OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 17, 35, and 52

[FAR Case 2026–006, Docket No. FAR–2026–0006, Sequence No. 1]

RIN 9000–AO91

Federal Acquisition Regulation: Revolutionary Federal Acquisition Regulation Overhaul Parts 16, 17, and 35

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, if finalized, would streamline the FAR in its entirety. This rule proposes revisions to FAR part 16, Types of Contracts, part 17, Special Contracting Methods, part 35, Research and Development Contracting, and part 52, Solicitation Provisions and Contract Clauses.

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 2026–006 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 2026–006'' in all correspondence related to this case. Include your name, company name (if any), and ''FAR Case 2026–006'' 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-2026-0006.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact *FARpolicy@gsa.gov* or call 202–969–4075 and cite ''FAR Case 2026–006.'' 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 2026–006.''

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 regulations 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 16, 17, and 35, 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. FAR Part 16

The proposed rule, if finalized, would revise FAR part 16 to eliminate excessive acquisition regulations to stop the inefficient use of American taxpayer dollars through the removal of obsolete and non-statutory content not essential to sound procurement, and to simplify, clarify, and streamline the policies and procedures pertaining to contract types. These revisions would further emphasize the use of fixed-price contract types. The proposed rule would also reorganize FAR part 16 to first address contract types, then contract mechanisms (indefinite-delivery contracts, letter contracts, and agreements), with subparts updated as follows.

Existing FAR Reference	Proposed FAR Subpart
16.1 Selecting Contract Types	16.1 Selecting Contract Types.
16.2 Fixed-Price Contracts	16.2 Fixed-Price Contracts.
16.3 Cost-Reimbursement Contracts	16.3 Cost-Reimbursement Contracts.
16.4 Incentive Contracts	16.4 Incentive Contracts.
16.5 Indefinite-Delivery Contracts	16.6 Indefinite-Delivery Contracts.
16.6 Time-and-Materials, Labor-Hour, and Letter Contracts	16.5 Time-and-Materials and Labor-Hour Contracts.
16.603 Letter Contracts	16.7 Letter Contracts.
16.7 Agreements	16.8 Agreements.

The following is a list of substantive changes proposed for FAR part 16.

1. Shift from Restrictive to Permissive Framework in Contract Type Selection.

The proposed rule, if finalized, would shift the guiding principles on contract type selection from a restrictive to a permissive framework, consistent with 10 U.S.C. 3321 and 41 U.S.C. 3901. This change would allow agencies to more easily utilize contract types not explicitly mentioned in the FAR and would allow for better congruence with commercial practices if the contract type promotes the best interest of the Government and is not expressly prohibited by statute. Alternate I to provision 52.216–1, Type of Contract, would provide offerors the opportunity to propose an alternative contract type.

2. Changes Reflective of E.O. *14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting.*

On April 30, 2026, the President issued E.O. 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting. Section 3(b) of the E.O. directed the Administrator for Federal Procurement Policy, in coordination with the FAR Council, to propose amendments to the Federal Acquisition Regulation, consistent with the policies of the order.

Section 1 of the E.O. states that fixed-price contracts with performance-based considerations should serve as the default and preferred method of procurement in order to advance cost predictability and budget discipline, appropriate contractor incentives and accountability, and streamlined procurement and contract administration.

Section 2 of the E.O. requires agencies to justify the use of non-fixed-price contract types in writing, with the justification signed by the agency head. The E.O. requires agency head approval of the contract at various total potential contract value thresholds.

The proposed rule would revise FAR part 16 to adhere to the preference for fixed-price contracts with performance-based considerations, and adds justification and approval requirements for other than fixed-price contracts and firm-fixed-price, level-of-effort term contracts. New section 16.104 describes the justification and approval requirements.

3. Consumption-Based Solutions.

The proposed rule includes changes consistent with section 1825 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2026 (Pub.

L. 119–60) for consistent use across the Federal Government. New language would include the definition of ''consumption-based solution,'' and clarification that contracting officers may acquire consumption-based solutions where supplies and services are capable of being metered and billed based on actual usage as fixed-price units. The acquisition of fixed-priced units on a consumption basis would be considered a firm-fixed price contract. The inclusion of this language would support the use of consumption-based contracts, a common commercial practice for a variety of supplies and services, including but not limited to cloud computing capacity.

4. Delineation Between ''Ordering Period'' and ''Period of Performance.''

The proposed 16.601–2 would include a clear delineation between ''ordering period'' for task-order contracts and delivery-order contracts, ''period of performance'' for their orders, and ''effective period of the contract.'' The clauses at 52.216–21, Requirements, and 52.216–22, Indefinite Quantity, have been edited for clarity given the delineation of these terms.

5. On-ramps and Off-ramps under Multiple-Award Contracts.

The proposed rule, if finalized, would include policies and procedures related to ''on-ramping'' (adding new contractors) and ''off-ramping'' (removing contractors) from a multiple-award contract to maintain a current, competitive, and innovative pool of vendors. Alternates I and II to provision 52.216–22, Indefinite Quantity, are proposed to provide for off-ramps with various cancellation policies.

6. Inclusion of Blanket Purchase Agreements (BPAs) under Multiple-Award Contracts.

The proposed rule would include the policies and procedures to issue and use BPAs under multiple-award contracts, similar to those permitted under the Federal Supply Schedules. If finalized, this policy would allow contracting officers to utilize fair opportunity procedures to issue BPAs within the scope of the contract if authorized under the multiple-award contract.

7. Significant Reorganization of Ordering Procedures for Task-Order Contracts and Delivery-Order Contracts.

The proposed rule would reorganize the postaward ordering placement into two sections: 16.606, which would be applicable to all task-order contracts and delivery-order contracts, regardless of the number of awardees, and 16.607, which would be applicable to multiple-award contracts only. Section 16.607 would address purchases at or below the micro-purchase threshold, fair opportunity procedures applicable to all purchases above the micro-purchase threshold, and specific instructions for fair opportunity depending on dollar value. The instructions in 16.607 would further emphasize the broad discretion the contracting officer has in developing appropriate order placement procedures for the acquisition at hand and encourages utilization of innovative techniques.

8. Inclusion of FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task-Order Contracts and Delivery-Order Contracts (88 FR 53855).

The proposed rule would revise the FAR to implement section 874 of the NDAA for FY 2020 (Pub. L. 116–92) which, for task orders or delivery orders exceeding the simplified acquisition threshold (SAT) but not greater than $7.5 million, requires contracting officers to provide, upon written request from an unsuccessful offeror, a brief explanation as to why the offeror was unsuccessful, including the rationale for award and an evaluation of the significant weak or deficient factors in the offeror's offer.

Section 874 of the NDAA uses the term ''unsuccessful offeror.'' The proposed FAR 16.607–4 would use the term ''contractor who competed for the order, but was not awarded the order.'' Both terms are synonymous; referring to an entity who has been awarded a basic contract but has been unsuccessful for the award of an order competed under the basic contract.

The proposed rule would require contracting officers to notify all contractors who competed for the order, but were not awarded the order, when the total price of a task order or delivery order exceeds $7.5 million. If the $7.5 million threshold is met or exceeded, contracting officers would be directed to the procedures at FAR part 15 when providing a postaward notification or postaward debriefing, respectively.

The FAR threshold at 16.505 (included in the proposed rule at 16.607–4 and 16.607–5) is currently $7.5 million as a result of three inflation adjustments in accordance with FAR 1.109. FAR Case 2014–022 published on July 2, 2015, at 80 FR 38293, which raised the threshold from $5 million to $5.5 million; 2019–013 published on October 2, 2020, at 85 FR 62485, which raised the threshold to $6 million; and FAR Case 2024–001 published on August 27, 2025, at 90 FR 41872, which raised the threshold to $7.5 million.

The proposed rule would implement the requirement for contracting officers to, upon written request from an unsuccessful awardee, provide a brief explanation as to why the awardee was unsuccessful for a task order or delivery order exceeding the SAT but not exceeding $7.5 million. While the statutory threshold is $5.5 million, the proposed rule would impose these brief explanation requirements at the higher $7.5 million threshold to align with the current threshold. This would avoid a gap between $5.5 million and $7.5 million. This new brief explanation requirement for orders above the SAT and below $7.5 million would not provide a debriefing at the level of detail currently afforded to unsuccessful awardees over $7.5 million, however, this information is expected to benefit entities by improving future offers. While not expressly required by the statute, the proposed rule would add a postaward notification requirement for the applicable task orders and delivery orders to ensure unsuccessful awardees are provided an opportunity to obtain the brief explanation as to why the awardee was unsuccessful in a timely manner.

9. Streamlining of 52.216–7, Allowable Cost and Payment.

The proposed rule would remove a number of items required for an adequate indirect cost proposal in clause 52.216–7, Allowable Cost and Payment, paragraph (d)(2)(iii).

Paragraph (j), Subcontract Information, would be limited to only those subcontracts with a value exceeding the threshold for requiring certified cost or pricing data as prescribed in FAR 15.403–3.

The detailed information previously required by paragraph (k) for time-and-materials and labor-hour contracts such as labor rates, labor hours, and other detailed costs elements would be removed. The summary level information previously required by paragraph (k) would be relocated to paragraph (h).

Paragraph (l), which required submission of reconciliation of total payroll per IRS form 941 to total labor costs distribution, would be removed in its entirety.

The information previously required by paragraph (o) for contracts physically completed in this fiscal year would be relocated to paragraph (h) and is limited to level-of-effort information, contract ceiling amount, and an indication of whether the contract is ready to close. Contract fee computations would no longer required.

The removal of these items would reduce the amount of information required from contractors for an incurred cost audit submission and would therefore reduce the time required for contract closeout and impact settlement agreements.

10. Clarification on Applicability of 52.216–7, Allowable Cost and Payment, to Cost-Type Incentive Contracts.

FAR paragraph 16.305(a), clause 52.216–16, Incentive Price Revision-Firm Target, and clause 52.216–17, Incentive Price Revision-Successive Targets, would be altered to clarify applicability of 52.216–7, Allowable Cost and Payment, to cost-type incentive contracts, including fixed-price cost incentive contracts.

Fixed-price cost incentive contracts are hybrid contracts that use actual costs, including indirect costs, to negotiate a final incentive payment. FAR 42.503–1(c)(2) and FAR 31.103(b)(3) would require the use of established final indirect cost rates (FICR) to calculate costs in fixed-price cost incentive contracts in order to comply with 10 U.S.C. 3743(a) and 41 U.S.C. 4303(a). This change would erase ambiguity in the applicability of FAR clause 52.216–7, which includes the process to calculate FICR.

FAR clauses 52.216–16 and 52.216–17 currently acknowledge that ''costs'' mean ''allowable costs'' in accordance with the cost principles in FAR Part 31. The proposed rule adds language clarifying that FICR should be used for calculating incurred costs and, if the contractor does not already have a contract which establishes FICR, they should follow the process in paragraph (d) of the allowable cost and payment clause to establish FICR.

C. FAR Part 17

The proposed rule would revise FAR part 17 to eliminate excessive acquisition regulations to stop the inefficient use of American taxpayer dollars through the removal of obsolete and non-statutory content not essential to sound procurement, and to simplify, clarify, and streamline the policies and procedures pertaining to special contracting methods. Subparts would be rearranged to remove reserved subparts and ensure similar content is placed together.

Existing FAR reference	Proposed FAR subpart
17.1 Multiyear Contracting	17.1 Multiyear Contracting.
17.2 Options	17.2 Options.
17.3 [Reserved]	N/A.
17.4 Leader Company Contracting	17.3 Leader Company Contracting.
17.5 Interagency Acquisitions	17.4 Interagency Acquisitions.
17.6 Management and Operating Contracts	17.6 Management and Operating Contracts.
17.7 Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense.	17.5 Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense.
17.8 Reverse Auctions	17.7 Reverse Auctions.

The following substantive changes are proposed to FAR part 17.

1. Clarification on Multiyear Contracts for Supplies and Services for DoD, NASA, and the Coast Guard.

The proposed rule would include language reflective of the limitations on the use of multiyear contracts for supplies and services by DoD, NASA, and the Coast Guard in accordance with 10 U.S.C. 3501 and 10 U.S.C. 3531 in 17.103–1.

2. Removal of General Five-Year Limitation on Contract Duration.

The proposed rule would replace the non-statutory five-year limitation on contract duration for all contracts previously included at 17.204(e) with a requirement to ''follow any statutory or regulatory limits on contract duration.'' An example of such a statutory limitation is the five-year limit on initial ordering periods, and ten-year limit on total potential ordering period, for indefinite-delivery contracts given in 10 U.S.C. 3403.

3. Modernize Option for Increased Quantity Clauses to Apply to Both Services and Supplies.

The proposed rule would remove limitations on the use of clause 52.217–6, Option for Increased Quantity, and clause 52.217–7, Option for Increased Quantity—Separately Priced Line Item, in solicitations and contracts for the purchases of services. As currently written, the FAR prescribes the provisions and clauses contracting officers use when including options in solicitations and contracts, but lacks a FAR clause for use when contracting officers identify a potential need for additional quantities of services during a contract's performance period. An example of such a need is when a program office has a bona fide need for a definite quantity of services but identifies circumstances where an increase in the demand for those services may reasonably occur.

