with the bonds before making a final determination on the bonds.

(4) When specified in the solicitation, the contracting officer may accept a bond from the direct writing company in satisfaction of the total bond requirement of the contract. This is permissible until necessary reinsurance agreements are executed, even though the total bond requirement may exceed

the insurer's underwriting limitation. The contractor must execute and submit necessary reinsurance agreements to the contracting officer within the time specified on the bid form, which may not exceed 45 calendar days after the execution of the bond. The contractor must use Standard Form (SF) 273, Reinsurance Agreement for a Bonds Statute Performance Bond, and SF 274, Reinsurance Agreement for a Bonds Statute Payment Bond, when reinsurance is furnished with the required performance or payment bonds. SF 275, Reinsurance Agreement in Favor of the United States, is used when reinsurance is furnished with bonds for other purposes.

(b) For contracts performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if the contracting officer determines that it is impracticable for the contractor to use Treasury listed sureties.

(c) Treasury issues supplements to Treasury Department Circular 570, notifying all Federal agencies of new approved corporate surety companies and the termination of the authority of any specific corporate surety to qualify as a surety on Federal bonds. Upon receipt of notification of termination of a company's authority to qualify as a surety on Federal bonds, review the outstanding contracts and take action necessary to protect the Government, including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with the named company.

(d) Treasury Department Circular 570 may be obtained from the U.S. Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Branch, 3201 Pennsy Drive, Building E, Landover, MD 20785 or at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

**28.203 Individual sureties.**

**28.203–1 Acceptability of individual sureties.**

(a) An individual surety is acceptable for all types of bonds except position schedule bonds. Assets pledged by an individual surety must meet the eligibility requirements of Treasury's Bureau of the Fiscal Service. Per 31 U.S.C. 9310, individual sureties must pledge eligible obligations, which Treasury refers to as acceptable collateral or eligible collateral. A list of acceptable assets, entitled ''Acceptable Collateral for 31 CFR part 225,'' may be accessed by going to *https://fiscal.treasury.gov/tcmm/resources.html* and clicking on ''31 CFR part 225''.

(b)(1) An individual surety must execute the bond (*e.g.,* bid bond (SF 24), performance bond (SF 25), payment bond (SF 25A)).

(2) The net adjusted value of unencumbered assets is their market value minus the margin. The margin tables are available at *www.treasurydirect.gov.* The net adjusted value of unencumbered assets pledged by the individual surety must equal or exceed the penal amount (*i.e.,* face value) of each bond.

(3) The individual surety must execute the SF 28, Affidavit of Individual Surety, and provide a security interest. One individual surety is adequate support for a bond, provided the net adjusted value of unencumbered assets pledged by that individual surety equals or exceeds the amount of the bond.

(4) An offeror or contractor may submit up to three individual sureties for each bond, in which case the net adjusted value of the pledged unencumbered assets, when combined, must equal or exceed the penal amount of the bond. Each individual surety is jointly and severally liable to the extent of the penal amount of the bond.

(c) Using the information from the SF 28 submitted by the offeror or contractor, notify the Treasury's collateral operations support team by email at *BMT@fiscal.treasury.gov* or by phone at 888–568–7343 of the individual surety, the assets to be pledged, and the amount necessary to cover the individual surety bond, *i.e.,* the required amount to be collateralized. Treasury will advise the contracting officer whether the assets are eligible to be pledged, consistent with 28.203–1(a), and of the valuation of the assets offered to be pledged, consistent with the valuation standards in 28.203–1(b)(2). If after 3 business days the contracting officer has not received a response from Treasury, the contracting officer may seek assistance from the Director, Bank Policy and Oversight, at 202–504–3502. Determine whether the individual surety bond is acceptable as to the amount necessary to cover the individual surety bond based on the asset eligibility and valuation assessment from Treasury. Notify both the offeror or contractor and the individual surety of this determination.

(d) If the contracting officer determines the individual surety is acceptable, request the Treasury's collateral operations support team set up the necessary individual surety pledged asset collateral account.

(e) If the contracting officer determines that no individual surety in support of a bid guarantee is acceptable, reject the offeror utilizing the individual surety as nonresponsible, except as provided in 28.101–4. A finding of nonresponsibility based on unacceptability of an individual surety, need not be referred to the Small Business Administration for a Certificate of Competency. (See part 19 and 61 Comp. Gen. 456 (1982).)

(f) If a contractor submits an unacceptable individual surety, or one that Treasury could not assess the asset eligibility and valuation within a reasonable time, then the contracting officer may permit the contractor to substitute an acceptable surety within a reasonable time.

(g) Evidence of possible criminal or fraudulent activities by an individual surety must be referred to the appropriate agency official in accordance with agency procedures.

**28.203–2 Substitution of assets.**

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request, including a revised SF 28, to the responsible contracting officer. Following the requirements set forth in 28.203–1, the contracting officer may agree to the substitution of assets upon determining that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations.

**28.203–3 Release of security interest.**

(a) After consultation with legal counsel, release the security interest on the individual surety's assets using the Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in subparagraphs (a)(1) and (2) of this section. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) *Contracts subject to the Bonds statute.* See section 1.110 and section 28.102–1, paragraph (a). The security interest must be maintained for the later of—

(i) 1 year following final payment;

(ii) Until completion of any warranty period (applicable only to performance bonds); or

(iii) Pending resolution of all claims filed against the payment bond during the 1 year period following final payment.

(2) *Contracts subject to alternative payment protection.* See section 28.102–1, paragraph (b)(1). The security interest must be maintained for the full contract performance period plus 1 year.

(3) *Other contracts not subject to the Bonds statute.* The security interest must be maintained for 90 days following final payment or until completion of any warranty period (applicable only to performance bonds), whichever is later.

(b) Upon written request by the individual surety, the contracting officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon written request by the individual surety, the contracting officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the contractor's obligations under its performance bond. Release of the security interest in support of a payment bond must comply with the subparagraphs (a)(1) through (3) of this section. In making this determination, the contracting officer will give consideration as to whether the contractor has reached substantial completion, final acceptance, or other substantial objective milestone and if the unreleased portion of the security is sufficient to cover the remaining contract obligations, including payments to subcontractors and other potential liabilities. The individual surety must, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

**28.203–4 Solicitation provision and contract clause.**

(a) Insert the provision at 52.228–17, Individual Surety—Pledge of Assets (Bid Guarantee), in solicitations, including for commercial products (other than commercially available off-the-shelf items) and commercial services, that require the submission of a bid guarantee.

(b) Insert the clause at 52.228–11, Individual Surety—Pledge of Assets, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf items) and commercial services, that require the submission of performance or payment bonds.

**28.203–5 Exclusion of individual sureties.**

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in part 9. The exclusion must be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of the value of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this section must be entered as an exclusion in the System for Award Management (SAM) (see part 9).

(d) Do not accept the bonds of individual sureties whose names appear in an active exclusion record in SAM unless the acquiring agency's head or a designee state in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this section will also preclude such party from acting as a contractor in accordance with part 9.

**28.204 Alternatives in lieu of corporate or individual sureties.**

(a) Any person required to furnish a bond to the Government may furnish any of the types of security listed in 28.204–1 through 28.204–3 instead of a corporate or individual surety for the bond. When any of those types of security are deposited, a statement must be incorporated in the bond form pledging the security in lieu of execution of the bond form by corporate or individual sureties. The contractor must execute the bond forms as the principal. Agencies must establish safeguards to protect against loss of the security and must return the security or its equivalent to the contractor when the bond obligation has ceased.

(b) Upon written request by any contractor securing a performance or payment bond by any of the types of security listed in 28.204–1 through 28.204–3, the contracting officer may release a portion of the security only when the conditions allowing the partial release of security in 28.203–3(c) are met. The contractor must, as a condition of the partial release, furnish an affidavit agreeing that the release of such security does not relieve the contractor of its obligations under the bond(s).

(c) The contractor may satisfy a requirement for bond security by furnishing a combination of the types of security listed in 28.204–1 through 28.204–3 or a combination of bonds supported by these types of security and additional surety bonds under 28.202 or 28.203. During the period for which a bond supported by security is required, the contractor may substitute one type of security listed in 28.204–1 through 28.204–3 for another, or may substitute, in whole or combination, additional surety bonds under 28.202 or 28.203.

**28.204–1 United States bonds or notes.**

Any person required to furnish a bond to the Government has the option, instead of furnishing a surety or sureties on the bond, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 (31 CFR part 225)). In addition, a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default of the principal on the bond must accompany the deposited bonds or notes. The contracting officer may—

(a) Turn securities over to the finance or other authorized agency official; or

(b) Deposit them with the Treasurer of the United States, a Federal Reserve Bank (or branch with requisite facilities), or other depository designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154 (exception: deposit all bonds and notes received in the District of Columbia with the Treasurer of the United States).

**28.204–2 Certified or cashier's checks, bank drafts, money orders, or currency.**

Any person required to furnish a bond has an option to furnish a certified or cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds. Those furnishing checks, drafts, or money orders must draw them to the order of the appropriate Federal agency.

**28.204–3 Irrevocable letter of credit.**

(a) Any person required to furnish a bond has the option to furnish a bond secured by an irrevocable letter of credit (ILC) in an amount equal to the penal sum required to be secured (see 28.204).

A separate ILC is required for each bond.

(b) The ILC must be irrevocable, require presentation of no document other than a written demand and the ILC (and letter of confirmation, if any), expire only as provided in paragraph (f) of this subsection, and be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection.

(c) To draw on the ILC, use the sight draft set forth in the clause at 52.228–14 and present it with the ILC (including letter of confirmation, if any) to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, draw on the ILC prior to the expiration date of the ILC to cover these claims.

(f) The period for which financial security is required must be as follows:

(1) If used as a bid guarantee, the ILC should expire no earlier than 60 days after the close of the bid acceptance period.

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC must provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the contracting officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage must be:

(i) For contracts subject to the Bonds statute, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Bonds statute, the later of

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(g) Only federally insured financial institutions rated investment grade must issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(1) The offeror/contractor is required by paragraph (d) of the clause at 52.228–14, Irrevocable Letter of Credit, to provide the contracting officer a credit rating from a recognized commercial rating service that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) To support the credit rating of the financial institution(s) issuing or confirming the ILC, verify the following information:

(i) *Federal insurance:* Each financial institution is federally insured. Verification of federal insurance is available through the Federal Deposit Insurance Corporation institution directory at the website *http://www2.fdic.gov/idasp/index.asp.*

(ii) Current credit rating. The current credit rating for each financial institution is investment grade and that the credit rating is from a Nationally Recognized Statistical Rating Organization (NRSRO). NRSROs can be located at the website *http://www.sec.gov/answers/nrsro.htm* maintained by the SEC.