While FAR subpart 17.2, as currently codified, permits the use of options for increased quantities of services, the FAR lacks any corresponding clause for doing so. The limiting language included in these prescriptions have prevented many agencies from adequately utilizing 52.217–6 and 52.217–7, or forced increased acquisition time and costs associated with seeking a deviation or drafting of acquisition-unique clause.

The proposed rule would provide contracting officers with a corresponding policy to allow the use of FAR clause 52.217–6 and 52.217–7 when procuring additional requirements during a contract's performance period. The inclusion of such a clause during initial competition of the contract would allow for the prices included for such surge requirements to be determined on the basis of competition, rather than negotiated as a sole-source modification during contract administration. The cost and lead time associated with exercising an option for increased quantity is less than that of issuing a sole-source modification or engaging in a competition for a new award of the same items.

4. Modernize Option To Extend Services to Apply to Services and Supplies.

The proposed rule would allow for the use of clause 52.217–8, Option to Extend Services, renamed Option to Extend, in task-order contracts and delivery-order contracts for requirements other than services. This clause allows for the Government to continue to utilize an existing contract for up to six months at the current rate.

The clause was previously prescribed for use in solicitations and contracts ''for services when the inclusion of an option is appropriate.'' FAR subpart 17.2, as currently codified, permits the use of options for extensions of contract duration.

The limiting language included in the codified prescription has prevented many agencies from adequately utilizing 52.217–8, or forced increased acquisition time and costs associated with seeking a deviation or drafting of acquisition-unique clause.

Allowing use of this clause for an indefinite delivery contract for critical supplies, for example, would provide for the provision of supplies without interruption in the case of a delay in a follow-on award due to protest or other reasons. The transaction cost associated with the extension of a contract utilizing 52.217–8 is less than that of issuing a competitive or sole-source bridge contract.

The proposed rule updates this clause and prescribes it for use in solicitations and contracts ''when adding an option to extend the period of performance for services, ordering period for any requirement, or both to ensure continuity of services for up to six months is appropriate.'' Limiting the use of this clause to services for periods of performance, specifically, is appropriate to prevent the inadvertent use of the clause in increasing the end date of a supply contract.

5. Add Language on Handling of Expiring Contracts During a Lapse in Appropriations.

The proposed rule would include a new paragraph in clauses 52.217–8, Option to Extend Services, renamed Option to Extend, and 52.217–9, Option to Extend the Term of Contract, to allow for the Government and contractor to mutually agree to toll or delay the option exercise time period, such as 30 days after the resumption of Government operations, in the event the period to exercise the option ends during a lapse in appropriations.

The addition of this paragraph would allow for a more expedient return to operations and allow for reduced transaction costs as a result of a Government shutdown.

6. Removal of Best Interest Determination Requirement Under Economy Act Interagency Acquisitions.

Section 875 of the John S. McCain NDAA for FY 2019 (Pub. L. 115–232), entitled ''Promotion of the Use of Government-Wide and Other Interagency Contracts'', removed the requirement to include in the FAR a determination that ''an interagency acquisition is the best procurement alternative.'' The proposed rule would remove this requirement from the FAR.

7. Changes to Management and Operating Contracts.

The proposed rule would remove language regarding competition and reviews of contractor performance for Management and Operating contracts. Removal of this non-statutory language would reduce confusion and emphasizes the use of competition in accordance with the Competition in Contracting Act of 1984.

8. Incorporation of FAR Case 2023–003, Prohibition on the Use of Reverse Auctions for Complex, Specialized, or Substantial Design and Construction Services (89 FR 70157).

The proposed rule would amend the FAR to implement section 2 of the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117–28). Section 2 of the Construction Consensus Procurement Improvement Act of 2021 amended section 402 of Title IV of Division U of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) entitled the Construction Consensus Procurement Improvement Act of 2020 to require rulemaking to promulgate a definition of ''complex, specialized, or substantial design and construction services'', which includes site planning and design; architectural and engineering services (as defined in 40 U.S.C. 1102); interior design; performance of substantial construction work for facility, infrastructure, and environmental restoration projects; and construction or substantial alteration of public buildings or public works. The statute prohibits the use of reverse auctions for such services having a value that exceeds the simplified acquisition threshold (SAT). This change is reflected in new definitions, a revised applicability section, and in clauses 52.217–10, 52.217–11, and 52.217–12.

The proposed rule would establish a new definition in FAR subpart 17.8 for ''complex, specialized, or substantial design and construction services'' that reflects the statutory definition to support its use at FAR subpart 17.8 and in FAR part 36. In addition, the definition of ''reverse auction'' in FAR 2.101 would be revised to better reflect the statutory definition provided in the Construction Consensus Procurement Improvement Act of 2021 (see FAR case 2026–001, Revolutionary FAR Overhaul Parts 1, 2, 4, 33, 39, 40 and 53).

While the statute does not prohibit the use of reverse auctions for the subject services at or below the SAT, a reverse auction may only be used if market research indicates it is appropriate (see FAR 17.702–1(a)) and not prohibited by regulation or statute (see FAR 17.702–2, and FAR part 36).

The FAR identifies two types of procurements for which reverse auctions may not be used, regardless of dollar value:

a. Procurements for the design and construction of a public building, facility or work using the two-phase design-build selection procedures authorized by 10 U.S.C. 3241 and 41 U.S.C. 3309, as implemented at FAR part 36, may not be conducted using a reverse auction.

b. Procurements for architectural and engineering services subject to 40 U.S.C. chapter 11, commonly known as the Brooks Architect Engineer Act, may not be awarded using reverse auctions because reverse auctions do not comply with the qualifications-based selection processes required by statute and implemented at FAR part 36.

D. FAR Part 35

The proposed rule would revise FAR part 35 to eliminate excessive acquisition regulations to stop the inefficient use of American taxpayer dollars through the removal of obsolete and non-statutory content not essential to sound procurement, and to simplify, clarify, and streamline the policies and procedures pertaining to research and development contracting. Several areas within existing FAR part 35 were extraneous or were addressed in multiple locations across the existing FAR, and therefore are proposed for removal. The following substantive changes are proposed to FAR part 35.

1. Clarity on Scope of Research and Development.

The proposed rule would include clarifying language on the purpose of research and development previously included in the FAR and information on the delivery of initial or additional items created as a result of such research and development.

2. Clarity on Use of Grants, Cooperative Agreements, and Other Transaction Authorities.

The proposed rule would include clarifying language on the types of agreements that may be issued in response to the selection of a proposal resulting from a research and development solicitation or Broad Agency Announcement. While the use of grants, cooperative agreements, and other transaction authority are not regulated by the FAR, a variety of solicitation types that may lead to such an agreement are regulated by the FAR (*e.g.,* Broad Agency Announcements). Therefore, for the ease of decision of award medium for the contracting officer overseeing such a solicitation, the description of such agreements would be appropriate in the FAR.

3. Removing Preference for ''Well-Established'' Entities and Ambiguity with Publicizing Requirements in Part 5.

The proposed rule would remove language regarding providing solicitations to ''only a reasonable number of responsible sources'' and the requirement for agencies to ''continually search for and develop information on sources competent to perform R&D work.'' The preference for ''well-established'' entities conflicts with the full and open competition requirements of FAR part 6 and the solicitation publicizing requirements in FAR parts 5 and 35. Continually searching for potential R&D sources is in an agency's best interest, and further incentivized via agency small business goals. Therefore, inclusion in the FAR is unnecessary.

4. Clarified applicability of FAR part 15.

The proposed rule would clarify that the general research and development evaluation procedures provided in FAR part 35 may be used alone, or in conjunction with the Broad Agency Announcement evaluation procedures at 35.102 or part 15 evaluation procedures. This clarification would allow contracting officers maximum flexibility depending on the type and complexity of research and development desired.

For example, if a Government requirement exists related to developing a specific system or hardware for a major system, FAR part 15 solicitation and evaluation procedures may be appropriate to use in tandem with FAR part 35. If a requirement is for basic and applied research directed toward advancing the state-of-the-art, and varying technical/scientific approaches are reasonably expected to where no apples-to-apples comparison is possible, the Broad Agency Announcement technique provided in 35.102 may be appropriate to use on its own for flexibility in evaluation and agreement type.

E. FAR Part 52

Discussion and analysis for provisions and clauses updated in this rule. Provisions and clauses associated with a particular FAR part are discussed within the relevant FAR part's analysis (*e.g.,* proposed changes to FAR clause 52.216–7 are addressed at Discussion and Analysis section II.B.9).

Potential future provision and clause renumbering. As a result of the RFO, the FAR Council is considering establishing a new 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. 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 16, 17, and 35 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.

This rule proposes to add the following new alternate clauses and provisions. These alternate clauses and provisions would hold the same applicability 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, as the basic clauses and provisions.

Provision or clause	No.	Name	Prescription reference
Provision	52.216–1, Alt. I	Type of Contract, Alternate I	16.105.
Clause	52.216–22, Alt. I	Indefinite Quantity, Alternate I	16.605(e)(1).
Clause	52.216–22, Alt. II	Indefinite Quantity, Alternate II	16.605(e)(2).

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 NDAA for 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 would apply to that category of commercial acquisition, as prescribed:

Provision/clause No.	Title	Commercial products	Commercial services	COTS items
52.216–1	Type of Contract	X	X	X
52.216–1 Alt I	Type of Contract	X	X	X
52.216–2	Economic Price Adjustment-Standard Supplies	X	X	X
52.216–3	Economic Price Adjustment-Semistandard Supplies	X	X	X
52.216–4	Economic Price Adjustment-Labor and Material	X	X	X
52.216–5	Price Redetermination-Prospective			
52.216–6	Price Redetermination-Retroactive			
52.216–7	Allowable Cost and Payment			
52.216–7 Alt I	Allowable Cost and Payment			
52.216–7 Alt II	Allowable Cost and Payment			
52.216–7 Alt III	Allowable Cost and Payment			
52.216–7 Alt IV	Allowable Cost and Payment			
52.216–8	Fixed Fee			
52.216–9	Fixed Fee-Construction			
52.216–10	Incentive Fee			
52.216–11	Cost Contract-No Fee			
52.216–11 Alt I	Cost Contract-No Fee			
52.216–12	Cost-Sharing Contract-No Fee			
52.216–12 Alt I	Cost-Sharing Contract-No Fee			
52.216–15	Predetermined Indirect Cost Rates			
52.216–16	Incentive Price Revision-Firm Target			
52.216–16 Alt I	Incentive Price Revision-Firm Target			
52.216–17	Incentive Price Revision-Successive Targets			
52.216–17 Alt I	Incentive Price Revision-Successive Targets			
52.216–18	Ordering	X	X	X
52.216–19	Order Limitations	X	X	X
52.216–20	Definite Quantity	X	X	X
52.216–21	Requirements	X	X	X
52.216–21 Alt I	Requirements	X	X	X
52.216–21 Alt II	Requirements	X	X	X
52.216–21 Alt III	Requirements	X	X	X
52.216–21 Alt IV	Requirements	X	X	X
52.216–22	Indefinite Quantity	X	X	X
52.216–22 Alt I	Indefinite Quantity	X	X	X
52.216–22 Alt II	Indefinite Quantity	X	X	X
52.216–23	Execution and Commencement of Work	X	X	X
52.216–24	Limitation of Government Liability	X	X	X
52.216–25	Contract Definitization	X	X	X
52.216–25 Alt. I	Contract Definitization	X	X	X
52.216–26	Payments of Allowable Costs Before Definitization			
52.216–27	Single or Multiple Awards	X	X	X
52.216–28	Multiple Awards for Advisory and Assistance Services		X	
52.216–29	Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition.			
52.216–30	Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition.			
52.216–31	Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition.	X	X	X
52.216–32	Task-Order and Delivery-Order Ombudsman	X	X	X
52.216–32 Alt. I	Task-Order and Delivery-Order Ombudsman	X	X	X
52.217–2	Cancellation Under Multiyear Contracts	X	X	X
52.217–3	Evaluation Exclusive of Options	X	X	X
52.217–4	Evaluation of Options Exercised at Time of Contract Award	X	X	X
52.217–5	Evaluation of Options	X	X	X
52.217–6	Option for Increased Quantity	X	X	X
52.217–7	Option for Increased Quantity-Separately Priced Line Item	X	X	X
52.217–8	Option to Extend	X	X	X
52.217–9	Option to Extend the Term of the Contract	X	X	X
52.217–10	Reverse Auction	X	X	X
52.217–11	Reverse Auction—Orders	X	X	X
52.217–12	Reverse Auction Services		X	

The FAR Council also reviewed subcontract flow down requirements in clauses associated with the FAR parts covered by this proposed rule. None of the clauses and provisions prescribed in FAR parts 16, 17, or 35 contain subcontract flow down requirements.

IV. Expected Impact of the Rule

A. Overview

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 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 NDAA for 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 SAM Contract 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.

B. Impact of Rule

The Government has conducted a regulatory impact analysis (RIA) for the RFO rulemaking inclusive of this proposed rule for FAR parts 16, 17, and 35. The RIA includes a discussion of the anticipated effects of the rulemakings as follows:

1. FAR Part 16.

This proposed rule would implement revisions to FAR part 16, Types of Contracts, that are expected to have a significant positive impact on both industry and the Government. These changes are intended to benefit and reduce burden on both Government and contractors.

1.1 Shift from Restrictive to Permissive Framework in Contract Type Selection.

The proposed rule would shift the guiding principles on contract type selection from a restrictive to a permissive framework, consistent with 10 U.S.C. 3321 and 41 U.S.C. 3901. This change would allow agencies to more easily utilize contract types not explicitly mentioned in the FAR and allow for better congruence with commercial practices if the contract type promotes the best interest of the Government and is not expressly prohibited by statute.

This change would reduce Government burden by reducing the number of deviations and associated reviews sought. This change would reduce the burden on contractors by allowing the Government to utilize the same contract types used in the private sector.

1.2 Firm-Fixed Price Contracts on a Consumption Basis.

The proposed rule would include new paragraph 16.202–2(b), Consumption basis, and new section 16.202–3, Required content. The inclusion of this paragraph and section would clarify that the use of fixed-price units on a consumption basis is a type of firm-fixed-price contract type. The proposed rule would revise the FAR in conformance with section 1825 of the NDAA for FY 2026 (Pub. L. 119–60), which required the Department of Defense to implement procurement policies relevant to consumption-based solutions, to ensure consistent application across the Government.

The inclusion of consumption-based solutions supports agencies when using this common commercial practice for procuring a variety of supplies and services, including but not limited to cloud computing capacity. This change would reduce Government burden by reducing the number of deviations and associated reviews sought, and seeks to reduce the burden on contractors by allowing for the use of the same contract types used in the private sector.

1.3 On-ramps and Off-ramps under Multiple-Award Contracts.

The proposed rule includes policies and procedures related to ''on-ramping'' (adding new contractors) and ''off-ramping'' (removing contractors) from a multiple-award contract to maintain a current, competitive, and innovative pool of vendors. New Alternates I and II to provision 52.216–22, Indefinite Quantity, are included to provide for off-ramps with various cancellation policies.

This change is expected to benefit the Government through ensuring continued competition throughout the life of a multiple-award contract and through cost savings in reducing the payment of minimums for awardees who choose not to engage in order competitions under the multiple-award contract. This is expected to benefit contractors in allowing for the ability to propose to enter existing indefinite delivery vehicles, and to choose to exit multiple-award contracts to avoid administrative expenses without the use of termination procedures or costly negotiations.

1.4 Inclusion of Blanket Purchase Agreements (BPAs) under Multiple-Award Contracts.

The proposed rule includes the policies and procedures to issue and use BPAs under multiple-award contracts, similar to those permitted under the Federal Supply Schedules. BPAs are anticipated to facilitate strategic demand management, especially for IT, professional services, and recurring operational support. BPAs would allow for concentrated competition amongst vendors with relevant capabilities and aligned pricing models, resulting in higher-quality proposals and better mission outcomes. Agencies may create small business BPAs to support sustained participation of small business vendors.

This change is expected to benefit the Government in encouraging use of existing multi-award contracts by reducing transaction costs for repetitive buys through the use of pre-priced supplies or services, allowing agencies to move faster without sacrificing competition. This rule would reduce administrative burden for contractors and Government, by removing the need for repetitive order solicitations, duplicative evaluations, and duplicative documentation.

Because prices for out-years or additional items can be set competitively in the initial issuance of a BPA, this rule is expected to benefit contractors in increased utilization of existing multi-award contracts and reduced proposal costs for new orders and sole-source modifications. Vendors under BPAs know to expect recurring opportunities, allowing agencies to recognize cost savings through ceiling rates and volume-based or tiered pricing.

1.5 Significant Reorganization of Ordering Procedures for Task-Order Contracts and Delivery-Order Contracts.

The rule would reorganize the postaward ordering placement into two sections: 16.606, which is applicable to all task-order contracts and delivery-order contracts, regardless of the number of awardees, and 16.607, which is applicable to multiple-award contracts only. Section 16.607 would provide tailored procedures based on dollar thresholds—including micro-purchase rules and fair-opportunity requirements—and reinforces the contracting officer's discretion in order placement procedures. By encouraging innovation and customized acquisition strategies, these improvements would strengthen competition and allow more tailored ordering solutions.

These changes are expected to benefit both the Government and contractors with clear requirements, shorter order solicitations, streamlined comparisons instead of traditional Part 15-adjacent source selections, and the potential to reduce proposal costs through the use of task and delivery order solicitations that only require information needed to make an informed selection decision.

1.6 Inclusion of FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task-Order Contracts and Delivery-Order Contracts (88 FR 53855).

To align with section 874 of the FY2020 NDAA, the rule would require agencies to send brief written explanations upon request to contractors who competed but did not win task or delivery orders valued between the SAT and $7.5 million. This change would bolster transparency, giving industry insight into evaluation results and helping them refine future proposals and ensuring consistency and fairness in feedback delivery.

1.7 Streamlining of 52.216–7, Allowable Cost and Payment.

The proposed rule would remove a number of required items for an adequate indirect cost proposal in clause 52.216–7, Allowable Cost and Payment, paragraph (d)(2)(iii). The removal of these items would reduce the amount of information required from contractors for an incurred cost audit submission, and would therefore provide a reduction in the time required for contract closeout and impact settlement agreements. Less information required from the contractors would reduce the time the Government requires to analyze this information.

2. Part 17.

This proposed rule would implement revisions to FAR Part 17, Special Contracting Methods, that are expected to have a positive impact and reduce burden on both industry and the Government.

2.1 Removal of the General Five-Year Limitation on Contract Duration.

The proposed rule would replace the non-statutory five-year limitation on contract duration for all contracts previously included at 17.204(e) with a requirement to ''follow any statutory or regulatory limits on contract duration.'' This removal would allow agencies to more easily align contract structure with mission realities, allowing for contracts to be re-competed when performance demands versus an arbitrary calendar. For those actions not restricted by statute or regulation, duration would be a business judgement based on what best supports mission outcomes, competition, and value.

For the Government, contract durations based on mission needs instead of an arbitrary, unrelated timeline would result in more realistic acquisition strategies, fewer workaround structures, and better mission continuity. Competition is still a motivator for positive performance, either for future solicitations or for orders under multiple-award contracts or blanket purchase agreements.

This change would allow for contractors to spread startup costs over longer periods, capture lifecycle savings, and avoid paying repeatedly for ''year one'' inefficiencies, providing for an overall lower total cost of projects. Framing contract duration based on mission needs instead of an arbitrary five-year limitation would reduce the burden of too-frequent competition, including the acquisition resources, proposal costs, and performance risk associated, allowing teams to focus on mission delivery. Realistic contract durations based on mission needs would allow contractors to invest in workforce development, process improvement, and price more rationally to create value over the long term. By reducing the competition cycle, this change would help to alleviate contractor workforce attrition and the associated knowledge and morale loss.

2.2 Modernize Option for Increased Quantity Clauses to Apply to Both Services and Supplies.

The proposed rule would provide contracting officers with a corresponding policy to allow the use of FAR clause 52.217–6, Option for Increased Quantity, and 52.217–7, Option for Increased Quantity—Separately Priced Line Item, when procuring additional quantities of supplies or services during a contract's performance period. These clauses were previously only applicable to supplies.

The use of these clauses for services would enable the initial competition to reflect the anticipated reality of the mission instead of having to react to it. The inclusion of such a clause during initial competition of the contract would allow for the prices included for such surge requirements to be determined on the basis of competition, rather than negotiated as a sole-source modification during contract administration.

This rule is expected to benefit the Government and contractors in allowing for competitively priced volume-based or tiered pricing for additional services, resulting in lower total cost and administrative burden.

This rule would reduce acquisition time and costs associated with seeking a deviation or drafting of acquisition-unique clauses for such an effort, which has been a common practice across the Government. The cost and lead time associated with exercising an option for increased quantity is significantly lower than that of issuing a sole-source modification or engaging in a competition for a new award of the same items. This rule therefore eliminates redundant solicitations, reduces the review cycle, and allows for more meaningful competition reflective of the anticipated future need.

For contractors, this rule is expected to provide visibility into potential future requirements and a clear ceiling for additional work, allowing for better planning and more accurate forecasting. These elements would result in lower bid and proposal costs because neither a new competition nor a sole-source modification would be required.

2.3 Modernize Option to Extend Services to Apply to Services and Supplies.

The proposed rule would allow for the use of clause 52.217–8, Option to Extend Services, renamed Option to Extend, in task-order contracts and delivery-order contracts for requirements other than services. This clause allows for the Government to continue to utilize an existing contract for up to six months at the current rate. Applicability of this clause was previously limited to only service contracts.

This change would allow the Government to plan for necessary extensions to existing contracts at the same price due to complex transitions, slipped awards, delayed appropriations, and protests. The use of this clause would prevent the loss of leverage and unfavorable terms often experienced in last-minute negotiations for critical needs.

This change would allow for reduced acquisition time and costs associated with negotiating a sole-source modification or engaging in a competition for a new award for the same items. This change therefore is expected to eliminate redundant solicitations and reduce the review cycle, allowing the Government and the contractor to focus on the mission and not expensive and time-intensive proposals and negotiations.

2.4 Addition of Language on Handling of Expiring Contracts During a Lapse in Appropriations.

The proposed rule would include a new paragraph in clauses 52.217–8, Option to Extend Services, renamed Option to Extend, and 52.217–9, Option to Extend the Term of Contract, to allow for the Government and contractor to toll or delay the option exercise time period up to 30 days after the resumption of Government operations in the event the period to exercise the option ends during a lapse in appropriations.

The addition of this paragraph would allow for a more expedient return to operations and allow for reduced transaction costs as a result of a Government shutdown for both the Government and contractors. This change would allow for reduced acquisition time and costs associated with negotiating a sole-source contract or engaging in a competition for a new award due to contracts with actionable option periods ending during a lapse in appropriations.

For the Government, this change would reduce the risk of lapses of critical supplies or services and prevent the loss of leverage and unfavorable terms often experienced in last-minute negotiations for critical needs. This change is expected to reduce future urgent solicitations and the associated review cycle, allowing the Government and the contractor to focus on the mission and not expensive and time-intensive proposals and negotiations.

2.5 Changes to Management and Operating Contracts.

The proposed rule would remove language regarding competition and reviews of contractor performance for Management and Operating contracts. Removal of this non-statutory language would reduce confusion and emphasize the use of competition in accordance with the Competition in Contract Act of 1984. This is expected to benefit the Government, as competition is the main driver of price reasonableness. This is expected to benefit potential contractors, as well—providing space to compete long-held sole-source contracts.

2.6 Incorporation of FAR Case 2023–0003, Prohibition on the Use of Reverse Auctions for Complex, Specialized, or Substantial Design and Construction Services (89 FR 70157).

The proposed rule would amend the FAR to implement section 2 of the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117–28). This proposed change is not expected to have a significant impact on the public or the Government because the rulemaking does not supersede current statutory direction on the use of FAR part 36 procedures for construction. Contracting officers would still be required to conduct market research to determine the most appropriate contracting method for the particular procurement. Requirements for sealed bidding, design-build construction, and architect-engineering services would remain unchanged.

Offerors participating in competitive procurements that are valued at or below the SAT would still be provided advance notices and solicitations in accordance with FAR 36.211 and for actions anticipated to be awarded to a small business, 15 U.S.C. 644(w). Use of a reverse auction as the method of obtaining pricing would not impact these requirements.

3. Part 35 Research and Development.

This proposed rule would implement revisions to FAR part 35, Research and Development Contracting, that are not expected to have a significant impact on contractors, subcontractors, or the Government. The proposed changes to FAR part 35 are primarily removal of superfluous information and clarification of existing policies.

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, if finalized, 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.

Proposed revisions to FAR parts 16, 17, and 35, and associated changes in FAR part 52, apply broadly to all Federal offerors and contractors, including small businesses across all sectors.

This proposed rule may have a positive impact on small entities by simplifying and streamlining acquisition regulations. Because these changes do not impose new reporting, recordkeeping, or compliance obligations on contractors, including small entities, and do not require changes to internal systems, ethics programs, or business practices, they are not expected to result in additional costs. Accordingly, the proposed revisions to FAR parts 16, 17, and 35 and associated changes in FAR part 52 do not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

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

This proposed rule does not create any new reporting, recordkeeping, or other compliance requirements. Instead, this proposed rule, if finalized, would reduce the following existing reporting requirements.

a. Clause 52.216–7, Allowable Cost and Payment, (d)(2)(iii) would be edited to reduce the required data to be submitted to support an adequate indirect cost rate proposal. For more information about the changes to reporting requirements, see section VIII of this notice.

b. Clause 52.216–15, Predetermined Indirect Cost Rates. This clause repeats the requirement in the clause at FAR 52.216–7, paragraph (d), for the contractor to submit an adequate final indirect cost rate proposal, and therefore the same expected reduction in reporting requirements.