(3) The rating services listed in the website *http://www.sec.gov/answers/nrsro.htm* use different rating scales (*e.g.,* AAA, AA, A, BBB, BB, B, CCC, CC, C, and D; or Aaa, Aa, A, Baa, Ba, B, Caa, Ca, and C) to provide evaluations of institutional credit risk; however, all such systems specify the range of investment grade ratings (*e.g.,* BBB–AAA or Baa-Aaa in the examples in this section) and permit evaluation of the relative risk associated with a specific institution. If the contracting officer learns that a financial institution's rating has dropped below investment grade level, give the contractor 30 days to substitute an acceptable ILC or must draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228–14.

(h) A copy of the Uniform Customs and Practice for Documentary Credits, 2007 Edition, International Chamber of Commerce Publication No. 600, is available from: ICC Books USA, 1212 Avenue of the Americas, 21st Floor, New York, NY 10036; Phone: 212–703–5078; Fax: 212–391–6568; Email: *iccbooks@uscib.org;* Via the internet at: *http://www.uscib.org/ucp-600-ud-4465/.*

**28.204–4 Contract clause.**

Insert the clause at 52.228–14, Irrevocable Letter of Credit, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf items) and commercial services, for services, supplies, or construction, when a bid guarantee, or performance bonds, or performance and payment bonds are required.

## Subpart 28.3—Insurance

**28.301 Policy.**

Contractors must carry insurance under the following circumstances:

(a)(1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9904.416) to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when the—

(i) Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances; or

(ii) Contract specifically relieves the contractor of liability for loss of or damage to Government property.

(2) The Government reserves the right to disapprove the purchase of any insurance coverage not in the Government's interest.

(3) Allowability of the insurance program's cost must be determined in accordance with the criteria in 31.205–19.

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law and this regulation to provide insurance for certain types of perils (*e.g.,* workers' compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of insurance required by this regulation (see 28.307–2) may be reduced when a contract is to be performed outside the United States and its outlying areas. When more than one agency is involved, the agency responsible for review and approval of a contractor's insurance program must coordinate with other interested agencies before acting on significant insurance matters.

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see part 37).

**28.302 Notice of cancellation or change.**

When the Government requires the contractor to provide insurance coverage, the policies must contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest must not be effective unless the insurer or the contractor gives written notice of cancellation or change as required by the contracting officer. When the coverage is provided by self-insurance, the contractor must not change or decrease the coverage without the administrative contracting officer's prior approval (see 28.308(c)).

**28.303 Insurance against loss of or damage to Government property.**

When the Government requires or approves insurance to cover loss of or damage to Government property (see part 45), it may be provided by specific insurance policies or by inclusion of the risks in the contractor's existing policies. The policies must disclose the Government's interest in the property.

**28.304 Risk-pooling arrangements.**

Agencies may establish risk-pooling arrangements. These arrangements are designed to use the services of the insurance industry for safety engineering and the handling of claims at minimum cost to the Government. The agency responsible must appoint a single manager or point of contact for each arrangement.

**28.305 Overseas workers' compensation and war-hazard insurance.**

(a) *Public-work contract,* as used in this subpart, means any contract for a fixed improvement or for any other project, fixed or not, for the public use of the United States or its allies, involving construction, alteration, removal, or repair, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project.

(b) The Defense Base Act (42 U.S.C. 1651 *et seq.*) extends the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees working outside the United States, including those engaged in performing—

(1) Public-work contracts; or

(2) Contracts approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87–195) other than contracts—

(i) Approved or financed by the Development Loan Fund (unless the Secretary of Labor, acting upon the recommendation of a department or agency, determines that such contracts should be covered); or

(ii) Exclusively for materials or supplies.

(c) When the Defense Base Act applies to these employees, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*) to protect the employees against the risk of war hazards (injury, death, capture, or detention). When, by means of an insurance policy or a self-insurance program, the contractor provides the workers' compensation coverage required by the Defense Base Act, the contractor's employees automatically receive war-hazard risk protection.

(d) When the agency head recommends a waiver to the Secretary of Labor, the Secretary may waive the applicability of the Defense Base Act to any contract, subcontract, work location, or classification of employees.

(e) If the Defense Base Act is waived for some or all of the contractor's employees, the benefits of the War Hazards Compensation Act are automatically waived with respect to those employees for whom the Defense Base Act is waived. For those employees, the contractor must provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention. The contract must provide either that the costs of this liability or the reasonable costs of insurance against this liability must be allowed as a cost under the contract.

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

(a) *General.* Although the Government is not ordinarily concerned with the contractor's insurance coverage if the contract is a fixed-price contract, in special circumstances agencies may specify insurance requirements under fixed-price contracts. Examples of such circumstances include the following:

(1) The contractor is—or has a separate operation—engaged principally in Government work.

(2) Government property is involved.

(3) The work is to be performed on a Government installation.

(4) The Government elects to assume risks for which the contractor ordinarily obtains commercial insurance.

(b) *Work on a Government installation.* (1) When the clause at 52.228–5, Insurance—Work on a Government Installation, is required to be included in a fixed-price contract by 28.310, the coverage specified in 28.307 is the minimum insurance required and must be included in the contract Schedule or elsewhere in the contract. The contracting officer may require additional coverage and higher limits.

(2) When the clause at 52.228–5, Insurance—Work on a Government Installation, is not required by 28.310 but is included because the contracting officer considers it to be in the Government's interest to do so, any of the types of insurance specified in 28.307 may be omitted or the limits may be lowered, if appropriate.

**28.307 Insurance under cost-reimbursement contracts.**

Cost-reimbursement contracts (and subcontracts, if the terms of the prime contract are extended to the subcontract) ordinarily require the types of insurance listed in 28.307–2, with the minimum amounts of liability indicated. (See 28.308 for self-insurance.)

**28.307–1 Group insurance plans.**

(a) *Prior approval requirement.* Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor must submit the plan for approval, in accordance with agency regulations. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government requires similar approval.

(b) *Premium refunds or credits.* The plan must provide for the Government to share in any premium refunds or credits paid or otherwise allowed to the contractor. In determining the extent of the Government's share in any premium refunds or credits, any special reserves and other refunds to which the contractor may be entitled in the future must be taken into account.

**28.307–2 Liability.**

(a) *Workers' compensation and employer's liability.* Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they must 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 must be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers. (See 28.305(c) for treatment of contracts subject to the Defense Base Act.)

(b) *General liability.* (1) Require bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(2) Property damage liability insurance must be required only in special circumstances as determined by the agency.

(c) *Automobile liability.* Require automobile liability insurance written on the comprehensive form of policy. The policy must 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 must 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. The amount of liability coverage on other policies must be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) *Aircraft public and passenger liability.* When aircraft are used in connection with performing the contract, require aircraft public and passenger liability insurance. Coverage must be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury must be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability.* When contract performance involves use of vessels, require, as determined by the agency, vessel collision liability and protection and indemnity liability insurance.

**28.308 Self-insurance.**

(a) When it is anticipated that 50 percent or more of the self-insurance costs to be incurred at a segment of a contractor's business will be allocable to negotiated Government contracts, and the self-insurance costs at the segment for the contractor's fiscal year are expected to be $200,000 or more, the contractor must submit, in writing, information on its proposed self-insurance program to the administrative contracting officer and obtain that official's approval of the program. The submission must be by segment or segments of the contractor's business to which the program applies and must include—

(1) A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;

(2) If available, the corporate insurance manual and organization chart detailing fiscal responsibilities for insurance;

(3) The terms regarding insurance coverage for any Government property;

(4) The contractor's latest financial statements;

(5) Any self-insurance feasibility studies or insurance market surveys reporting comparative alternatives;

(6) Loss history, premiums history, and industry ratios;

(7) A formula for establishing reserves, including percentage variations between losses paid and losses reserved;

(8) Claims administration policy, practices, and procedures;

(9) The method of calculating the projected average loss; and

(10) A disclosure of all captive insurance company and reinsurance agreements, including methods of computing cost.

(b) Programs of self-insurance covering a contractor's insurable risks, including the deductible portion of purchased insurance, may be approved when examination of a program indicates that its application is in the Government's interest. Agencies must not approve a program of self-insurance for workers' compensation in a jurisdiction where workers' compensation does not completely cover the employer's liability to employees, unless the contractor—

(1) Maintains an approved program of self-insurance for any employer's liability not so covered; or

(2) Shows that the combined cost to the Government of self-insurance for workers' compensation and commercial insurance for employer's liability will not exceed the cost of covering both kinds of risk by commercial insurance.

(c) Once the administrative contracting officer has approved a program, the contractor must submit to that official for approval any major proposed changes to the program. Any program approval may be withdrawn if a contracting officer finds that either—

(1) Any part of a program does not comply with the requirements of this subpart and/or the criteria at 31.205–19; or

(2) Conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

(d) To qualify for a self-insurance program, a contractor must demonstrate ability to sustain the potential losses involved. In making the determination, consider the following factors:

(1) The soundness of the contractor's financial condition, including available lines of credit.

(2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.

(3) The history of previous losses, including frequency of occurrence and the financial impact of each loss.

(4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks.

(5) The contractor's compliance with Federal and State laws and regulations.

(e) Agencies must not approve a program of self-insurance for catastrophic risks (*e.g.,* see part 50 for special procedures for unusually hazardous or nuclear risks). Should performance of Government contracts create the risk of catastrophic losses, the Government may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both.

(f) Self-insurance programs to protect a contractor against the costs of correcting its own defects in materials or workmanship must not be approved. For these purposes, normal rework estimates and warranty costs will not be considered self-insurance.

**28.309 Contract clauses for workers' compensation insurance.**

(a) Insert the clause at 52.228–3, Workers' Compensation Insurance (Defense Base Act), in solicitations and contracts, including those for commercial services, but excluding those for commercial products, when the Defense Base Act applies (see 28.305) and the—

(1) Contract will be a public-work contract performed outside the United States; or

(2) Contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87–195) and is not excluded by 28.305(b)(2).

(b) Insert the clause at 52.228–4, Workers' Compensation and War-

Hazard Insurance Overseas, in solicitations and contracts, other than those for commercial products or commercial services, when the contract will be a public-work contract performed outside the United States and the Secretary of Labor waives the applicability of the Defense Base Act (see 28.305(d)).

**28.310 Contract clause for work on a Government installation.**

(a) Insert the clause at 52.228–5, Insurance—Work on a Government Installation, in solicitations and contracts, other than those commercial products or commercial services, if—

(1) A fixed-price contract is contemplated;

(2) The value of the acquisition is expected to exceed the simplified acquisition threshold; and

(3) The contract will require work on a Government installation, unless—

(i) Only a small amount of work is required on the Government installation (*e.g.,* a few brief visits per month); or

(ii) All work on the Government installation will be performed outside the United States and its outlying areas.

(b) Insert the clause at 52.228–5 in solicitations and contracts described in paragraph (a)(3)(i) and (ii) of this section only if it is in the Government's interest to do so.