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 2026–006)'' 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 16

1. OMB Control No. 9000–0067, Certain Federal Acquisition Regulation Part 16 Contract Pricing Requirements—FAR Sections Affected: 52.216–2, 52.216–3, 52.216–4, 52.216–5, 52.216–6, 52.216–16, and 52.216–17.

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.

2. OMB Control No. 9000–0069, Indirect Cost Rate Proposals, Payments to Small Business Subcontractors, and Bankruptcy Notifications—FAR Sections Affected: 52.216–7, 52.216–15, 52.242–4, 52.242–5 and 52.242–13.

The changes under this proposed rule, if finalized, would revise this information collection and the paperwork burden previously approved by OMB.

a. Clause 52.216–7, Allowable Cost and Payment, (d)(2)(iii) has been edited to reduce the required data to be submitted to support an adequate indirect cost rate proposal.

Paragraph (j), Subcontract Information, is now limited to only those subcontracts with a value exceeding the threshold for requiring certified cost or pricing data as prescribed in FAR 15.403–3.

The detailed information previously required by paragraph (k) for time-and-materials and labor-hour contracts such as labor rates, labor hours, and other detailed costs elements was removed and relocates only the summary level information to paragraph (h).

Paragraph (l), which required submission of reconciliation of total payroll per IRS form 941 to total labor costs distribution, is removed in its entirety.

The information previously required by paragraph (o) for contracts physically completed in this fiscal year has been relocated to paragraph (h) and is limited to level-of-effort information, contract ceiling amount, and an indication of whether the contract is ready to close. Contract fee computations are no longer required.

The proposed changes are expected to decrease the overall burden related to the preparation and submission of incurred costs proposals and streamline the initial determination adequacy. Contractors will spend less time preparing the submission and estimate 10 percent based on the statements from Industry in their response to OIRA's Request for Information (RFI) for burden reduction suggestion. In addition, contractors and Government will spend less time reviewing and discussing information that provide little value to the initial adequacy determination. These changes will promote efficiency in the setting of final indirect cost rates.

b. Clause 52.216–15, Predetermined Indirect Cost Rates, repeats the requirement in the clause at FAR 52.216–7, paragraph (d), for the contractor to submit an adequate final indirect cost rate proposal, however it does not impose any additional reporting requirements.

c. The revised annual burden is estimated as follows:

Respondents/Recordkeepers: 6,265.
Total Annual Responses: 6,265.
Total Burden Hours: 1,353,807.

B. 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 the collections of information affected by this proposed 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 Parts 16, 17, 35, 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 16, 17, 35, and 52 as set forth below:

■ 1. Revise parts 16, 17, and 35 to read as follows:

PART 16—TYPES OF CONTRACTS

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.

16.000 Scope of part.

This part prescribes policies and procedures for selecting contract type(s) appropriate to the circumstances of the acquisition. Except for limited instructions regarding the placement of task and delivery orders, the entirety of this part applies to the pre-solicitation phase and is meant to guide acquisition planning.

16.001 Definitions.

As used in this part—

Award-Fee Board means the team of individuals identified in the award-fee plan who have been designated to assist the Fee-Determining Official in making award-fee determinations.

Consumption-based solution means a model under which a service is provided to the Government and may utilize any combination of software, hardware or equipment, data, and labor or services that provides a capability that is metered and billed based on actual usage at fixed-price units.

Established price means a price that—

(1) Is an established catalog or market price for a commercial product or commercial service sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the contractor.

Fee-Determining Official means the designated agency official(s) who reviews the recommendations of the Award-Fee Board in determining the amount of award fee to be earned by the contractor for each evaluation period.

Rollover of unearned award fee means the process of transferring unearned award fee, which the contractor had an opportunity to earn, from one evaluation period to a subsequent evaluation period, thus allowing the contractor an additional opportunity to earn that previously unearned award fee.

Subpart 16.1—Selecting Contract Types

16.101 Policies.

(a) Unless expressly prohibited by statute or this regulation, contract types that promote the best interests of the Government, but are not described in this regulation, are permitted for use in accordance with agency procedures (see 10 U.S.C. 3321(a) and 41 U.S.C. 3901). Ensure selection of contract type is consistent with the Guiding Principles for the System in 1.102.

(b) Do not use a cost-plus-a-percentage-of-cost system of contracting (see 10 U.S.C. 3322(a) and 41 U.S.C. 3905(a)).

(c) Prime contracts (including letter contracts) other than firm-fixed-price contracts must, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts (see clauses prescribed in part 44 for cost-reimbursement contracts and part 16 for fixed-price contracts).

16.102 Negotiating contract type.

(a)(1) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Consider contract terms, risks (*e.g.,* technical, performance, delivery), and pricing.

(2) Contracting officers may instruct offerors in the solicitation to propose an alternative contract type within their response to the solicitation.

(b) Fixed-price contract types are the default and preferred contract types. If a fixed-price contract type is not appropriate for an entire contract, consider whether a portion of the contract can be established on a fixed-price basis.

(c) Use a firm-fixed-price contract (see section 16.202) when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, consider other contract types and negotiate a contract type (or combination of types) that will appropriately tie profit to contractor performance.

(d) In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may necessitate different contract types than those used initially. Contracting officers should avoid extended use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

16.103 Documenting contract type.

(a) Except as identified in paragraph (b) of this section, document and explain in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures—

(1) Why the contract type selected must be used to meet the agency's needs. For other than fixed-price contracts, discuss—

(i) An analysis of why the use of other than a fixed-price contract (*e.g.,* cost reimbursement, time-and-materials, labor hour, innovative contract type) is appropriate;

(ii) Rationale that details specific facts and circumstances (*e.g.,* lack of incentive to control costs, complexity of the requirements, uncertain work duration, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(2) The Government's risks and the burden to manage the contract type selected. As applicable, discuss—

(i) How the Government identified the risks (*e.g.,* pre-award survey, or past performance information);

(ii) The nature of the risks (*e.g.,* inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(iii) How the Government will manage and mitigate the risks;

(3) An assessment of whether Government resources are adequate to properly plan for, award, and administer the contract type selected (*e.g.,* resources needed and the additional risks to the Government if adequate resources are not provided);

(4) Why a level-of-effort, price redetermination, or fee provision was included; and

(5) For other than a fixed-price contract, a discussion of planned actions to minimize the use of other than fixed-price contracts on future acquisitions for the same requirement and to transition to fixed-price contracts to the maximum extent practicable.

(b) Documentation of contract type is not required for the following:

(1) Fixed-price acquisitions made under simplified acquisition procedures.

(2) Contracts on a firm-fixed-price basis (see section 16.202) other than those for major systems or research and development.

16.104 Executive Order 14402 justification for covered contracts and orders.

(a) *Definition.* As used in this section, *covered contract or order* means a contract or order that is—

(1) Other than fixed-price;

(2) Firm-fixed-price, level-of-effort term; or

(3) A hybrid contract that includes one or more elements described in paragraphs (1) and (2).

(b) *Policy.* This section implements Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting, April 30, 2026. The head of the agency must approve a written justification described in paragraph (d) of this section prior to using a covered contract or order.

(c) *Application.* (1) *Thresholds.* Unless an exception in paragraph (e) of this section applies, a justification is required for covered contracts and orders valued at or above—

(i) $100 million, for DoD;

(ii) $35 million, for NASA;

(iii) $25 million, for Department of Homeland Security; or

(iv) $10 million, for all other Federal agencies.

(2) *Hybrid contracts or orders.* A hybrid contract or order is a covered contract or order when the value of the other than fixed-price or firm-fixed-price, level-of-effort term portion meets or exceeds the thresholds.

(3) *Single-award indefinite-delivery contracts.* A single-award indefinite-delivery contract (IDC) is a covered contract if the estimated total value of the known and forecasted covered orders meets or exceeds the thresholds. Use the contract ceiling price if the contract only allows for covered orders.

(4) *Blanket purchase agreements.* The head of the agency decides whether the justification requirement applies when the blanket purchase agreement (BPA) is awarded, or when each order under the BPA is placed.

(5) *Duration of a justification.* An approved justification is valid for the duration of the contract or order.

(d) *Procedures.* (1) Submit to the head of the agency the required justification for approval that includes—

(i) The information in section 16.103; and

(ii) Any determination and findings required for the contract type (see 12.104(b)(1), 16.401–2, 16.501–3).

(2) The head of the agency may only delegate the justification approval to the chief acquisition officer of the agency or another non-career official in the Senior Executive Service within the agency.

(e) *Exceptions.* The justification requirement does not apply to—

(1) Multiple-award contracts. However, the justification requirement does apply to task orders, delivery orders, and BPAs under those contracts;

(2) Contracts in support of a response to an emergency, major disaster, or contingency operation;

(3) Research and development contracts or orders (see part 35); or

(4) Pre-production development for a major system acquisition (see part 34).

16.105 Solicitation provision.

The contracting officer may complete and insert the provision at 52.216–1, Type of Contract, in a solicitation, including those for commercial products and commercial services. When the solicitation provides the opportunity for an offeror to propose an alternative contract type, use the provision with its Alternate I.

Subpart 16.2—Fixed-Price Contracts

16.201 General.

(a) Fixed-price types of contracts provide for a firm price or, in certain cases, an adjustable price. Fixed-price contracts with adjustable prices may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price may only be adjusted through contract clauses that provide for equitable adjustment or other revision of the contract price under stated circumstances.

(b) Use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial products and commercial services, except as provided in 12.104.

(c) Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

16.202 Firm-fixed-price contracts.

16.202–1 Description.

(a) *General.* A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's experience in performing the contract.

(b) *Incentives.* The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.402) and performance or delivery incentives (see 16.403–2 and 16.403–3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

16.202–2 Application.

(a) *General.* A firm-fixed-price contract is suitable for acquiring supplies or services on the basis of clearly defined functional or detailed specifications (see part 11) when the contracting officer can establish fair and reasonable prices at the outset.

(b) *Consumption basis.* Contracting officers may acquire consumption-based solutions where supplies and services are capable of being metered and billed based on actual usage as fixed-price units.

16.202–3 Required content.

When acquiring on a consumption basis, the contract must include the following:

(a) Predetermined pricing at fixed-price units. The contractor may offer volume discounts or other equitable adjustments to the unit price(s) without changing the contract type.

(b) A guaranteed minimum, a ceiling, and fiscal controls limiting the agency's obligation to the obligated funding identified in the contract (see part 32).

(c) A requirement for the contractor to notify the contracting officer when the Government has used 75 percent and 90 percent of the funded amount, respectively, of the contract.

16.203 Fixed-price contracts with economic price adjustment.

16.203–1 Description.

(a) A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price when specific events occur. Economic price adjustments are of three general types:

(1) Adjustments based on established prices. These price adjustments are based on increases or decreases from an agreed-upon level in published or established prices of specific items or the contract end items.

(2) Adjustments based on actual costs of labor or material. These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(3) Adjustments based on cost indexes of labor or material. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

(b) The contracting officer may use a fixed-price contract with economic price adjustment in conjunction with an award-fee incentive (see 16.402) and performance or delivery incentives (see 16.403 and 16.404). This combination is appropriate when the award fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

16.203–2 Application.

(a) A fixed-price contract with economic price adjustment may be used when—

(1) There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and

(2) Contingencies that would otherwise be included in the contract price may be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control. For use of economic price adjustment in sealed bid contracts, see part 14.

(b) When establishing the base level from which adjustments will be made, do not include contingency allowances in both the base price and the adjustment requested by the contractor under the economic price adjustment clause.

(c) In contracts that do not require submission of certified cost or pricing data, obtain adequate data to establish the base level from which adjustment will be made and require verification of data submitted if necessary.

16.203–3 Limitations.

A fixed-price contract with economic price adjustment may be used only if the contracting officer determines that it is necessary to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

16.203–4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies.*

(1) Insert the clause at 52.216–2, Economic Price Adjustment-Standard Supplies, or an agency-prescribed clause, in solicitations and contracts, including those for commercial products or commercial services, when contracting by negotiation and all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203–3.

(2) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216–2(c)(1), upon approval by the chief of the contracting office.

(b) *Adjustment based on established prices-semistandard supplies.* (1) Insert the clause at 52.216–3, Economic Price Adjustment-Semistandard Supplies, or an agency-prescribed clause in solicitations and contracts, including those for commercial products or commercial services, when contracting by negotiation and all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203–3.

(2) Before entering into the contract, the contracting officer and contractor must agree in writing on the identity of the standard supplies and the corresponding line items to which the clause applies.

(3) If the supplies are standard, except for preservation, packaging, and packing requirements, the clause prescribed in 16.203–4(a) must be used rather than this clause.