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

**28.311–1 Contract clause.**

When a cost reimbursement contract is contemplated and in accordance with agency acquisition regulations, insert the clause at 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for commercial products, commercial services, construction, and architect-engineer services.

**28.311–2 Agency solicitation provisions and contract clauses.**

Agencies may prescribe their own solicitation provisions and contract clauses to implement the basic policies contained in this subpart 28.3.

**28.312 Contract clause for insurance of leased motor vehicles.**

Insert the clause at 52.228–8, Liability and Insurance—Leased Motor Vehicles, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf items) and commercial services, for the leasing of motor vehicles (see part 8).

**28.313 Contract clauses for insurance of transportation or transportation-related services.**

(a) Insert the clause at 52.228–9, Cargo Insurance, in solicitations and contracts, including those for commercial services but excluding those for commercial products, for transportation or for transportation-related services, except when freight is shipped under rates subject to released or declared value.

(b) Insert a clause substantially the same as that at 52.228–10, Vehicular and General Public Liability Insurance, in solicitations and contracts, including those for commercial services, but excluding those for commercial products, for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient.

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS



**Authority:** 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

**36.000 Scope.**

This part prescribes policies and procedures for construction and architect-engineer services. It also includes requirements for using certain clauses and standard forms that apply to contracts for dismantling, demolition, or removal of improvements.

**36.001 Definition.**

As used in this part—

*Firm* as it relates to architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

**36.002 Policy.**

(a) Agencies must require the use of a project labor agreement for Federal construction projects with a total estimated construction cost at or above $35 million, unless an exception applies (see part 22).

(b) Conduct market research for Federal construction contracts valued at or above $35 million, and ensure that the market research procedures (see subpart 7.2) involve a current and proactive examination of the market conditions in the project area to determine national, regional, and local entity interest in participating on a project that requires a project labor agreement, and to understand the availability of unions, and unionized and non-unionized contractors. Contracting officers may coordinate with agency labor advisors, as appropriate.

(c) Use one of the following acquisition procedures when contracting for the design and construction of a public building, facility, or work:

(1) Design-bid-build established under 40 U.S.C. chapter 11, Selection of Architects and Engineers.

(2) Two-phase design-build selection procedures authorized by 10 U.S.C. 3241 or 41 U.S.C. 3309.

(3) Another acquisition procedure authorized by law.

(d) Agencies must implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices to ensure that—

(1) All new construction and modernization projects greater than 25,000 gross square feet are designed, constructed, and maintained to meet or exceed Government sustainable design and operations principles in accordance with the Council on Environmental Quality's Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding

Principles) (available at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf*);

(2) All renovation projects of existing Federal buildings/facilities must use, to the greatest extent possible, Government sustainable design and operations principles for existing buildings in accordance with the Guiding Principles; and

(3) Rehabilitation of Federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings.

## Subpart 36.1—Pre-Solicitation

### 36.101 Construction.

### 36.101–1 Acquisition Strategy.

(a) Only use sealed bid procedures (see part 14) for a construction contract if the conditions in part 6 for use of sealed bidding are met. However, sealed bidding should not be used if the contract will be performed outside the United States and its outlying areas.

(b) The following must be considered when determining the contract type and pricing structure and must be addressed in the acquisition plan.

(1) Generally, firm-fixed-price contracts must be used to acquire construction. They may be priced—

(i) On a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work);

(ii) On a unit-price basis (when a unit price is paid for a specified quantity of work units); or

(iii) Using a combination of the two methods.

(2) Lump-sum pricing must be used in preference to unit pricing except when—

(i) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(ii) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(iii) Estimated quantities of work required may change significantly during construction; or

(iv) Offerors would have to expend unusual effort to develop adequate estimates.

(3) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

(4) In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features must not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the head of the contracting activity.

(c) Do not use reverse auctions for certain design and construction services. See 17.802–2.

(d) For construction that is a commercial service, see also part 12.

### 36.101–2 Use of two-phase design-build selection procedures.

(a) As authorized by 10 U.S.C. 3241 and 41 U.S.C. 3309, the two-phase design-build selection procedures may be used when the contracting officer determines in writing that this method is appropriate, based on the following:

(1) Three or more offers are anticipated.

(2) Design work must be performed by offerors before developing price or cost proposals, and a substantial expense will be incurred in preparing offers.

(3) That the contracting officer has considered:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection method.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the agency.

(b) Phase-one of the solicitation(s) must include—

(1) The scope of work;

(2) The phase-one evaluation factors, which must include—

(i) Technical approach (excluding detailed design or technical information);

(ii) Technical qualifications, such as—

(A) Specialized experience and technical competence;

(B) Capability to perform;

(C) Past performance of the offeror's team (including the architect-engineer and construction members); and

(iii) Other appropriate factors (excluding cost or price related factors);

(3) Phase-two evaluation factors (see paragraph (d) of this section); and

(4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. Unless the contracting officer determines in writing that a number greater than five is in the Government's interest, no more than five offerors can be selected for phase-two proposals.

(c) After evaluating phase-one proposals in accordance with the solicitation, select the most highly qualified offerors and request those offerors submit phase-two proposals.

(d) Phase-two of the solicitation(s) must—

(1) Be prepared and evaluated in accordance with part 15;

(2) Include phase-two evaluation factors, such as design concepts and proposed technical solutions; and

(3) Require submission of separate technical and price proposals.

### 36.101–3 Scope of work.

(a) A scope of work must be included in the solicitation, and must:

(1) Define the project; and

(2) Provide prospective offerors with sufficient information regarding the Government's requirements.

(b) The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements.

(c) If the agency contracts for development of the scope of work, it must use the procedures in sections 36.102 and 36.202.

### 36.101–4 Advance notices and solicitations.

As required by 15 U.S.C. 644(w), when the contracting officer anticipates the award of a contract to a small business pursuant to a solicitation for construction, transmit to the Governmentwide point of entry (GPE) a solicitation notice (see part 5). The solicitation notice must include information regarding the agency's definitization of equitable adjustments for change orders under construction contracts, including:

(a) A description of agency policies or procedures, in addition to that outlined in part 43, that apply to definitization of equitable adjustments for change orders under construction contracts.

(b) Data on the agency's past performance, for the prior 3 fiscal years, regarding the time required to definitize equitable adjustments for change orders under construction contracts (see part 43). Agencies must provide the data shown in the following table, or provide the address of an agency-specific, publicly accessible website containing this information.

TABLE 1 TO PARAGRAPH (B)

| Time to definitize after receipt of an adequate change order definitization proposal under construction contracts | Number of change order proposals definitized under construction contracts |
|---|---|
| 30 days or less. | |
| 31 to 60 days. | |
| 61 to 90 days. | |
| 91 to 180 days. | |
| 181 to 365 days. | |
| 366 or more days. | |
| After completion of contract performance via a contract modification addressing all undefinitized equitable adjustments received during contract performance. | |

**36.101–5 Liquidated damages.**

During acquisition planning evaluate the need for liquidated damages in a construction contract in accordance with part 11 and agency policies.

**36.101–6 Government cost estimate.**

(a) An independent Government estimate (IGE) of the cost of construction must be prepared for any action expected to exceed the simplified acquisition threshold. The IGE must be prepared based on a detailed analysis of the requirements.

(b) The IGE must be given to the contracting officer before receipt of any proposals. When two-step sealed bidding is used, the independent Government estimate must be prepared when the contract requirements are definitized.

**36.101–7 Clauses.**

(a) Insert the clauses in Table 1 in solicitations and contracts if—

(1) The acquisition value exceeds the simplified acquisition threshold; and

(2) A fixed-price contract for construction or dismantling, demolition, or removal of improvements is contemplated, including those for construction that is a commercial service.

TABLE 1 TO PARAGRAPH (A)

| Clause | Title |
|---|---|
| 52.236–2 | Differing Site Conditions. |
| 52.236–3 | Site Investigation and Conditions Affecting the Work. |
| 52.236–6 | Superintendence by the Contractor. |
| 52.236–8 | Other Contracts. |
| 52.236–9 | Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. |
| 52.236–10 | Operations and Storage Areas. |
| 52.236–12 | Cleaning Up. |

(b) Insert the clause at 52.236–5, Material and Workmanship, in solicitations and contracts for construction, including those for construction that is a commercial service.

(c) Insert the clause at 52.236–7, Permits and Responsibilities, in solicitations and contracts when—

(1) A fixed-price contract for construction, or dismantling, demolition, or removal of improvements contract is contemplated, including those for construction that is a commercial service; or

(2) A cost-reimbursement construction contract is contemplated.

(d) Insert the clause at 52.236–11, Use and Possession Prior to Completion, in solicitations and contracts, when a fixed-price construction contract is contemplated, including those for construction that is a commercial service, and the contract award amount is expected to exceed the simplified acquisition threshold. This clause is optional if the contract award amount is expected to be at or below the simplified acquisition threshold.

(e)(1) Insert the clause at 52.236–13, Accident Prevention, in solicitations and contracts, when a fixed-price contract for construction or dismantling, demolition, or removal of improvements is contemplated, including those for construction that is a commercial service, and the contract amount is expected to exceed the simplified acquisition threshold. This clause is optional when the contract amount is expected to be at or below the simplified acquisition threshold.

(2) The clause must be used with its Alternate I when a contract for services will involve:

(i) Work of a long duration or hazardous nature; or

(ii) Performance on a Government facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property.

(f)(1) Insert the clause at 52.236–14, Availability and Use of Utility Services, in solicitations and contracts, when a fixed-price contract for construction or dismantling, demolition, or removal of improvements contract is contemplated, including those for construction that is a commercial service, the contract is to be performed on Government sites, and the contracting officer decides that—

(i) The existing utility system(s) is adequate for the needs of both the Government and the contractor; and

(ii) Furnishing it is in the Government's interest.

(2) When this clause is used, list the available utilities in the contract.

(g)(1) Insert the clause at 52.236–15, Schedules for Construction Contracts, in solicitations and contracts, when a fixed-price construction contract is contemplated, including those for construction that is a commercial service, the contract amount is expected to exceed the simplified acquisition threshold, and—

(i) The period of actual work performance exceeds 60 days; or

(ii) When work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements.

(2) Contracting officers should not insert the clause in paragraph (g)(1) of

this section, in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

(h) The contracting officer may insert the clause at 52.236–16, Quantity Surveys, in solicitations and contracts, when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated, including those for construction that is a commercial service. The clause must be used with its Alternate I if it is determined at a level above that of the contracting officer that—

(1) It is impracticable for Government personnel to perform the original and final surveys; and

(2) The Government wishes the contractor to perform these surveys.

(i) Insert the clause at 52.236–17, Layout of Work, in solicitations and contracts, when a fixed-price construction contract is contemplated, including those for construction that is a commercial service, and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance.