(4) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216–3(c)(1), upon approval by the chief of the contracting office.

(c) *Adjustments based on actual cost of labor or material.* (1) Insert a clause that is substantially the same as the clause at 52.216–4, Economic Price Adjustment-Labor and Material, or an agency-prescribed clause in solicitations and contracts, including those for commercial products and commercial services, when contracting by negotiation and all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) There is no major element of design engineering or development work involved.

(iii) One or more identifiable labor or material cost factors are subject to change.

(iv) The contracting officer has made the determination specified in 16.203–3.

(2) Describe in detail in the contract Schedule—

(i) The types of labor and materials subject to adjustment under the clause;

(ii) The labor rates, including fringe benefits (if any) and unit prices of materials that may be increased or decreased; and

(iii) The quantities of the specified labor and materials allocable to each unit to be delivered under the contract.

(3) When negotiating adjustments under the clause—

(i) Consider work in process and materials on hand at the time of changes in labor rates, including fringe benefits (if any) or material prices;

(ii) Not include in adjustments any indirect cost (except fringe benefits as defined in 31.205–6(l) or profit); and

(iii) Consider only those fringe benefits specified in the contract Schedule.

(4) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216–4(c)(4), upon approval by the chief of the contracting office.

(d) *Adjustments based on cost indexes of labor or material.* The contracting officer should consider using an economic price adjustment clause based on cost indexes of labor or material in solicitations and contracts, including those for commercial products or commercial services, under the circumstances described in paragraphs(d)(1) and (d)(2) of this section.

(1) A clause providing adjustment based on cost indexes of labor or materials may be appropriate when—

(i) The contract involves an extended period of performance with significant costs to be incurred beyond 1 year after performance begins;

(ii) The contract amount subject to adjustment is substantial; and

(iii) The economic variables for labor and materials are too unstable to permit a reasonable division of risk between the Government and the contractor, without this type of clause.

(2) Any clause using this method must be prepared and approved using agency procedures.

16.204 Fixed-price contracts with prospective price redetermination.

16.204–1 Description.

A fixed-price contract with prospective price redetermination provides for—

(a) A firm-fixed-price for an initial period of contract deliveries or performance; and

(b) Prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

16.204–2 Application.

A fixed-price contract with prospective price redetermination may be used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed-price for an initial period, but not for subsequent periods of contract performance.

(a) The initial period should be the longest period for which it is possible to negotiate a fair and reasonable firm-fixed-price. Each subsequent pricing period should be at least 12 months.

(b) The contract may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact.

16.204–3 Limitations.

This contract type may only be used when—

(a) Negotiations have established that using a firm-fixed-price or fixed-price cost incentive contract is not appropriate for the acquisition;

(b) The contractor's accounting system is adequate for price redetermination;

(c) The prospective pricing periods can be made to conform with operation of the contractor's accounting system; and

(d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

16.204–4 Contract clause.

Insert the clause at 52.216–5, Price Redetermination-Prospective, in solicitations and contracts, other than those for commercial products or commercial services, when contracting by negotiation, a fixed-price contract is contemplated, and the conditions specified in 16.204–2 and 16.204–3 apply.

16.205 Fixed-ceiling-price contracts with retroactive price redetermination.

16.205–1 Description.

A fixed-ceiling-price contract with retroactive price redetermination provides for (a) a fixed ceiling price and (b) retroactive price redetermination within the ceiling after completion of the contract.

16.205–2 Application.

A fixed-ceiling-price contract with retroactive price redetermination is appropriate when it is established at the outset that a fair and reasonable firm-fixed-price cannot be negotiated, and that the amount involved and short performance period make the use of any other fixed-price contract type impracticable.

(a) A ceiling price must be negotiated for the contract at a level that reflects a reasonable sharing of risk by the contractor. The established ceiling price may be adjusted only if required by the operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(b) The contract should be awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.

16.205–3 Limitations.

This contract type may only be used when—

(a) The contract is for research and development and the estimated cost is at or below the simplified acquisition threshold (SAT);

(b) The contractor's accounting system is adequate for price redetermination;

(c) There is reasonable assurance that the price redetermination will take place promptly at the specified time; and

(d) The head of the contracting activity (or a higher-level official, if required by agency procedures) approves its use in writing.

16.205–4 Contract clause.

Insert the clause at 52.216–6, Price Redetermination-Retroactive, in solicitations and contracts, other than those for commercial products or commercial services, when a fixed-price contract is contemplated and the conditions in 16.205–2 and 16.205–3 apply.

16.206 Firm-fixed-price, level-of-effort term contracts.

16.206–1 Description.

A firm-fixed-price, level-of-effort term contract requires—

(a) The contractor to provide a specified level of effort, over a stated period of time, on work towards a deliverable that can be described in general terms; and

(b) The Government to pay the contractor a fixed dollar amount for the effort.

16.206–2 Application.

A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The deliverable of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort expended rather than on the results achieved.

16.206–3 Limitations.

This contract type may be used only when—

(a) The work required cannot otherwise be clearly defined;

(b) The required level of effort is identified and agreed upon in advance;

(c) There is reasonable assurance that the intended deliverable cannot be achieved by expending less than the stipulated effort; and

(d) The agency head approves a justification if required by 16.104.

Subpart 16.3—Cost-Reimbursement Contracts

16.301 General.

16.301–1 Description.

Cost-reimbursement contracts allow for the reimbursement of allowable incurred costs. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling value that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

16.301–2 Application.

Use cost-reimbursement contracts only when—

(a) The requirements cannot be sufficiently defined to allow for a fixed-price type contract; or

(b) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

16.301–3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) A written acquisition plan has been approved at least one level above the contracting officer (see 7.102(d));

(2) The agency head approves a justification if required by 16.104;

(3) The contractor's accounting system can adequately segregate, accumulate and allocate costs specifically attributed to the contract or order during contract performance; and

(4) Before award of the contract or order, sufficient Government resources are available to award and manage a contract other than firm-fixed-priced (see part 7). This includes designating a contracting officer's representative to monitor contractor performance and cost controls (see part 1).

(b) The use of cost-reimbursement contracts is not allowed for the purchase of commercial products and commercial services (see part 12).

16.302 Cost contracts.

A cost contract is a cost-reimbursement contract that does not include fee.

16.303 Cost-sharing contracts.

A cost-sharing contract is a cost-reimbursement contract that does not include fee, and the Government reimburses only a portion of the allowable costs. State in the contract the agreed upon portion or percentage of allowable costs that will be reimbursed.

16.304 Cost-plus-fixed-fee contracts.

16.304–1 Description.

A cost-plus-fixed-fee contract is a cost-reimbursement contract that includes payment of an agreed upon fixed-fee. The fixed fee does not change with actual cost but may be adjusted as a result of changes in the work to be performed under the contract.

16.304–2 Limitations.

A cost-plus-fixed-fee contract must not be awarded unless the contracting officer complies with all limitations listed at 15.404–9 and 16.301–3.

16.304–3 Completion and term forms.

A cost-plus-fixed-fee contract may take one of two basic forms-completion or term.

(a) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (*e.g.,* a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee. However, if the work costs more than estimated, the Government may increase allowable costs to complete the work without increasing the fee.

(b) The term form describes the scope of work in general terms and requires the contractor to work at a specified level of effort for a specific time period. The term form may not be used unless required by the contract to provide a specific level of effort within a definite time period. Under this form, if the performance is considered satisfactory by the Government, the fixed fee is payable at the end of the agreed upon period. Renewal for further periods of performance is a new acquisition that involves new cost and fee arrangements.

16.305 Contract clauses.

(a) Insert the clause at 52.216–7, Allowable Cost and Payment, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-reimbursement contract, including cost-type incentive contracts described in subpart 16.4, or a time-and-materials contract is anticipated. If the contract is a time-and-materials contract, the clause at 52.216–7 applies in conjunction with the clause at 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, but only to the portion of the contract that provides for reimbursement of materials (as defined in the clause at 52.232–7) at actual cost. The clause at 52.216–7 does not apply to labor-hour contracts.

(1) Use the clause with its Alternate I for the acquisition of construction.

(2) Use the clause with its Alternate II if the contract is with an educational institution.

(3) Use the clause with its Alternate III if the contract is with a State or local government.

(4) Use the clause with its Alternate IV if the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VIII.

(b) Insert the clause at 52.216–8, Fixed Fee, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-plus-fixed-fee contract (other than a construction contract) is anticipated.

(c) Insert the clause at 52.216–9, Fixed Fee-Construction, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-plus-fixed-fee construction contract is anticipated.

(d) Insert the clause at 52.216–10, Incentive Fee, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-plus-incentive-fee contract is anticipated.

(e)(1) Insert the clause at 52.216–11, Cost Contract-No Fee, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-reimbursement contract that provides no fee and is not a cost-sharing contract is anticipated. This clause may be modified by substituting $10,000 in lieu of $100,000 as the maximum reserve in paragraph (b) if the contractor is a nonprofit organization.

(2) Use the clause with its Alternate I if a cost-reimbursement research and development contract with an educational institution or a nonprofit organization that provides no profit and is not a cost-sharing contract is anticipated, and if the contracting officer determines that withholding of a portion of allowable costs is not required.

(f)(1) Insert the clause at 52.216–12, Cost-Sharing Contract-No Fee, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-sharing contract is anticipated. The contracting officer may modify the clause by substituting $10,000 in lieu of $100,000 as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

(2) Use the clause with its Alternate I if a cost-sharing research and development contract with an educational institution or a nonprofit organization is anticipated, and if the contracting officer determines that withholding of a portion of allowable costs is not required.

(g) Insert the clause at 52.216–15, Predetermined Indirect Cost Rates, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-reimbursement research and development contract with an educational institution (see part 42) is anticipated and predetermined indirect cost rates are to be used.

Subpart 16.4—Incentive Contracts

16.401 General.

16.401–1 Description.

(a) Incentive contracts are designed to obtain specific acquisition objectives by—

(1) Establishing realistic and achievable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to—

(i) Motivate contractor efforts that might not otherwise be emphasized; and

(ii) Discourage contractor inefficiency and waste.

(b) Fixed-price and cost-reimbursement contracts may include incentives when appropriate.

(c) The two types of incentives are award-fee (16.402) and predetermined, formula-type incentives based on objective criteria including performance, delivery, cost, or multiple criteria (16.403, 16.404, and 16.405).

(1) Use objective criteria to the maximum extent practicable to measure contract performance.

(2) When predetermined, formula-type incentives on technical performance or delivery are included, profit or fee increases are only earned when performance exceeds the targets. Decreases apply when contractors fail to meet these targets. These incentive increases or decreases relate only to performance targets, not minimum performance requirements.

(3) Consider use of a multiple-incentive contract containing both objective incentives and subjective award-fee criteria when objective criteria exist but it is in the best interest of the Government to also incentivize subjective elements of performance.

(d) No incentive contract may provide for other incentives without also providing a cost incentive or constraint.

16.401–2 Limitations.

(a) A determination and findings, signed by the head of the contracting activity, must be completed for all incentive- and award-fee contracts justifying that the use of this type of contract is in the best interest of the Government. The determination for award-fee contracts must address all of the suitability items in 16.402–1.

(b)(1) For cost-reimbursement incentive contracts, the agency head must approve a justification if required by 16.104.

(2) For fixed-price incentive contracts based solely on factors other than cost, a justification is not required.

16.401–3 Collection and analysis of fee data.

Each agency must collect relevant data on incentive and award fees paid to contractors and include performance measures to evaluate such data on a regular basis to determine effectiveness of incentive and award fees as a tool for improving contractor performance and achieving desired program outcomes. This information should be considered as part of the acquisition planning process (see part 7) in determining the appropriate type of contract to be used for future acquisitions.

16.401–4 Incentive strategy best practices.

Each agency head must provide processes for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

16.402 Award-fee.

16.402–1 Application.

An award-fee contract is suitable for use when—

(a) The work to be performed is too complex or uncertain to set predetermined objective incentive targets applicable to cost, schedule, and technical performance;

(b) The likelihood of meeting acquisition objectives will be increased by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the circumstances under which work was achieved; and

(c) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits as documented by a risk and cost benefit analysis to be included in the determination and findings referenced in 16.401–2.

16.402–2 Limitations.

(a) *Justification for other than fixed-price.* For award-fee contracts, except for fixed-price award-fee contracts based solely on factors other than cost, the agency head must approve a justification, if required by 16.104.

(b) *Award-fee plan.* Do not award an award-fee contract unless an award-fee plan is completed in accordance with the requirements in paragraph (d) of this section.