(j) Insert the clause at 52.236–18, Work Oversight in Cost-Reimbursement Construction Contracts, in solicitations and contracts, when a cost-reimbursement construction contract is contemplated. Do not include this clause in contracts for construction that is a commercial service.

(k)(1) Insert the clause at 52.236–21, Specifications and Drawings for Construction, in solicitations and contracts, when a fixed-price contract for construction or dismantling, demolition, or removal of improvements contract is contemplated, including those for construction that is a commercial service, and the contract amount is expected to exceed the simplified acquisition threshold.

(2) Insert the clause in paragraph (k)(1) of this section in solicitations and contracts, when a fixed-price contract for construction or dismantling, demolition, or removal of improvements contract is contemplated, including those for construction that is a commercial service, and the contract amount is expected to be at or below the simplified acquisition threshold.

(3) When the Government needs record drawings—

(i) Use the clause with its Alternate I, if reproducible shop drawings are needed, or

(ii) Use the clause with its Alternate II, if reproducible shop drawings are not needed.

**36.102 Architect-Engineer Services**

**36.102–1 Public announcement.**

The Government must publicly announce all requirements for architect-engineer services (see 40 U.S.C. 1101 *et seq.*).

**36.102–2 Contracting procedures and competition.**

(a) Acquire architect-engineer services by negotiation and select sources in accordance with this section.

(b) The procedures of this section are competitive procedures (see part 6).

(c) Agencies must encourage firms to submit annually an updated statement of qualifications and performance data on a Standard Form (SF) 330, Part II—General Qualifications.

(d)(1) Surveying is considered to be an architectural and engineering service and must be procured pursuant to sections 36.102 and 36.202 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and must be procured pursuant to sections 36.102 and 36.202.

(2) Mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services must be procured pursuant to provisions in parts 8, 13, 14, and 15.

**36.102–3 Government cost estimate.**

(a) An independent Government estimate (IGE) of the cost of architect-engineer services must be prepared based on a detailed analysis of the requirements.

(b) The IGE must be given to the contracting officer before beginning negotiations for any action expected to exceed the simplified acquisition threshold.

**36.102–4 Clauses.**

(a) Do not include the clauses in paragraphs (b) through (e) of this section in solicitations or contracts for commercial products or commercial services.

(b) Insert the clause at 52.236–22, Design Within Funding Limitations, in fixed-price architect-engineer contracts except when—

(1) The head of the contracting activity determines in writing that cost limitations are secondary to performance considerations and additional project funding can be expected;

(2) The design is for a standard structure and is not intended for a specific location; or

(3) There is little or no design effort involved.

(c) Insert the clause at 52.236–23, Responsibility of the Architect-Engineer Contractor, in fixed-price architect-engineer contracts.

(d) Insert the clause at 52.236–24, Work Oversight in Architect-Engineer Contracts, in all architect-engineer contracts.

(e) Insert the clause at 52.236–25, Requirements for Registration of Designers, in architect-engineer contracts, except that it may be omitted when the design will be performed—

(1) Outside the United States and its outlying areas; or

(2) In a State or outlying area of the United States that does not have registration requirements for the particular field involved.

## Subpart 36.2—Evaluation and Award

**36.201 Construction.**

**36.201–1 Limitations.**

Do not award a contract for construction—

(a) At a cost to the Government—

(1) In excess of statutory cost limitations, unless applicable limitations can be and are waived in writing for the particular contract; or

(2) Which, with allowances for Government-imposed contingencies and overhead, exceeds the statutory authorization.

(b) To the firm that designed the project or to the firm's subsidiaries or affiliates, unless approved by the agency head.

**36.201–2 Standard and optional forms.**

(a) Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), must be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the simplified acquisition threshold, and may be used for contracts at or below the simplified acquisition threshold. In all sealed bid solicitations, or when the Government otherwise requires a noncancellable offer acceptance period, insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.

(b) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are at or below the simplified acquisition threshold; provided, that the contracting officer includes the clauses required (see section 36.101–7) in the simplified acquisitions (see part 13).

(c) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet, or the automated equivalents to record offers submitted in response to a sealed bid solicitation (see part 14) and may also use them to record offers submitted in response to negotiated solicitations.

**36.202 Architect and engineering services.**

**36.202–1 Evaluation.**

(a)(1) Agencies must provide for one or more permanent or ad hoc architect-engineer evaluation boards—

(i) Which may include preselection boards when authorized by agency regulations;

(ii) Composed of members who—

(A) Collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters;

(B) Are appointed from among highly qualified professional employees of the agency or other agencies; and

(C) If authorized by agency procedure, are private practitioners of architecture, engineering, or related professions.

(2) One Government member of each board must be designated as the chairperson.

(b) Under the general direction of the head of the contracting activity, an evaluation board must perform the following functions:

(1) For each proposed project, evaluate the firms' Standard Form (SF) 330, Part II—General Qualifications, together, if necessary, with data submitted on the SF 330, Part I—Contract-Specific Qualifications, either already on file with the agency or submitted regarding the proposed project.

(2) Conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(3) Prepare a selection report for the agency head or other designated selection authority recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report must include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based.

**36.202–2 Selection authority.**

(a) The final selection decision must be made by the agency head or a designated selection authority.

(b) The final selection must be made by reviewing and considering the selection report and advice of technical and staff representatives.

(1) The final selection must be a listing, in order of preference, of the firms considered most highly qualified to perform the work.

(2) The selection authority must not add firms to the selection report.

(3) If the firm listed as the most preferred is not the firm recommended as the most highly qualified, the selection authority must provide a written explanation of the reason for the preference for inclusion in the contract file.

(4) If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the selection authority must record the reasons and return the report for appropriate revision.

(c) All firms on the final selection list are considered selected firms with which the contracting officer may negotiate.

**36.202–3 Award.**

(a) Negotiate a contract with the most highly qualified firm selected by the selection authority.

(b)(1) If the contracting officer is unable to negotiate a fair and reasonable contract with the firm selected by the selection authority—

(i) Formally terminate negotiations;

(ii) Proceed to negotiate a fair and reasonable contract with the next most qualified firm; and

(iii) Continue the process until a fair and reasonable agreement is reached.

(2) If unable to reach a fair and reasonable agreement after negotiating with the firms on the final selection list, the selection authority must select additional firms in order of their competence and qualification for the contracting officer to continue negotiations until an agreement is reached.

(3) If unable to reach a fair and reasonable agreement after negotiating with all firms selected by the selection authority, reject all submissions and reissue the solicitation.

(c) During negotiations, the contracting officer is permitted to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price.

(d) Only award contracts for architect-engineer services to firms permitted by law to practice the professions of architecture or engineering.

(e) An architect-engineer contract must not be awarded to a firm during the period in which any of its principals or associates are participating as members of the awarding agency's evaluation board.

(f) Debriefings of successful and unsuccessful firms may be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.301.

**36.202–4 Short selection process for contracts not to exceed the simplified acquisition threshold.**

When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the simplified acquisition threshold. Otherwise, the procedures prescribed in 36.202–1, 36.202–2, and 36.202–3 must be followed.

(a) Selection by the board. The board must review and evaluate architect-engineer firms in accordance with 36.202–1, except that the selection report serves as the final selection list and must be provided directly to the contracting officer. The report serves as the authorization for the contracting officer to commence negotiations in accordance with 36.202–3.

(b) Selection by the chairperson of the board. When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures must be followed:

(1) The chairperson of the board must perform the functions required in 36.202–1(b).

(2) The agency head or designated selection authority must review the report and approve it or return it to the chairperson for appropriate revision.

(3) Upon receipt of an approved report, the chairperson of the board must provide a copy of the report to the contracting officer which will serve as the authorization for the contracting officer to commence negotiations in accordance with 36.202–3.

**36.202–5 Standard and optional forms.**

(a) Use Standard Form (SF) 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services will be performed in the United States or its outlying areas.

(b) The firm's qualifications as listed in the SF 330, Part II—General Qualifications as well as the SF 330, Part I—Contract-Specific Qualifications, must be used to evaluate firms before awarding a contract for architect-engineer services:

(1) Use the SF 330, Part I—Contract-Specific Qualifications, to obtain information from an architect-engineer firm about its qualifications for a specific contract when the contract amount is expected to exceed the simplified acquisition threshold. Part I may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(2) Use the SF 330, Part II—General Qualifications, to obtain information from an architect-engineer firm about its general professional qualifications.

## Subpart 36.3—Postaward

### 36.301 Responsibilities of contracting officers.

See part 42 for performing general contract administration functions. For construction and architect-engineer services there are additional functions including:

(a) *Performance and deliverables.* (1) Contracting officers may, in writing, request the removal of any contractor employee deemed incompetent, careless, or otherwise objectionable (see 52.236–5).

(2) Provide the contractor with a list of work remaining to be performed or corrected for any portions of the work the Government intends to possess or use, prior to taking possession or using said work (see 52.236–11).

(3) Regarding schedules for construction contracts:

(i) The contracting officer may withhold approval of progress payments if the contractor fails to submit the required schedule.

(ii)(A) Determine whether the work is progressing with sufficient diligence to meet the contract's specified completion time; and

(B) The contracting officer may terminate the contractor's right to proceed with the work, or any separable part of it, per the default terms of the contract if the contractor fails to recover lost time (see 52.236–15).

(b) *Modifications.* (1) Upon receiving written notice of differing site conditions,-

(i) Promptly investigate the site; and

(ii) Negotiate an equitable adjustment if the conditions materially differ, leading to an increase or decrease in the contractor's costs or performance time. Requests for an equitable adjustment will be allowed only if prior written notice is received and submitted before final payment (see 52.236–2).

(2) If repairs are not made promptly to damaged existing vegetation, structures, equipment, utilities, or improvements; contracting officers may have the necessary work performed and charge the cost to the contractor (see 52.236–9).

(3) If stakes and marks are destroyed by the contractor, the contracting officer may replace them and deduct the cost from due or future payments (see 52.236–17).

(4)(i) Regarding specifications and drawings for construction—

(A) Make a written determination in the case of a discrepancy in the figures, in the drawings, or in the specifications; and

(B) Approve or disapprove shop drawings, with reasons for disapproval if applicable.

(ii) If the contracting officer approves a shop drawing variation from the contract requirements that is minor or does not impact price or performance time, a contract modification will not be issued. For all other approved variations, issue a contract modification (see 52.236–21).

(5) If a construction contract needs a modification due to architect-engineer design errors—

(i) Assess the architect-engineer's liability, with the advice of technical personnel and legal counsel;

(ii) Seek cost recovery if the amount exceeds administrative costs or if it benefits the Government; and

(iii) Include in the contract file a written statement detailing the recovery decision (see 52.236–23).

(c) *Compliance and reporting.*

(1) Ensure compliance with the labor standards requirement of the contract (*e.g.,* payroll reviews, on-site inspections, and employee interviews to determine compliance).

(2) Contracting officers should advise contractors to promptly execute and return any required payment and performance bonds to ensure a notice to proceed is issued to commence work in a timely manner (see part 28).

(3) If appropriate, give written consent for the contractor to abandon, without removal, temporary buildings and utilities (see 52.236–10).

(4) If the contracting officer becomes aware of noncompliance with requirements or conditions that endanger public or Government personnel health or safety, the contracting officer—

(i) Must notify the contractor orally, then in writing, requesting immediate corrective action; and

(ii) May issue a stop-work order if the contractor fails to promptly take satisfactory corrective action (see 52.236–13).

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. The authority citation for 48 CFR Part 52 continues to read as follows:

**Authority:** 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 42 U.S.C. 2473(c).

■ 3. Revise sections 52.214–3 through 52.214–7 to read as follows:

### 52.214–3 Amendments to Invitations for Bids.

As prescribed in 14.207(b)(1), insert the following provision:

**Amendments to Invitations for Bids (DATE)**

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b)(1) Bidders must acknowledge receipt of any amendment to this solicitation—

(i) By signing and returning the amendment;

(ii) By identifying the amendment number and date in space provided for this purpose on the form for submitting a bid;

(iii) By letter; or

(iv) By email, if email bids are authorized in the solicitation.

(2) The Government must receive the acknowledgement by the time and at the place specified for receipt of bids.

(End of provision)

### 52.214–4 False Statements in Bids.

As prescribed in 14.207(b)(2), insert the following provision:

**False Statements in Bids (DATE)**

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

### 52.214–5 Submission of Bids.

As prescribed in 14.207(b)(3), insert the following provision:

**Submission of Bids (DATE)**

(a) Unless submitted by electronic means, bids and bid modifications must be submitted in sealed envelopes or packages—

(1) Addressed to the office specified in the solicitation; and

(2) Showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services must ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Bids submitted by electronic commerce will be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

**52.214–6 Explanation to Prospective Bidders.**

As prescribed in 14.207(b)(4), insert the following provision:

### Explanation to Prospective Bidders (DATE)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

**52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.**

As prescribed in 14.207(b)(5), insert the following provision:

### Late Submissions, Modifications, and Withdrawals of Bids (DATE)

(a) *Definitions.*

''Acceptable evidence'' means a verifiable record, either physical or electronic, that provides a clear and authenticated account of the exact time a submission was received by the Government, which includes:

(1) The time/date stamp of that installation on the bid wrapper;

(2) Other documentary evidence of receipt maintained by the installation (*e.g.,* receiving reports, mailroom logs, or internal logs);

(3) Oral testimony or statements of Government personnel;

(4) Electronic metadata, electronic audit trails, server gateway logs, or delivery receipts generated by the bidder's or the Government's email system.

''Government control'' means the point at which a bid has been delivered, either physically or electronically, into the custody of the Government, such that the bidder can no longer modify or exercise dominion over the submission.

(b) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(c)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is ''late'' and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid is in the best interests of the Government and would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(d) If an emergency or unanticipated event (*e.g.,* weather emergencies, government-wide or agency-specific network outages, server crashes, or cybersecurity-related blocking of authorized file types) interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids 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.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

■ 4. Revise section 52.214–10 to read as follows:

**52.214–10 Contract Award—Sealed Bidding.**

As prescribed in 14.207(c), insert the following provision:

### Contract Award—Sealed Bidding (DATE)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may—

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid will result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

■ 5. Revise section 52.214–12 to read as follows:

**52.214–12 Preparation of Bids.**

As prescribed in 14.207(d), insert the following provision:

### Preparation of Bids (DATE)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder must furnish the information required by the solicitation. The bidder must sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent must be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c)(1) For each item offered, bidders must—

(i) Show the unit price, including, unless otherwise specified, packaging, packing, and preservation; and

(ii) Enter the extended price for the quantity of each item offered in the *Amount* column of the Schedule.

(2) In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

■ 6. Revise sections 52.214–14 through 52.214–16 to read as follows:

**52.214–14 Place of Performance—Sealed Bidding.**

As prescribed in 14.207(e), insert the following provision:

**Place of Performance—Sealed Bidding (DATE)**

(a) The bidder, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks *intends* in paragraph (a) of this provision, it must insert in the spaces provided below the required information:

| Place of performance (street address, city, county, state, zip code) | Name and address of owner and operator of the plant or facility if other than bidder |
| --- | --- |
| | |

(End of provision)

### 52.214–15 Period for Acceptance of Bids.

As prescribed in 14.207(f), insert the following provision:

**Period for Acceptance of Bids (DATE)**

In compliance with the solicitation, the bidder agrees, if this bid is accepted within ______ calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)

### 52.214–16 Minimum Bid Acceptance Period.

As prescribed in 14.207(g), insert the following provision:

**Minimum Bid Acceptance Period (DATE)**

(a) *Acceptance period,* as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of ______ calendar days [*the Contracting Officer will insert the number of days*].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: ______ calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within—

(1) The acceptance period stated in paragraph (c) of this provision; or

(2) Any longer acceptance period stated in paragraph (d) of this provision.

(End of provision)

■ 7. Revise sections 52.214–18 through 52.214–29 to read as follows:

### 52.214–18 Preparation of Bids—Construction.

As prescribed in 14.207(h), insert the following provision:

**Preparation of Bids—Construction (DATE)**

(a)(1) Bids must be—

(i) Submitted on the forms furnished by the Government or on copies of those forms; and

(ii) Manually signed.

(2) The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including—

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words *no bid* in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

### 52.214–19 Contract Award—Sealed Bidding—Construction.

As prescribed in 14.207(i), insert the following provision:

**Contract Award—Sealed Bidding—Construction (DATE)**

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

### 52.214–20 Bid Samples.

As prescribed in 14.207(j)(1), insert the following provision:

**Bid Samples (DATE)**

(a) *Bid sample* means a product sample required to be submitted by a bidder to show those characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid (*e.g.,* balance, facility of use, or pattern).

(b) Bidders must furnish bid samples as part of the bid. The bidder must deliver to the Government the bid samples by the time specified in the invitation for bids. If the bidder fails to submit samples on time, the Government will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The Government will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The Government will reject the bid when the sample fails to conform to the required characteristics. Products delivered under any resulting contract must conform to—

(1) The approved sample for the characteristics listed for test or evaluation; and

(2) The specifications for all other characteristics.

(d) Unless otherwise specified in the solicitation, bid samples must be—

(1) Submitted at no expense to the Government; and

(2) Returned at the bidder's request and expense, unless they are destroyed during preaward testing.

(End of provision)

*Alternate I* (DATE). As prescribed in 14.207(j)(2)(i), insert the following *Alternate I:*

(e) At the discretion of the Contracting Officer, the requirement for furnishing bid samples may be waived for a bidder if—

(1) The bid states that the offered product is the same as a product offered by the bidder to the ______ [*as appropriate, the Contracting Officer will designate the contracting office or an alternate activity or office*]; and

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

*Alternate II* (DATE). As prescribed in 14.207(j)(2)(ii), insert the following *Alternate II:*

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if—

(1) The bid states that the offered product is the same as a product offered by the bidder to the ______ [*as appropriate, the Contracting Officer will designate the contracting office or an alternate activity or office*] on a previous acquisition;

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation; and

(3) The product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.

**52.214–21 Descriptive Literature.**

As prescribed in 14.207(k)(1), insert the following provision:

**Descriptive Literature (DATE)**

(a) *Descriptive literature,* as used in this provision, means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as—

(1) Design;

(2) Materials;

(3) Components;

(4) Performance characteristics; and

(5) Methods of manufacture, assembly, construction, or operation.

(c) Descriptive literature, required elsewhere in this solicitation, must be—

(1) Identified to show the item(s) of the offer to which it applies; and

(2) Received by the time specified in this solicitation.

(d) If the bidder fails to submit descriptive literature on time, the Government will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(e) If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the Government will reject the bid.

(End of provision)

*Alternate I* (DATE). As prescribed in 14.207(k)(2), add the following paragraphs (f) and (g) to the basic provision:

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement must provide the following information:

Prior contract number ______

Date of prior contract ______

Line item number of product supplied ______

Name and address of Government activity to which delivery was made ______

Date of final delivery of product supplied ______

(g) Bidders must submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. The Government will disregard a bidder's request for a waiver under paragraph (f) if that bidder has submitted the descriptive literature requested under this solicitation.

**52.214–22 Evaluation of Bids for Multiple Awards.**

As prescribed in 14.207(l), insert the following provision:

**Evaluation of Bids for Multiple Awards (DATE)**

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

**52.214–23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.**

As prescribed in 14.207(m), insert the following provision:

**Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (DATE)**

(a) *Definitions.*

''Acceptable evidence'' means a verifiable record, either physical or electronic, that provides a clear and authenticated account of the exact time a submission was received by the Government, which includes:

(1) The time/date stamp of that installation on the bid wrapper;

(2) Other documentary evidence of receipt maintained by the installation (*e.g.,* receiving reports, mailroom logs, or internal logs);

(3) Oral testimony or statements of Government personnel;

(4) Electronic metadata, electronic audit trails, server gateway logs, or delivery receipts generated by the bidder's or the Government's email system.

''Government control'' means the point at which a bid has been delivered, either physically or electronically, into the custody of the Government, such that the bidder can no longer modify or exercise dominion over the submission.

(b) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(c)(1) Any technical proposal under step one of two-step sealed bidding or modification, revision, or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the request for technical proposals, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under part 15 of the Federal Acquisition Regulation.

(2) However, a late modification 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.

(d) If an emergency or unanticipated event (*e.g.,* weather emergency, government-wide or agency-specific network outages, server crashes, or cybersecurity-related blocking of authorized file types)interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

**52.214–24 Multiple Technical Proposals.**

As prescribed in 14.207(n), insert the following provision:

## Multiple Technical Proposals (DATE)

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)

**52.214–25 Step Two of Two-Step Sealed Bidding.**

As prescribed in 14.207(o), insert the following provision:

## Step Two of Two-Step Sealed Bidding (DATE)

(a) This invitation for bids is issued to initiate step two of two-step sealed bidding under section 14.211 of the Federal Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step one of this acquisition under ____[*the Contracting Officer will insert the identification of the step-one request for technical proposals*].

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)

**52.214–26 Audit and Records—Sealed Bidding.**

As prescribed in 14.208(a), insert the following clause:

## Audit and Records—Sealed Bidding (DATE)

(a) *Definition.* As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, has the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, has the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

(d) *Availability.* The Contractor must make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified for contractor record retention in part 4 Federal Acquisition Regulation (FAR). FAR Subpart 4.4, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated must be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract must be made available until disposition of such appeals, litigation, or claims.