(c) *Award-fee amount.* The amount of award fee earned must be in line with the contractor's overall cost, schedule, and technical performance as measured against contract requirements in accordance with the criteria stated in the award-fee plan. Award fee must not be earned if the contractor's overall cost, schedule, and technical performance in the aggregate is below satisfactory. The basis for all award-fee determinations must be documented in the contract file to include, at a minimum, a determination that overall cost, schedule, and technical performance in the aggregate is or is not at a satisfactory level. This determination and the approach for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(d) *Award-fee plan.* All contracts providing for award fees must be supported by an award-fee plan that sets up the process for evaluating award fee and an Award-Fee Board for completing the award-fee evaluation. Award-fee plans must—

(1) Be approved by the Fee-Determining Official unless otherwise authorized by agency procedures;

(2) Identify the award-fee evaluation criteria and how they are connected to acquisition objectives which must be defined in terms of contract cost, schedule, and technical performance. Criteria should motivate the contractor to enhance performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas;

(3) Describe how the contractor's performance will be evaluated against the award-fee evaluation criteria;

(4) Use the adjectival rating and associated description as well as the award-fee pool earned percentages shown in Table 16–1. Contracting officers may supplement the adjectival rating description. The approach used to determine the adjectival rating must be documented in the award-fee plan;

TABLE 16–1

Award-fee adjectival rating	Award-fee pool available to be earned	Description
Excellent	91%–100%	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.
Very Good	76%–90%	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.
Good	51%–75%	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.
Satisfactory	No Greater Than 50%.	Contractor has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.
Unsatisfactory	0%	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.

(5) Earning any award fee when a contractor's overall cost, schedule, and technical performance in the aggregate is below satisfactory is not allowed;

(6) Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (*e.g.,* six months, nine months, twelve months, or at specific milestones); and

(7) Define the total award-fee pool amount and how this amount is allocated to each evaluation period.

(e) *Rollover of unearned award fee.* The use of rollover of unearned award fee is prohibited.

16.402–3 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts must establish a fixed-price (including normal profit) for the work, which will be paid for satisfactory contract performance. Any award fee earned will be paid in addition to that fixed-price. See 16.402–1 and 16.402–2 for the requirements on using this contract type.

16.402–4 Cost-plus-award-fee contracts.

(a) A cost-plus-award-fee contract is a cost-reimbursement contract that provides a fee consisting of—

(1) A base amount fixed at inception of the contract, if applicable and at the discretion of the contracting officer; and

(2) An award fee that the contractor may earn in whole or in part to provide motivation for excellence in the areas of cost, schedule, and technical performance.

(b) See 16.301, 16.402–1, and 16.402–2 for the requirements relative to utilizing this contract type.

16.403 Application of predetermined, formula-type incentives.

16.403–1 Cost incentives.

(a) Cost incentives take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs.

(b) Except for award-fee contracts (see 16.402), cost incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

(1) If actual costs equal the target cost, the contractor will earn the target profit or fee;

(2) If actual costs exceed the target cost, the contractor's earned profit or fee will be lower than the target profit or fee; and

(3) If actual costs are less than the target cost, the contractor's earned profit or fee will be higher than the target profit or fee.

(c) See 16.404 for fixed-price cost incentive contracts and 16.405 for cost-reimbursable cost incentive contracts.

16.403–2 Performance incentives.

(a) Performance incentives may be considered in connection with specific, objectively measurable product characteristics (*e.g.,* a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific areas of the contractor's performance. Incentives should be linked to the contractor's profit or fee based on how their actual performance compares to the set targets.

(b) To the maximum extent practicable, positive and negative performance incentives for objectively measured tasks should be considered when the quality of performance is critical, and incentives are likely to motivate the contractor.

16.403–3 Delivery incentives.

(a) Delivery incentives should be considered when improvement from a required delivery schedule is important to the Government.

(b) Delivery incentive contracts should include how the reward-penalty structure is affected by Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

16.403–4 Structuring multiple-incentive contracts.

A properly structured multiple-incentive arrangement should—

(a) Motivate the contractor to work towards outstanding results in all incentive areas; and

(b) Encourage trade-offs between incentive areas to align with the Government's goals. Due to the connection of cost, technical performance, and delivery goals, a contract that focuses on only one of the goals may jeopardize control over the others. All multiple-incentive contracts must include a cost incentive (or constraint) that prevents rewarding a contractor for greater technical performance or delivery results when the cost of those results outweighs their value to the Government.

16.404 Fixed-price cost incentive contracts.

(a) *Description.* A fixed-price cost incentive contract is a fixed-price contract that uses an established formula to adjust profit upward or downward and establishes the final contract price based on actual costs. Two forms of fixed-price cost incentive contracts based on cost incentives, firm target and successive targets, are further described in 16.404–1 and 16.404–2.

(b) *Application.* A fixed-price cost incentive contract is appropriate when—

(1) A firm-fixed-price contract is not suitable;

(2) The contractor's acceptance of a degree of cost responsibility will provide a positive profit incentive to control costs and increase performance; and

(3) If the contract also includes technical, performance or delivery incentives, the technical/performance/delivery incentives should provide opportunities for the incentives to improve the contractor's management of the work.

(c) *Billing prices.* In fixed-price cost incentive contracts, interim billing prices are established for payment. Billing prices may be adjusted, within the ceiling limit, when requested by either party to the contract, when it becomes apparent that final price will be substantially different from the target price.

16.404–1 Fixed-price cost incentive (firm target) contracts.

(a) *Description.* A fixed-price cost incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a formula for profit adjustments. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss.

(b) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision; and

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(c) *Contract schedule.* Specify in the contract schedule the target cost, target profit, and price ceiling for each item subject to incentive price revision.

16.404–2 Fixed-price cost incentive (successive targets) contracts.

(a) *Description.* A fixed-price cost incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(1) An initial target cost.

(2) An initial target profit.

(3) An initial profit adjustment formula to calculate the firm target profit, including a ceiling and floor for the firm target profit.

(4) The production point at which the firm target cost and firm target profit will be negotiated.

(5) A ceiling price.

(b) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and

(2) Cost or pricing information adequate for establishing a reasonable firm target cost is expected to be available early on in contract performance.

(c) *Contract schedule.* Specify in the contract schedule the initial target cost, initial target profit, and initial target price for each item subject to incentive price revision.

16.405 Cost-plus-incentive-fee contracts.

The cost-plus-incentive-fee contract is a cost-reimbursement contract that adjusts the initially negotiated fee based on a formula comparing total allowable costs to total target costs. This contract type includes a target cost, target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the contractor's fee is determined using the specified fee formula. The formula provides for fee greater than the target fee when total allowable costs are less than target costs, and fee less than the target fee when total allowable costs exceed target costs, creating an incentive for effective contract management. When total allowable costs fall outside the range of the fee formula, the contractor receives total allowable costs plus either the minimum or maximum fee.

16.406 Contract clauses.

(a) Insert the clause at 52.216–16, Incentive Price Revision-Firm Target, in solicitations and contracts, other than those for commercial products or commercial services, when a fixed-price cost incentive (firm target) contract is contemplated. Use the clause with its *Alternate I* if the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision under the clause.

(b) Insert the clause at 52.216–17, Incentive Price Revision-Successive Targets, in solicitations and contracts, other than those for commercial products or commercial services, when a fixed-price cost incentive (successive targets) contract is contemplated. Use the clause with its *Alternate I* if the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to incentive price revision under the clause.

(c) Insert the clause at 52.216–10, Incentive Fee, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-plus-incentive-fee contract is contemplated.

(d) Insert an appropriate award-fee clause in solicitations and contracts, including those for commercial products or commercial services, when an award-fee contract is contemplated, provided that the clause—

(1) Is prescribed by or approved under agency acquisition regulations;

(2) Is compatible with the clause at 52.216–7, Allowable Cost and Payment; and

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

Subpart 16.5—Time-and-Materials and Labor-Hour Contracts

16.500 Scope.

Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

16.501 Time-and-materials contracts.

Definitions for the purposes of Time-and-Materials Contracts.

Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(1) Performed by the contractor;

(2) Performed by the subcontractors; or

(3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

Materials means—

(1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(3) Other direct costs (*e.g.,* incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(4) Applicable indirect costs.

16.501–1 Description.

A time-and-materials contract provides for acquiring supplies or services on the basis of—

(a) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and

(b) Actual cost for materials (except as provided for in part 31).

16.501–2 Application.

A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(a) *Government surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(b) *Fixed hourly rates.* (1) The contract must specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor.

(2) For acquisitions of other than commercial products or commercial services awarded without adequate price competition (see part 15), the contract must specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(i) The contractor;

(ii) Each subcontractor; and

(iii) Each division, subsidiary, or affiliate of the contractor under a common control.

(3) For contract actions that are not awarded using competitive procedures, unless exempt under paragraph (b)(4) of this section, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the contractor under a common control—

(i) Must not include profit for the transferring organization; but

(ii) May include profit for the prime contractor.

(4) For contract actions that are not awarded using competitive procedures, the fixed hourly rates for services that meet the definition of ''commercial service'' that are transferred between divisions, subsidiaries, or affiliates of the contractor under a common control may be the established catalog or market rate when—

(i) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(ii) The contracting officer has determined the price to be reasonable.

(c) *Material handling costs.* When included as part of material costs, material handling costs must include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with part 31.

16.501–3 Limitations.

A time-and-materials contract or order may be used only if—

(a) The contracting officer prepares a determination and findings that no other contract type is suitable. The determination and findings must be—

(1) Signed by the contracting officer prior to the execution of the base period or any option periods of the contracts; and

(2) Approved by the head of the contracting activity prior to the execution of the base period when the base period plus any option periods exceeds three years;

(b) The agency head approves a justification if required by 16.104; and

(c) The contract or order includes a ceiling price that the contractor exceeds at its own risk. See part 12 for further limitations on use of time-and-materials or labor-hour contracts for acquisition of commercial products and commercial services.

16.501–4 Solicitation provisions.

(a) Insert the provision at 52.216–29, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition, in solicitations, other than those for commercial products or commercial services, when the use of a time-and-materials or labor-hour type of contract is contemplated, and the price is expected to be based on adequate price competition. If authorized by agency procedures, the contracting officer may amend the provision to make mandatory one of the three approaches in paragraph (c) of the provision; or to require the identification of all subcontractors, divisions, subsidiaries, or affiliates included in a blended labor rate; or both.

(b) Insert the provision at 52.216–30, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition, in solicitations, other than those for commercial products or commercial services, when the use of a time-and-materials or labor-hour type of contract is contemplated if the price is not expected to be based on adequate price competition.

(c) Insert the provision at 52.216–31, Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition, in solicitations for commercial products or commercial services when a time-and-materials or labor-hour contract is contemplated.

16.501–5 Postaward requirements.

Prior to an increase in the ceiling price of a time-and-materials or labor-hour contract or order—

(a) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government;

(b) Document the decision in the contract or order file; and

(c) When making a change that modifies the general scope of—

(1) A contract, follow the procedures at part 6, 12.102, or 13.101;

(2) An order issued under the Federal Supply Schedules, follow the procedures at subpart 8.4; or

(3) An order issued under multiple-award task-order contracts and delivery-order contracts, follow the procedures at 16.607–6.

16.502 Labor-hour contracts.

Description. A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See part 12, 16.501–2, and 16.501–3 for application and limitations for time-and-materials contracts that also apply to labor-hour contracts.

Subpart 16.6—Indefinite-Delivery Contracts

16.600 Scope.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and subsequent orders and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by part 6.

(c) See part 19 for procedures to set aside part or parts of multiple-award contracts for small businesses and to reserve one or more awards for small business on multiple-award contracts.

(d) The statutory multiple-award preference (see 10 U.S.C. 3403 and 41 U.S.C. 4103) implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in part 36. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with part 36.

(e) This subpart does not limit the authority of the General Services Administration (GSA) to enter into schedule, multiple-award, or task-order contracts or delivery-order contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program take precedence over this subpart.

16.601 General.

16.601–1 Definitions.

As used in this subpart—

Delivery-order contract means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

Task-order contract means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

16.601–2 Policies.

(a) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies or services or both when the exact times and quantities of future deliveries are not known at the time of contract award. Pursuant to 10 U.S.C. 3401 and 41 U.S.C. 4101, requirements contracts and indefinite-quantity contracts are also known as delivery-order contracts or task-order contracts.

(b)(1) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under this part. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (*e.g.,* estimated number of labor hours) must comply with the appropriate procedures of this subpart.

(2) In accordance with 10 U.S.C. 3206(c), for DoD, NASA, and the Coast Guard—

(i) The contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation—

(A) Has an estimated value exceeding the simplified acquisition threshold;

(B) Will result in multiple-award contracts that are for the same or similar services; and

(C) States that the Government intends to make an award to each and all qualifying offerors.

(ii) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award in accordance with paragraph (b)(2)(i) of this section, the contracting officer must consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(iii) The exception in paragraph (b)(2)(i) of this section must not apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(c) Task-order contracts and delivery-order contracts (requirements contracts and indefinite-quantity contracts) have an ordering period in which orders may be placed. Individual task and delivery orders have a period of performance effective for that specific task or delivery order's scope of work. The effective period of a task-order contract or delivery-order contract includes the ordering period of the base contract and any period of performance of task orders beyond the end of the ordering period, provided the order was issued during the ordering period.