(e) *Subcontracts.* The Contractor must include the substance of the clause, including this paragraph (e), in subcontracts at any tier under this contract, other than those for commercial products or commercial services, if the value of the subcontract exceeds the threshold for submission of certified cost or pricing data in FAR 15.403–3(a) on the date of subcontract award.

(End of clause)

**52.214–27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.**

As prescribed in 14.208(b)(1), insert the following clause:

## Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding (DATE)

(a) This clause will become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–3(a) on the date of execution of the modification, except that this clause does not apply to a modification if an exception under FAR 15.403–2(b) applies.

(b)(1) The contract will be modified to reflect a price reduction if any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because—

(i) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; or

(ii) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data.

(iii) Any of these parties furnished data of any description that were not accurate.

(2) This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract will be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided,* that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts will be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset must not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor will be liable to and must pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

### 52.214–28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.208(c), insert the following clause:

## Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding (DATE)

(a) *Applicability.* The requirements of paragraphs (b) and (c) of this clause will—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–3(a) on the date of execution of the modification, and

(2) Be limited to such modifications.

(b) *Requirement.* Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–3(a), on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–3(a), the Contractor must require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR 15.408, Table 15–1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–2(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403–3(a) is adjusted for inflation as set forth in FAR 1.108, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(c) *Certification.* The Contractor must require the subcontractor to certify in substantially the form prescribed in section 15.406–2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) *Subcontracts.* The Contractor must include the substance of this clause, including this paragraph (d), in subcontracts at any tier under this contract, other than those for commercial products or commercial services, if the value of the subcontract, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403–3(a).

(End of clause)

*Alternate I* (DATE). As prescribed in 14.208(c)(1), substitute the following paragraph (b) in place of paragraph (b) of the basic clause:

(b) *Requirement.* Unless an exception under FAR 15.403–2 (b) applies, the Contractor must require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR 15.408, Table 15–1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed $950,000; or

(2) Before awarding any subcontract expected to exceed $2 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed $2.5 million.

### 52.214–29 Order of Precedence—Sealed Bidding.

As prescribed in 14.208(d), insert the following clause:

## Order of Precedence—Sealed Bidding (DATE)

Any inconsistency in this solicitation or contract must be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications);

(b) Representations and other instructions;

(c) Contract clauses;

(d) Other documents, exhibits, and attachments; and

(e) The specifications.

(End of clause)

### 52.214–31 [Removed and Reserved]

■ 8. Remove and reserve section 52.214–31.

■ 9. Revise sections 52.214–34 through 52.214–35 to read as follows:

### 52.214–34 Submission of Offers in the English Language.

As prescribed in 14.207(p), insert the following provision:

## Submission of Offers in the English Language (DATE)

Offers submitted in response to this solicitation must be in the English language. Offers received in other than English will be rejected.

(End of provision)

### 52.214–35 Submission of Offers in U.S. Currency.

As prescribed in 14.207(q), insert the following provision:

## Submission of Offers in U.S. Currency (DATE)

Offers submitted in response to this solicitation must be in terms of U.S. dollars. Offers received in other than U.S. dollars will be rejected.

(End of provision)

■ 10. Revise sections 52.228–1 through 52.228–5 to read as follows: 52.228–1 Bid Guarantee.

As prescribed in 28.101–2, insert a provision or clause substantially as follows:

### Bid Guarantee (DATE)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder must furnish a bid guarantee in the form of a firm commitment, *e.g.,* bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds to—

(1) Unsuccessful bidders as soon as practicable after the opening of bids; and

(2) The successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee must be ____ percent of the bid price or $____, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of provision)

**52.228–2 Additional Bond Security.**

As prescribed in 28.106–4(a), insert the following clause:

### Additional Bond Security (DATE)

The Contractor must promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if—

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

**52.228–3 Workers' Compensation Insurance (Defense Base Act).**

As prescribed in 28.309(a), insert the following clause:

### Workers' Compensation Insurance (Defense Base Act) (DATE)

(a) *Requirements.* The Contractor must—

(1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing workers' compensation insurance or qualifying as a self-insurer under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) as extended by the Defense Base Act (42 U.S.C. 1651, *et seq.*), and continue to maintain provisions to provide such Defense Base Act benefits until contract performance is completed;

(2) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS–202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 930(a), 20 CFR 702.201 to 702.203);

(3) Pay all compensation due for disability or death within the time frames required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914, 20 CFR 702.231 and 702.232);

(4) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 907, 20 CFR 702.402 and 702.419);

(5) If controverting the right to compensation, submit Form LS–207 (Notice of Controversion of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(d), 20 CFR 702.251);

(6) Immediately upon making the first payment of compensation in any case, submit Form LS–206 (Payment Of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c), 20 CFR 702.234);

(7) When payments are suspended or when making the final payment, submit Form LS–208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c) and (g), 20 CFR 702.234 and 702.235); and

(8) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR parts 701 to 704.

(b) *Resource.* For additional information on the Longshore and Harbor Workers' Compensation Act requirements see *http://www.dol.gov/owcp/dlhwc/lsdba.htm.*

(c) *Subcontracts.* The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier to which the Defense Base Act applies including those for commercial services, but excluding those for commercial products.

(End of clause)

**52.228–4 Workers' Compensation and War-Hazard Insurance Overseas.**

As prescribed in 28.309(b), insert the following clause:

### Workers' Compensation and War-Hazard Insurance Overseas (DATE)

(a) *Defense Base Act.* This paragraph applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to workers' compensation insurance under the Defense Base Act (42 U.S.C. 1651 *et seq.*). On behalf of employees for whom the applicability of the Defense Base Act has been waived, the Contractor must provide, before commencing performance under this contract, at least that workers' compensation insurance or the equivalent as the laws of the country of which these employees are nationals may require.-The Contractor must continue to maintain it until performance is completed. The Contractor must insert, in all subcontracts at any tier under this contract, including those contracts for commercial services, to which the Defense Base Act would apply but for the waiver, a clause similar to this paragraph (a) (including this sentence) imposing upon those subcontractors this requirement to provide such workers' compensation insurance coverage.

(b) *War Hazards Compensation Act.*

(1) *Applicability.* This paragraph (b) applies if the Contractor or any subcontractor under this contract employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(2) *Responsibility.* On behalf of employees for whom the applicability of the Defense Base Act (and hence that of the War Hazards Compensation Act) has been waived, the Contractor must, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the War Hazards Compensation Act, except that the level of benefits must conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act apply; *e.g.,* the definition of war-hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by workers' compensation insurance or the equivalent.

(c) *Subcontracts.* Unless the Contractor elects to assume directly the liability to subcontractor employees created by this clause, the Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier under this contract to which the War Hazards Compensation Act would apply but for the waiver, other than those for commercial products or commercial services, in order to impose upon those subcontractors this requirement to provide war-hazard benefits.

(End of clause)

**52.228–5 Insurance—Work on a Government Installation.**

As prescribed in 28.310, insert the following clause:

**Insurance—Work on a Government Installation (DATE)**

(a) *Requirement.* The Contractor must, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

(b) *Notice.* Before commencing work under this contract, the Contractor must notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance must contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest must not be effective—

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) Subcontracts. The Contractor must–

(1) Insert the substance of this clause, including this paragraph (c), in subcontracts at any tier under this contract that requires work on a Government installation must other than those for commercial products or commercial services;

(2) Require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract;

(3) Must maintain a copy of all subcontractors' proofs of required insurance; and

(4) Make copies available to the Contracting Officer upon request.

(End of clause)

■ 11. Revise sections 52.228–7 through 52.228–17 to read as follows:

**52.228–7 Insurance—Liability to Third Persons.**

As prescribed in 28.311–1, insert the following clause:

**Insurance—Liability to Third Persons (DATE)**

(a)(1) Except as provided in paragraph (a)(2) of this clause, the Contractor must provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; *provided* that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph must be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor must be reimbursed—

(1) For that portion—

(i) Of the reasonable cost of insurance allocable to this contract; and

(ii) Required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract will be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor must not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

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

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause do not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided,* that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor must—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

**52.228–8 Liability and Insurance—Leased Motor Vehicles.**

As prescribed in 28.312, insert the following clause:

**Liability and Insurance—Leased Motor Vehicles (DATE)**

(a) The Government will be responsible for loss of or damage to—

(1) Leased vehicles, except for—

(i) Normal wear and tear; and

(ii) Loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671–2680).

(b) The Contractor is liable for, and must indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor must provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least $200,000 per person and $500,000 per occurrence for death or bodily injury and $20,000 per occurrence for property damage or loss.

(d)(1) Before commencing work under this contract, the Contractor must notify the Contracting Officer in writing that the required insurance has been obtained.

(2) The policies evidencing required insurance must contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government must not be effective—

(i) For such period as the laws of the State in which this contract is to be performed prescribe; or

(ii) Until 30 days after written notice to the Contracting Officer, whichever period is longer.

(3) The policies must exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.

(e) The contract price must not include any costs for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

### 52.228–9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause:

### Cargo Insurance (DATE)

(a) The Contractor, at the Contractor's expense, must provide and maintain, during the continuance of this contract, cargo insurance of $____ per vehicle to cover the value of property on each vehicle and of $____ to cover the total value of the property in the shipment.

(b) All insurance must be written on companies acceptable to ____ [*insert name of contracting agency*], and policies must include such terms and conditions as required by ____ [*insert name of contracting agency*]. The Contractor must provide evidence of acceptable cargo insurance to ____ [*insert name of contracting agency*] before commencing operations under this contract.

(c) Each cargo insurance policy must include the following statement:

''It is a condition of this policy that the Company must furnish—

(1) Written notice to ____ [*insert name and address of contracting agency*], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (1) of this statement, not less than 15 days prior to the expiration of any current policy on file with ____ [*insert name of contracting agency*].''

(End of clause)

### 52.228–10 Vehicular and General Public Liability Insurance.

As prescribed in 28.313(b), insert a clause substantially the same as the following:

### Vehicular and General Public Liability Insurance (DATE)

(a) The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for—

(1) Bodily injury of not less than $____ for each person and $____ for each occurrence; and

(2) Property damage of not less than $____ for each accident and $____ in the aggregate.

(b) The Contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(End of clause)

### 52.228–11 Individual Surety—Pledge of Assets.

As prescribed in 28.203–4(b), insert the following clause:

### Individual Surety—Pledge of Assets (DATE)

(a) The Contractor must obtain from each person acting as an individual surety on a performance bond or a payment bond—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203–1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Contracting Officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the Contractor's obligations under its performance bond. The security interest in support of a performance bond must be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding $150,000 (40 U.S.C. 3131).* Until completion of any warranty period, or for 1 year following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR 28.102–1(b)(1)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (b)(1) of this clause.* Until completion of any warranty period, or for 90 days following final payment, whichever is later.

(c) A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release. The security interest on the individual surety's assets in support of a payment bond must be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding $150,000 which require performance and payment bonds (40 U.S.C. 3131).* For 1 year following final payment, or until resolution of all pending claims filed against the payment bond during the 1-year period following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR 28.102–1(b)(1)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (c)(1) of this clause.* For 90 days following final payment.

(d) The Contracting Officer may allow the Contractor to substitute an individual surety, for a performance or payment bond, after contract award. The Contractor must comply with the requirements of paragraph (a) of this clause within the timeframe established by the Contracting Officer.

(End of clause)

### 52.228–12 Prospective Subcontractor Requests for Bonds.

As prescribed in 28.106–4(b), use the following clause:

### Prospective Subcontractor Requests for Bonds (DATE)

In accordance with section 806(a)(3) of Public Law 102–190, as amended by sections 2091 and 8105 of Public Law 103–355 (10 U.S.C. 4601 note prec.), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the Contractor must promptly provide a copy of such payment bond to the requester.

(End of clause)

### 52.228–13 Alternative Payment Protections.

As prescribed in 28.102–3(b), insert the following clause:

### Alternative Payment Protections (DATE)

(a) The Contractor must submit one of the following payment protections: ________

(b) The amount of the payment protection must be 100 percent of the contract price.

(c) The submission of the payment protection is required within ____ days of contract award.

(d) The payment protection must provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor must utilize only suppliers of labor and material that signed the escrow agreement.

(End of clause)

### 52.228–14 Irrevocable Letter of Credit.

As prescribed in 28.204–4, insert the following clause:

### Irrevocable Letter of Credit (DATE)

(a) ''Irrevocable letter of credit'' (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause must be used.

(c) The letter of credit must be irrevocable, must require presentation of no document other than a written demand and the ILC (including confirming letter, if any), must be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC must not expire earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC must provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage must be:

(i) For contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d)(1) Only federally insured financial institutions rated investment grade by a commercial rating service may issue or confirm the ILC.

(2) Unless the financial institution issuing the ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(3) The Offeror/Contractor must provide the Contracting Officer a credit rating that indicates the financial institutions have the required credit rating as of the date of issuance of the ILC.

(4) The current rating for a financial institution is available through any of the following rating services registered with the U.S. Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). NRSRO's can be located at the website *http://www.sec.gov/answers/nrsro.htm* maintained by the SEC.

(e) The following format must be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date __________
Irrevocable Letter of Credit No. __________
Account party's name __________
Account party's address __________
For Solicitation No. __________

(For reference only)
TO: [U.S. Government agency]
[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States $____. This Letter of Credit is payable at [*issuing financial institution's and, if any, confirming financial institution's*] office at [*issuing financial institution's address and, if any, confirming financial institution's address]* and expires with our close of business on ____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [*This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.*] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment must be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. ____ (*Insert version in effect at the time of ILC issuance, e.g.,* "*Publication 600, 2006 edition*") and to the extent not inconsistent therewith, to the laws of ____ [*State of confirming financial institution, if any, otherwise State of issuing financial institution*].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,
[Issuing financial institution]

(f) The following format must be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]

(Date) __________
Our Letter of Credit
Advice Number __________
Beneficiary: __________
[U.S. Government agency]
Issuing Financial Institution: __________
Issuing Financial Institution's LC No.: __________
Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by ____ [*name of issuing financial institution*] for drawings of up to United States dollars ____ /U.S. ____ $and expiring with our close of business on ____ [*the expiration date*], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at ____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [*This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.*] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we must notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution must have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. ____ (*Insert version in effect at the time of ILC issuance, e.g.,* "*Publication 600, 2006 edition*") and to the extent not inconsistent therewith, to the laws of ____ [*State of confirming financial institution*].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,
[*Confirming financial institution*]

(g) The following format will be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT
[*City, State*]
(Date) __________
[*Name and address of financial institution*]
Pay to the order of __________

[*Beneficiary Agency*] ____________________
the sum of United States $____
This draft is drawn under
Irrevocable Letter of Credit No. ____________
[*Beneficiary Agency*]
By: ____________________________________

(End of clause)

### 52.228–15 Performance and Payment Bonds—Construction.

As prescribed in 28.102–3(a), insert a clause substantially as follows:

### Performance and Payment Bonds—Construction (DATE)

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

*Original contract price* means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is valued at or below the threshold specified in Federal Acquisition Regulation 28.102–1(a) on the date of award of this contract, the successful offeror must furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award must be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25A).* The penal amount of payment bonds at the time of contract award must be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor must furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds must be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Department Circular 570 may be obtained from the U.S. Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Branch, 3201 Pennsy Drive, Building E, Landover, MD 20785 or at *https://www.fiscal.treasury.gov/surety-bonds/circular-570.html.*

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

### 52.228–16 Performance and Payment Bonds—Other Than Construction.

As prescribed in 28.103–4, insert a clause substantially as follows:

### Performance and Payment Bonds—Other Than Construction (DATE)

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

*Original contract price* means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The Contractor must furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to____ percent of the original contract price and a payment bond (Standard Form 1416) in an amount equal to ____ percent of the original contract price.

(c) The Contractor must furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within ____ days, but in any event, before starting work.

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds must be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Department Circular 570 may be obtained from the U.S. Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Branch, 3201 Pennsy Drive, Building E, Landover, MD 20785 or at *https://www.fiscal.treasury.gov/surety-bonds/circular-570.html.*

(End of clause)

*Alternate I* (DATE). As prescribed in 28.103–4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor must furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to ____ percent of the original contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

### 52.228–17 Individual Surety—Pledge of Assets (Bid Guarantee).

As prescribed in 28.203–4(a), insert the following provision:

### Individual Surety—Pledge of Assets (Bid Guarantee) (DATE)

(a) Offerors must obtain from each person acting as an individual surety on a bid guarantee—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203–1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Offeror must include with its offer the information required at paragraph (a) of this provision within the timeframe specified in the provision at FAR 52.228–1, Bid Guarantee, or as otherwise established by the Contracting Officer.

(c) The Contracting Officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(End of provision)

### 52.236–1 [Removed and Reserved]

■ 12. Remove and reserve section 52.236–1.

■ 13. Revise sections 52.236–2 through 52.236–3 to read as follows:

### 52.236–2 Differing Site Conditions.

As prescribed in 36.101–7(a), insert the following clause:

### Differing Site Conditions (DATE)

(a) Within 5 calendar days of discovery, the Contractor must, and before the conditions are disturbed, provide written notice to the Contracting Officer of—

(1) Latent physical conditions or subsurface conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b)(1) The Contracting Officer will investigate the site conditions promptly after receiving such a notice.

(2) If the conditions materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this

contract an equitable adjustment must be made under this clause.

(c) No request for an equitable adjustment to the contract under this clause will be allowed, unless the Contractor has given the written notice required.

(d) No request for an equitable adjustment to the contract for differing site conditions will be allowed if made after final payment under this contract.

(End of clause)

#### 52.236–3 Site Investigation and Conditions Affecting the Work.

As prescribed in 36.101–7(a), insert the following clause:

### Site Investigation and Conditions Affecting the Work (DATE)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including—

(1) Conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) The availability of labor, water, electric power, and roads;

(3) Uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) The conformation and conditions of the ground; and

(5) The character of equipment and facilities needed preliminary to and during work performance.

(b) The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph does not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(c) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

#### 52.236–4 [Removed and Reserved]

■ 14. Remove and reserve section 52.236–4.

■ 15. Revise sections 52.236–5 through 52.236–18 to read as follows:

#### 52.236–5 Material and Workmanship.

As prescribed in 36.101–7(b), insert the following clause:

### Material and Workmanship (DATE)

(a)(1) Equipment, material, and articles incorporated into the work covered by this contract must be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract.

(2) References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, will be regarded as establishing a standard of quality and must not be construed as limiting competition.

(3) The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor must obtain the Contracting Officer's approval of the machinery, mechanical, and other equipment to be incorporated into the work.

(1) When requesting approval, the Contractor must furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment.

(2) When required by this contract or by the Contracting Officer, the Contractor must also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work.

(i) When requesting approval, the Contractor must provide appropriate and required information concerning the material or articles.

(ii) When directed to do so, the Contractor must submit samples for approval at the Contractor's expense, with shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval are installed or used at the risk of subsequent rejection.

(c) Work under this contract must be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

#### 52.236–6 Superintendence by the Contractor.

As prescribed in 36.101–7(a), insert the following clause:

### Superintendence by the Contractor (DATE)

During performance of this contract and until the work is completed and accepted, the Contractor must directly superintend the work or assign and have on site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

#### 52.236–7 Permits and Responsibilities.

As prescribed in 36.101–7(c), insert the following clause:

### Permits and Responsibilities (DATE)

(a) The Contractor must, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work.

(b) The Contractor is responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence.

(c) The Contractor is responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

#### 52.236–8 Other Contracts.

As prescribed in 36.101–7(a), insert the following clause:

### Other Contracts (DATE)

(a) The Government may award other contracts for work at or near the site of the work under this contract. The Contractor must cooperate and coordinate with—

(1) Other contractors; and

(2) Government employees.

(b) The Contractor must adapt scheduling and performance of the work under this contract to accommodate the performance of other contractors. The Contractor's scheduling and performance must not delay or interfere with the performance of work by other contractors or Government employees.

(End of clause)

#### 52.236–9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

As prescribed in 36.101–7(a), insert the following clause:

### Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (DATE)

(a) The Contractor must preserve and protect structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed, and which do not unreasonably interfere with the work required under this contract. The Contractor must only remove trees when specifically authorized to do so. If any limbs or branches of trees are broken during contract performance, the Contractor must trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor must protect from damage existing improvements, structures, equipment, and utilities at or near the work site, on adjacent property of a third party, and transportation paths and routes. In the event of damage resulting from non-compliance with this contract or failure to exercise reasonable care in performing the work, the Contractor must promptly repair existing improvements structures, equipment, and utilities at or near the work site, on adjacent property of a third party, and on or near transportation paths and routes. The Contractor must repair any damage, including those that are the property of a third party.

(c) If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

**52.236–10 Operations and Storage Areas.**

As prescribed in 36.101–7(a), insert the following clause:

**Operations and Storage Areas (DATE)**

(a) The Contractor must confine all activities and operations on site to areas authorized or approved by the Contracting Officer. The Contractor must hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b)(1) Temporary buildings (*e.g.,* storage sheds, shops, offices) and utilities—

(i) May be erected by the Contractor only with the approval of the Contracting Officer; and

(ii) Must only be built with labor and materials furnished by the Contractor without additional expense to the Government.

(2) The temporary buildings and utilities are the property of the Contractor and must be removed by the Contractor at its expense upon completion of the work.