(1) *Limitation on ordering period.* In accordance with 10 U.S.C. 3403, for the DoD, NASA, and the Coast Guard, the head of an agency entering into a task-order contract or delivery-order contract may provide for the contract to cover any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

(2) *Limitation on ordering period for task-order contracts for advisory and assistance services.*

(i) In accordance with 10 U.S.C. 3405, except as provided for in paragraphs (c)(2)(ii) and (iii) of this section, the ordering period of a task-order contract for advisory and assistance services, including all periods of extensions of the contract under options, modifications or otherwise, may not exceed 5 years.

(ii) The 5-year limitation does not apply when—

(A) A longer ordering period is specifically authorized by statute; or

(B) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(iii) The contracting officer may extend the contract on a sole-source basis for a period not exceeding 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(A) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) The extension is necessary to ensure continuity of services, pending the award of, and commencement of performance under, the follow-on contract.

16.602 Definite-quantity contracts.

16.602–1 Description.

A definite-quantity contract provides for delivery of a definite (fixed) quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order. The delivery schedule, location, or both may be flexible or set, but the total number of items or services to be delivered under the contract will not change.

16.602–2 Application.

A definite-quantity contract may be used when it can be determined in advance that—

(a) The exact quantity of supplies or services required during the contract period is known at the time of award; and

(b) The supplies or services are regularly available or will be available after a short lead time.

16.603 Requirements contracts.

16.603–1 Description.

A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified ordering period exclusively from one contractor, with deliveries or performance to be scheduled by placing orders with the contractor.

16.603–2 Application.

A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

16.603–3 Limitations.

(a) No requirements contract in an amount estimated to exceed $150 million (including all options) may be awarded to a single source unless a determination is executed in accordance with 16.604–3(a)(4).

(b) *Limitations on use of requirements contracts for advisory and assistance services.* (1) Except as provided in paragraph (b)(2) of this section, no solicitation for a requirements contract for advisory and assistance services exceeding three years and $20 million (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.604–3(b).

(2) The limitation in paragraph (b)(1) of this section does not apply to a contract for the acquisition of supplies or services that includes acquisition of advisory and assistance services if the head of the executive agency entering into the contract determines that, under the contract, advisory and assistance services are necessarily incidental to, and not a significant component of, the contract.

16.603–4 Required content.

(a) Requirements contracts obligate the contractor to supply all the designated Government activities' actual needs, and the designated Government activities to purchase all their requirements from that specific contractor, within stated limits of the contract. The contract must state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The contract may also set minimum or maximum limits or both on the quantities the Government may order under each individual order or over a specified period of time.

(b) The solicitation and resulting contract must state a realistic estimated total quantity. This estimated total quantity is not a representation to an offeror or contractor that the estimate is guaranteed quantity, or that conditions affecting requirements will stay the same. The contracting officer should base the estimate on the most current information available, and may calculate the estimate based on records of previous requirements and consumption, or by other means.

(c) When a requirements contract is used to acquire work (*e.g.,* repair, modification, or overhaul) on existing items of Government property, specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as ''estimated'' or ''maximum'' will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

16.604 Indefinite-quantity contracts.

16.604–1 Description.

(a) An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services. The Government places orders for individual requirements during the ordering period of the contract. Quantity limits may be stated as number of units or as dollar values.

(b) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(c) In addition, if ordered, the contractor is required to furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(d) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

16.604–2 Application.

The contracting officer may use an indefinite-quantity contract when the Government knows what kind of supplies or services it requires and a certain minimum amount that it expects to require, but does not know exactly how much will be needed or when during the effective period. The contracting officer should use an indefinite-quantity contract only when the Government expects to have ongoing, repeated requirements for the supplies or services.

16.604–3 Multiple award preference.

(a)(1) Except for indefinite-quantity contracts for advisory and assistance services (see paragraph (b) of this section), contracting officers must, to the maximum extent practicable, give preference to awarding multiple indefinite-quantity contracts under a single solicitation to different contractors for the same or similar supplies or services.

(2) Document the decision whether to make multiple awards in the acquisition plan or contract file. Reasons for deciding that multiple awards are not in the best interests of the Government include, but are not limited to—

(i) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(ii) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(iii) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(iv) The projected orders are so integrally related that only a single contractor can reasonably perform the work;

(v) The total estimated value of the contract is at or below the SAT.

(3) The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards.

(4)(i) No task-order contract or delivery-order contract in an amount estimated to exceed $150 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(A) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(B) The contract provides only for firm-fixed-price (see 16.202) task or delivery orders for—

(*1*) Products for which unit prices are established in the contract; or

(*2*) Services for which prices are established in the contract for the specific tasks to be performed;

(C) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(D) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(ii) The head of the agency must notify Congress within 30 days after any determination under paragraph (a)(4)(i)(D) of this section.

(iii) The requirement for a determination for a single-award contract greater than $150 million—

(A) Is in addition to any applicable requirements of part 6; and

(B) Is not applicable for architect-engineer services awarded pursuant to part 36.

(b) *Preference for multiple awards for advisory and assistance services.* (1) In accordance with 10 U.S.C. 3405 and 41 U.S.C. 4105, except as provided in paragraph (b)(2) of this section, if an indefinite-quantity contract for advisory and assistance services is estimated to exceed 3 years and $20 million (including all options), the solicitation must provide for multiple awards unless—

(i) The contracting officer or other official designated by the head of the agency determines in writing—

(A) It is not practicable to award more than one contract because the services required are unique or highly specialized or the tasks are so integrally related; or

(B) After the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(ii) Only one offer is received.

(2) The requirements of paragraph (b)(1) of this section do not apply to a contract for the acquisition of supplies or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines in writing during acquisition planning that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.604–4 On-ramps and off-ramps.

To maintain a current, competitive, and innovative pool of vendors on a multiple-award contract, the solicitation and contract may provide for—

(a) Adding one or more new contractors (on-ramp) and increasing the maximum quantity during open seasons; and

(b) Removing a contractor (off-ramp) for underperforming, failure to actively participate in order competitions, other circumstances defined in the contract, or if requested by the contractor.

16.604–5 Required content.

An indefinite-quantity solicitation and contract must—

(a) Specify the ordering period of the contract, including the number of options and the period for which the Government may extend the contract ordering period under each option;

(b) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(c) Specify the last date that a contractor will be required to make deliveries under orders issued during the ordering period (see 52.216–22(d));

(d) Include a statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(e) State any uniform ordering procedures that the Government will use in issuing all orders, including the ordering media; otherwise, the ordering procedures are at the discretion of the ordering contracting officer;

(f) Specify the activities authorized to issue orders;

(g) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing; and

(h) When multiple awards are anticipated—

(1) Specify any fair opportunity procedures and selection criteria that must apply to all competed orders; otherwise, the procedures and selection criteria are at the discretion of the ordering contracting officer (see 16.607);

(2) Specify whether one or more blanket purchase agreements (BPAs) may be established under the contract according to 16.607–2(c)(3);

(3) Advise whether the Government reserves the right to conduct on-ramps, off-ramps, or both according to 16.604–4. Specify details of contemplated on-ramps and off-ramps. If the ordering period exceeds five years, provide for on-ramps according to 16.604–4, unless the contracting officer documents that on-ramps are not in the best interests of the Government.

16.605 Solicitation provisions and contract clauses.

(a) Insert the clause at 52.216–18, Ordering, in solicitations and contracts, including those for commercial products or commercial services, when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at 52.216–19, Order Limitations, in solicitations and contracts, including those for commercial products or commercial services, when—

(1) A definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated;

(2) The contracting officer desires maximum or minimum quantities that the Government may order under each task or delivery order; and

(3) When the Government desires to have a maximum that may be ordered over a specific period of time.

(c) Insert the clause at 52.216–20, Definite Quantity, in solicitations and contracts, including those for commercial products or commercial services, when a definite-quantity contract is contemplated.

(d)(1) Insert the clause at 52.216–21, Requirements, in solicitations and contracts, including those for commercial products or commercial services, when a requirements contract is contemplated.

(2) Use the clause with its *Alternate I* if the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform.

(3) Use the clause with its *Alternate II* if the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis (but see paragraph (d)(5) of this section if the contract also involves a partial small business set-aside).

(4) Use the clause with its *Alternate III* if the contract involves a partial small business set-aside (but see paragraph (d)(5) of this section if the contract also includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis).

(5) Use the clause with its *Alternate IV* if the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside.

(e) Insert the clause at 52.216–22, Indefinite Quantity, in solicitations and contracts, including those for commercial products or commercial services, when an indefinite-quantity contract is contemplated.

(1) Use the clause with a paragraph substantially the same as its *Alternate I* if off-ramping is contemplated and the agency desires a unilateral cancellation executable by either party. The contracting officer may vary the 30-day period in which the cancellation becomes effective from as few as 15 days to as many as 90 days.

(2) Use the clause with a paragraph substantially the same as its *Alternate II* if off-ramping is contemplated and the agency wishes to retain discretion to disapprove contractor-requested off-ramps. The contracting officer may vary the 30-day period in which the cancellation becomes effective from as few as 15 days to as many as 90 days.

(f) Insert the provision at 52.216–27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts, including those for commercial products or commercial services, that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and $20 million (including all options).

(g) Insert the provision at 52.216–28, Multiple Awards for Advisory and Assistance Services, in solicitations if the acquisition value exceeds $20 million (including all options), for task-order contracts for advisory and assistance services that exceed 3 years, including those for commercial services, unless a determination has been made under 16.604–3(b)(1)(i). Modify the provision to specify the estimated number of awards.

(h) Insert the clause at 52.216–32, Task-Order and Delivery-Order Ombudsman, in solicitations and contracts, including those for commercial products or commercial services, when a multiple-award task-order contract or delivery-order contract is contemplated.

(1) Use the clause with its Alternate I when the contract will be available for use by multiple agencies (*e.g.,* Governmentwide acquisition contracts or multi-agency contracts).

(2) Use the clause with its Alternate I, and complete paragraph (d)(2), in the notice of intent to place an order and the resulting order, when placing orders under the multiple-award contract available for use by multiple agencies.

16.606 Postaward procedures for placement of task and delivery orders.

(a) Orders must be within the scope, issued within the specified ordering period, and be within the maximum value of the contract.

(b) All orders placed under a task-order contract or delivery-order contract must contain the following information:

(1) Date of order.

(2) Contract number and order number.

(3) For supplies and services, line-item number, subline item number (if applicable), description, quantity, and unit price or estimated cost and fee (as applicable). The corresponding line-item number and subline item number from the base contract must also be included.

(4) Delivery or performance schedule.

(5) Statement of work that clearly specifies all requirements. For service orders, performance-based acquisition methods must be used to the maximum extent practicable (see subpart 37.1).

(6) Place of delivery or performance (including consignee).

(7) Any packaging, packing, and shipping instructions.

(8) Accounting and appropriation data.

(9) Method of payment and payment office, if not specified in the contract or BPA (see part 32).

(10) North American Industry Classification System code (see part 19).

(c) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.,* a Governmentwide acquisition contract, or multi-agency contract)—

(1) Are not exempt from the development of acquisition plans (see part 7), and an information technology acquisition strategy (see part 39);

(2) May not be used to circumvent conditions and limitations imposed on the use of funds (*e.g.,* 31 U.S.C. 1501(a)(1)); and

(3) Must comply with all FAR requirements for a consolidated or bundled contract when the order meets the definition at 2.101 of ''consolidation'' or ''bundling''.

(d) In accordance with section 1427(b) of Public Law 108–136 (40 U.S.C. 1103 note), orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in 2.101, must—

(1) Be awarded using the procedures at part 36.

(2) Require the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, possession, Federal District, or outlying area in which the services are to be performed.

(e) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the System for Award Management as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program.

(f) If the contract or BPA did not establish the price for the supply or service, establish prices for each order using the policies and methods in subpart 15.4 or part 12, as applicable.

(g) For additional requirements for cost-reimbursement orders, see subpart 16.3.

(h) For additional requirements for time-and-materials or labor-hour orders, see subpart 16.5.

(i) The contracting officer should rely on the small business representations at the contract level (but see part 19 for order rerepresentations).

16.607 Additional ordering procedures for multiple-award contracts.

These procedures apply to placing orders and establishing BPAs against multiple-award contracts. See 16.607–2(c)(3)(iv)(B) and (vii) for placing orders against BPAs.

16.607–1 Placement of orders valued at or below the micro-purchase threshold.

Each order or BPA valued at or below the micro-purchase threshold may be placed with any multiple-award contractor that can meet the agency's needs. Although not required to solicit from a specific number of contractors, ordering activities should attempt to distribute orders and BPAs among multiple-award contractors.

16.607–2 Fair opportunity procedures.

(a) *Fair opportunity.* (1) Provide each awardee a fair opportunity to be considered for each order or BPA exceeding the micro-purchase threshold according to paragraph (c) of this section and 16.607–3 through 16.607–5, unless a sole source order or BPA is justified and approved according to 16.607–6.