(3) The temporary buildings and utilities may be abandoned and need not be removed, with written consent of the Contracting Officer.

(c) The Contractor must, as prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles must not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation.

(End of clause)

**52.236–11 Use and Possession Prior to Completion.**

As prescribed in 36.101–7(d), insert the following clause:

**Use and Possession Prior to Completion (DATE)**

(a) The Government has the right to take possession of or use any completed or partially completed part of the work.

(1) Before taking possession of or using any work, the Contracting Officer will furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use.

(2) Failure of the Contracting Officer to list any item of work does not relieve the Contractor of responsibility for complying with the terms of the contract.

(3) The Government's possession or use is not an acceptance of any work under the contract.

(b)(1) While the Government has such possession or use, the Contractor is relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled ''Permits and Responsibilities''.

(2) If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment must be made in the contract price or the time of completion, and the contract will be modified in writing accordingly.

(End of clause)

**52.236–12 Cleaning Up.**

As prescribed in 36.101–7(a), insert the following clause:

**Cleaning Up (DATE)**

(a) The Contractor must keep the work area, including storage areas, in a clean, neat, orderly condition, and free from accumulations of waste materials.

(b) Before completing the work, the Contractor must remove from the site any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government.

(End of clause)

**52.236–13 Accident Prevention.**

As prescribed in 36.101–7(e), insert the following clause:

**Accident Prevention (DATE)**

(a) *Responsibilities.* The Contractor must provide and maintain work environments and procedures that—

(1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) Avoid interruptions of Government operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) *Requirements.* In addition, for contracts for construction or dismantling, demolition, or removal of improvements, the Contractor must—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) *Defense contracts.* If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor must comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385–1–1, in effect on the date of the solicitation.

(d) *Noncompliance.*

(1) If the Contracting Officer becomes aware of any noncompliance with these requirements or any condition that poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer will notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action.

(2) This notice, when delivered to the Contractor or the Contractor's representative at the work site, is sufficient notice of the noncompliance and that corrective action is required.

(3) After receiving the notice, the Contractor must immediately take corrective action.

(4) If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken.

(5) The Contractor is not entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop-work order issued under this clause.

(e) *Subcontracts.* The Contractor—

(1) Must include the substance of this clause, including this paragraph (e), in all subcontracts under this contract, including those for commercial services, but excluding those for commercial products; and

(2) May modify the clause only as necessary to identify the parties.

(End of clause)

*Alternate I* (DATE). As prescribed at 36.101–7(e)(2) add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor must—

(1) Submit a written proposed plan for implementing this clause. The plan must include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

**52.236–14 Availability and Use of Utility Services.**

As prescribed in 36.101–7(f), insert the following clause:

**Availability and Use of Utility Services (DATE)**

(a) The Government will make all reasonably required utilities available to the Contractor from existing outlets and supplies, as specified in the contract.

(b) Unless otherwise provided in the contract, the Contractor must pay for all utility costs.

(c) The Contractor, at its expense and in a workmanlike manner, must install and maintain all necessary temporary connections, distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges.

(d) Before final acceptance by the Government, the Contractor must remove the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

**52.236–15 Schedules for Construction Contracts.**

As prescribed in 36.101–7(g), insert the following clause:

**Schedules for Construction Contracts (DATE)**

(a)(1) Within five days after the work commences on the contract or another period of time determined by the Contracting Officer, the Contractor must prepare and submit to the Contracting Officer for approval a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the work (including acquiring materials, plant, and equipment).

(2) The schedule must be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period.

(3) If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor must continually update the actual progress in the schedule and must submit it to the Contracting Officer by the means prescribed in the contract for transmittals or as directed by the Contracting Officer.

(c)(1) If the Contractor falls behind the approved schedule, the Contractor must take steps necessary to recover lost time and execute in accordance with the approved schedule, without additional cost to the Government.

(2) Such steps may include increasing the number of shifts, overtime operations, days of work, and/or the amount of construction plant.

(3) The Contractor must submit, for approval, supplementary schedule(s) that demonstrate how the lost time will be recovered.

(d) If the Contractor does not recover the lost time, the Contracting Officer may determine that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

**52.236–16 Quantity Surveys.**

As prescribed in 36.101–7(h), insert the following clause:

**Quantity Surveys (DATE)**

(a) Quantity surveys must be conducted, and the data derived from these surveys must be used in computing the quantities of work performed and the actual construction completed and in place.

(1) The Government will conduct the original and final surveys and make the computations based on them.

(2)(i) The Contractor must conduct the surveys for any periods for which progress payments are requested and must make the computations based on these surveys.

(ii) All surveys conducted by the Contractor must be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(b) Upon completing a survey, the Contractor must promptly provide the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, which may be used by the Contracting Officer to determine the amount of progress payments.

(c) The Contractor must retain copies of all such material furnished to the Contracting Officer.

(End of clause)

*Alternate I* (DATE). As prescribed at 36.101–7(h) substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor must conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys must be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government must make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor must make the computations based on the surveys for any periods for which progress payments are requested.

**52.236–17 Layout of Work.**

As prescribed in 36.101–7(i), insert the following clause:

**Layout of Work (DATE)**

(a) The Contractor must layout its work from Government-established base lines and benchmarks provided on the drawings.

(b) The Contractor must be responsible for all measurements in connection with the layout.

(c) The Contractor must furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required for the layout.

(d) The Contractor is responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer.

(e)(1) The Contractor is responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them.

(2) If such marks are destroyed by the Contractor, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

**52.236–18 Work Oversight in Cost-Reimbursement Construction Contracts.**

As prescribed in 36.101–7(j), insert the following clause:

**Work Oversight in Cost-Reimbursement Construction Contracts (DATE)**

The extent and character of the work to be done by the Contractor is subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

**52.236–19 [Removed and Reserved]**

■ 16. Remove and reserve section 52.236–19.

■ 17. Revise sections 52.236–21 through 52.236–25 to read as follows:

**52.236–21 Specifications and Drawings for Construction.**

As prescribed in 36.101–7(k), insert the following clause:

**Specifications and Drawings for Construction (DATE)**

(a) The Contractor must keep at the site a copy of the drawings and specifications and must at all times give the Contracting Officer access thereto.

(b) Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, must be of like effect as if shown or mentioned in both.

(1) In case of difference between drawings and specifications, the specifications govern.

(2) In case of discrepancy in the figures, in the drawings, or in the specifications, the matter must be promptly submitted to the Contracting Officer, who will promptly make a determination in writing.

(3) Any adjustment by the Contractor without such a determination is at its own risk and expense.

(c) The Contracting Officer will furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(d)(1) Words, such as, ''directed'', ''required'', ''ordered'', ''designated'', ''prescribed'', or words of like import when used, in the specifications or on the drawings are intended to mean the ''direction'', ''requirement'', ''order'', ''designation'', or ''prescription'', of the Contracting Officer.

(2) Words, such as, ''approved'', ''acceptable'', ''satisfactory'', or words of like

import mean ''approved by'', or 'acceptable to'', or ''satisfactory to'' the Contracting Officer, unless otherwise expressly stated.

(e) Where ''as shown'', ''as indicated'', ''as detailed'', or words of similar import are used, it is understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word ''provided'' as used herein is understood to mean ''provide complete in place'', that is ''furnished and installed''.

(f) Shop drawings means detailed drawings, diagrams, illustrations, schedules, etc., submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail the proposed fabrication, assembly of, and the installation (*i.e.,* form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(g)(1) If this contract requires shop drawings, the Contractor must coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and must indicate its approval thereon as evidence of such coordination and review.

(2) Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission.

(h) The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted must indicate the Government's reasons therefor.

(1) Any work done before such approval is at the Contractor's risk.

(2) Approval by the Contracting Officer does not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with paragraph (i) of this clause.

(i)(1) If shop drawings show variations from the contract requirements, the Contractor must describe such variations in writing, separate from the drawings, at the time of submission.

(2) If the Contracting Officer approves any such variation, the Contracting Officer will issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(j) The Contractor must submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

*Alternate I* (DATE). As prescribed at 36.101–7(k)(3)(i), add the following sentences to paragraph (j) of the basic clause:

Upon completing the work under this contract, the Contractor must furnish a complete set of all shop drawings as finally approved. These drawings must show all changes and revisions made up to the time the equipment is completed and accepted.

*Alternate II* (DATE). As prescribed at 36.101–7(k)(3)(ii), add the following sentences to paragraph (j) of the basic clause:

Upon completing the work under this contract, the Contractor must furnish [*Contracting Officer complete by inserting desired amount*] sets of prints of all shop drawings as finally approved. These drawings must show changes and revisions made up to the time the equipment is completed and accepted.

**52.236–22 Design Within Funding Limitations.**

As prescribed in 36.102–4(b), insert the following clause:

### Design Within Funding Limitations (DATE)

(a) The Contractor must accomplish the design services required under this contract to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (d) of this clause.

(1) When bids or proposals for the construction contract are received that exceed the estimated price, the Contractor must perform such redesign and other services as are necessary to permit contract award within the funding limitation.

(2) These additional services must be performed at no increase in the price of this contract.

(3) The Contractor must not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly provide written notice to the Contracting Officer if it finds that the project will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations.

(1) Upon receipt of such written notice, the Contracting Officer will review the Contractor's revised estimate of construction cost.

(2) The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable,—

(i) Authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (d) of this clause; or

(ii) The Government may adjust such estimated construction contract price.

(c) When bids or proposals are not solicited or are unreasonably delayed, the Government must prepare an estimate of constructing the design submitted and such estimate must be used in lieu of bids or proposals to determine compliance with the funding limitation.

(d) The estimated construction contract price for the project described in this contract is $____.

(End of clause)

**52.236–23 Responsibility of the Architect-Engineer Contractor.**

As prescribed in 36.102–4(c), insert the following clause:

### Responsibility of the Architect-Engineer Contractor (DATE)

(a) The Contractor is responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract.

(b) The Contractor must, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(c) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract will 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.

(d) The Contractor remains liable to the Government, in accordance with applicable law, for all damages to the Government caused by the Contractor's negligent performance of any of the services provided under this contract.

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

(f) If the Contractor is comprised of more than one legal entity, each such entity is jointly and severally liable hereunder.

(End of clause)

**52.236–24 Work Oversight in Architect-Engineer Contracts.**

As prescribed in 36.102–4(d), insert the following clause:

### Work Oversight in Architect-Engineer Contracts (DATE)

The extent and character of the work to be done by the Contractor is subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

**52.236–25 Requirements for Registration of Designers.**

As prescribed in 36.102–4(e), insert the following clause:

### Requirements for Registration of Designers (DATE)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States must prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

**52.236–26 through 52.236–28 [Removed and Reserved]**

■ 18. Remove and reserve sections 52.236–26 through 52.236–28.

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