(2) The contracting officer has broad discretion to develop appropriate order or BPA placement procedures. To maximize efficiency, ordering activities are encouraged to use innovative approaches when placing orders and establishing BPAs commensurate with the risk and complexity of the requirement. To solicit orders and BPAs against indefinite-quantity contracts, issue an order or BPA solicitation (*e.g.,* request for quotation, request for proposal, or request for task plan).

(3) The contracting officer should keep submission requirements to a minimum. The ordering process is not subject to the competition requirements in part 6 or the policies in subpart 15.2 or part 14. The contracting officer may use streamlined procedures, including oral presentations. The contracting officer is not required to have evaluation plans, score offeror responses, or establish a competitive range before communicating with contractors competing for an order or soliciting revised responses to the order or BPA solicitation.

(4) See part 19 for procedures to set aside orders or BPAs for small businesses under multiple-award contracts.

(b) *Task-order and delivery-order ombudsman.* The head of the agency must designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's advocate for competition.

(c) *Procedures.*

(1) *Requirements.*

(i) Do not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order.

(ii) Tailor the procedures to the risk and complexity of each acquisition.

(iii) Include the procedures in the order or BPA solicitation.

(iv) Consider price or cost under each order as one of the factors in the selection decision.

(v) Except for DoD, document in the contract file a justification for use of the lowest price technically acceptable source selection process, including an explanation that the criteria at 15.102–2(c)(1) are met.

(vi) Except for DoD, avoid using the lowest price technically acceptable source selection process to acquire certain supplies and services in accordance with 15.102–2(c)(2).

(2) *Considerations.* The contracting officer should consider the following when developing the placement procedures:

(i) Past performance on earlier orders under the contract, including quality, timeliness, and cost control. When past performance under the multiple-award contract is available and sufficient, it is unnecessary to consider past performance under other efforts.

(ii) Potential impact on other orders placed with the contractor.

(iii) Minimum order requirements.

(iv) The amount of time contractors need to make informed business decisions on whether to respond to order or BPA solicitations.

(v) Whether contractors could be encouraged to respond to order or BPA solicitations by outreach efforts to promote exchanges of information, such as—

(A) Seeking comments from two or more contractors on draft statements of work;

(B) Using a multiphase approach when effort required to respond to a potential order or BPA solicitation may be resource intensive (*e.g.,* requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.,* rough estimates), and other considerations as appropriate (*e.g.,* proposed conceptual approach, past performance).

(3) *Blanket purchase agreements.* If authorized in the multiple-award contract according to 16.604–5(h)(2), the contracting officer may establish one or more BPAs to fill anticipated repetitive needs for supplies or services. Establish BPAs using the fair opportunity procedures at 16.607–3 through 16.607–5, based on the total estimated value of the BPA. BPAs must include—

(i) Sufficient detail about the need, such as scope of work or objectives;

(ii) An ordering period, inclusive of any options or award terms. BPAs may be established with an ordering period that extends beyond the current term of a contractor's multiple-award contract, so long as there are option periods in the contractor's contract that, if exercised by the administering contracting officer, will cover the BPA's ordering period, including options and award terms;

(iii) Ordering activity requirements (*e.g.,* invoicing, delivery, and discounts/other concessions) that are not otherwise included in the master multiple-award contract;

(iv) Ordering procedures that—

(A) Identify the customers/individuals authorized to place orders and any limitations surrounding the placement of orders; and

(B) For multiple-award BPAs, ensure that for each order BPA recipients are provided the fair opportunity procedures in 16.607–3 through 16.607–5, based on the total estimated value of the order;

(v) On-ramps according to 16.604–4 if the ordering period of the BPA exceeds five years, unless the contracting officer documents that on-ramps are not in the best interest of the Government.

(vi) On an annual basis or prior to exercise of an option or award of an award term, review and prepare a written determination providing that—

(A) The BPA still represents the best value;

(B) Estimated quantities/amounts have been reached or exceeded;

(C) The BPA ordering procedures are being followed;

(D) Additional price discounts or other concessions can be obtained; and

(E) The ordering period of the contract against which the BPA is established is still in effect.

(vii) When placing orders against a multiple-award indefinite-delivery BPA, follow the ordering procedures established by the BPA.

16.607–3 Orders exceeding the micro purchase threshold but not more than the SAT.

(a) Fairly consider all contractors offering the supplies or services. If information available to the contracting officer allows each contractor to be fairly considered, the contracting officer may place an order without further soliciting contractors, or by soliciting fewer than all contractors.

(b) Document the file to the extent necessary to support the award decision, such as demonstrating that each contractor was fairly considered.

16.607–4 Orders exceeding the SAT but not more than $7.5 million.

(a) *Definition.* Day, as used in this section, has the meaning set forth at subpart 33.1.

(b) *Notice.* Provide a fair notice of the intent to place an order to all contractors offering the products or services by issuing—

(1) A solicitation including a description of the work to be performed and the basis on which selection will be made; or

(2) A notice of intent to place an order that requires contractors to respond in order to receive the solicitation or be considered for the order.

(c) *Award decision documentation.* Document the file to the extent necessary to support the award decision, such as demonstrating that each quotation, offer, proposal, or other response to a notice was fairly considered.

(d) *Postaward notice.* Within 7 days after the award of the order, provide written notice to all of the contractors who competed, but were not awarded the order. At a minimum, the notice must provide the name of the awardee of the order and the total price of the order.

(e) *Explanation.* If the agency receives a written request within 3 days of the contractor receiving the notification of award in paragraph (d), provide a brief explanation of why the offeror was not selected. The explanation must include—

(1) A summary of the rationale for the award; and

(2) An evaluation of the significant weaknesses or deficiencies in the contractor's offer.

(f) *Explanation documentation.* Retain a record of the brief explanation in the task order or delivery order file.

16.607–5 Orders exceeding $7.5 million.

(a) *Procedures.* Provide a fair notice of the intent to place an order to all contractors offering the products or services according to 16.607–4(b). A fair notice must—

(1) Include a clear statement of the agency's requirements;

(2) Allow for a reasonable response period; and

(3) Disclose the significant factors and subfactors, as applicable, including cost or price, that the agency expects to consider in evaluating quotations, offers, or other responses to notices, and their relative importance;

(b) *Documentation.* Document the file to the extent necessary to support the award decision, such as demonstrating—

(1) That each quotation, offer, or other response to a notice was fairly considered; and

(2) When award is made using tradeoffs, the relative importance of quality and price or cost factors.

(c) *Postaward notices and debriefings.* Provide postaward notifications and debriefings according to part 15. A summary of the debriefing must be included in the task or delivery order file.

16.607–6 Exceptions to fair opportunity.

(a) *Procedures.* Orders placed and BPAs established against multiple-award contracts are exempt from the competition requirements in part 6. However, justify placing an order or BPA exceeding the micro-purchase threshold (MPT) on a sole source basis in accordance with this section.

(b) *Exceptions.* An order or a BPA exceeding the MPT may be placed on a sole source basis when:

(1) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;

(2) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(3) The order or BPA must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order or BPA already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order or BPA;

(4) It is necessary to satisfy a minimum guarantee;

(5) For orders exceeding the SAT, or BPAs expected to exceed the SAT, a

statute expressly authorizes or requires that the purchase be made from a specified source; or

(6) For DoD, NASA, and the Coast Guard, the order or BPA satisfies one of the exceptions permitting the use of other than full and open competition listed in 6.103 (10 U.S.C. 3406(c)(5)). Do not use the public interest exception unless Congress is notified in accordance with 10 U.S.C. 3204(a)(7).

(c) *Small business considerations.* Part 19 and Public Law 111–240 (15 U.S.C. 644(r)) provide authority for setting aside orders and placing orders under reserves, which are not subject to the justification, approval, and posting requirements in paragraphs (d)–(f) of this section.

(d) *Justification.* The justification for an exception to fair opportunity must be in writing and include the following:

(1) *Orders exceeding the micro-purchase threshold but not more than the SAT.* Document the basis for using an exception to the fair opportunity process. For the logical follow-on exception, the rationale must describe why the relationship between the initial order and the follow-on is logical (*e.g.,* in terms of scope, period of performance, or value).

(2) *Orders exceeding the SAT.* As a minimum, each justification must include the following information:

(i) Identification of the agency and the contracting activity, and specific identification of the document as a ''Justification for an Exception to Fair Opportunity.''

(ii) Nature or description of the action being approved.

(iii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iv) Identification of the exception to fair opportunity (see paragraph (b) of this section) and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited. If the contracting officer uses the logical follow-on exception, the rationale must describe why the relationship between the initial order and the follow-on is logical (*e.g.,* in terms of scope, period of performance, or value).

(v) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(vi) Any other facts supporting the justification.

(vii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.

(viii) The contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(ix) Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.,* verifying the Government's minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(x) A written determination by the approving official that one of the circumstances in paragraphs (b)(1) through (6) of this section applies to the order.

(e) *Approval.* The justification for an exception to fair opportunity must be approved in writing by the following official, or an official with a higher approval authority in Table 16–2:

TABLE 16–2—APPROVAL AUTHORITIES FOR EXCEPTIONS TO FAIR OPPORTUNITY

Value (including options)	Approval authority
(1) $900,000 or less	Contracting officer. Accomplished by certification required at 16.607–6(d)(2)(viii).
(2) >$900,000–$20,000,000	Advocate for competition of the activity placing the order. Not delegable.
(3) >$20,000,000–$90,000,000 (>$20,000,000–$150,000,000 for DoD, NASA, and USCG).	The head of the procuring activity placing the order. May be delegated to a general or flag officer of the armed forces or a civilian in a grade above GS–15 (or in a comparable or higher position under another schedule).
(4) >$90,000,000 (>$150,000,000 for DoD, NASA, and USCG)	Senior procurement executive of the agency placing the order. Not delegable, except in the case of the Under Secretary of Defense for Acquisition and Sustainment, acting as the senior procurement executive for the Department of Defense.

(f) *Posting.* (1) Except as provided in paragraph (f)(4), within 14 days after placing an order or establishing a BPA exceeding the SAT on a sole source basis according to paragraph (b)—

(i) Publish a notice to the Governmentwide Point of Entry (GPE); and

(ii) Post the justification required by paragraph (d)(2) for a minimum of 30 days—

(A) At the GPE *https://www.sam.gov;* and

(B) On the website of the agency, which may provide access to the justifications by linking to the GPE.

(2) In the case of an order permitted under paragraph (b)(1) of this section, the justification must be posted within 30 days after award of the order.

(3) Contracting officers must carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before posting the justification. Contracting officers must also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in part 24 in determining whether other data should be removed. Although the submitter notice process set out in Executive Order 12600 ''Predisclosure Notification Procedures for Confidential Commercial Information'' does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data before posting the justification, redacted as necessary. This process must not prevent or delay posting the justification in accordance with the timeframes required in paragraphs (f)(1)–(2) of this section.

(4) The posting requirement does not apply when disclosure would compromise the national security (*e.g.,* would result in disclosure of classified

information) or create other security risks.

16.607–7 Items peculiar to one manufacturer.

(a) Justify restricting consideration to an item peculiar to one manufacturer (*e.g.,* a particular brand-name, product, or a feature of a product that is peculiar to one manufacturer). A brand-name item, even if available on more than one contract, is an item peculiar to one manufacturer. Brand-name specifications must not be used unless the particular brand-name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(b) Brand-name requirements must be justified and approved when the requirement is determined, using the format(s) and requirements from 16.607–6(d)–(e), modified to show the brand-name justification, unless—

(1) A justification covering the requirements in the order was previously approved for the contract in accordance with 6.103–1(d); or

(2) The base contract is a single-award contract.

(c)(1) For an order exceeding $40,000—

(i) Post the justification and supporting documentation on the agency website used (if any) to solicit offers for orders under the contract; or

(ii) Provide the justification and supporting documentation along with the fair notice of intent to place an order issued according to 16.607–4, or to all awardees solicited according to 16.607–3.

(2) The justification for brand-name requirements may apply to the portion of the acquisition requiring the brand-name item. If the justification is to cover only the portion of the acquisition which is brand-name, then it should identify the applicable portion. The approval level requirements will then only apply to that portion.

(3) The requirements in paragraph (c)(1) of this section do not apply when disclosure would compromise the national security (*e.g.,* would result in disclosure of classified information) or create other security risks.

(d) The justification is subject to the screening requirement in 16.607–6(f)(3).

16.608 Protests of orders.

(a) No protest under part 33 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except—

(1) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(2)(i) For agencies other than DoD, NASA, and the Coast Guard, a protest of an order exceeding $10 million (41 U.S.C. 4106(f)); or

(ii) For DoD, NASA, or the Coast Guard, a protest of an order exceeding $35 million (10 U.S.C. 3406(f)).

(b) Protests of orders exceeding the thresholds stated in paragraph (a)(2) of this section may only be filed with the Government Accountability Office, in accordance with the procedures at 33.105.

(c) For protests of small business size status for set-aside orders, see part 19.

Subpart 16.7—Letter Contracts

16.701 Description.

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

16.702 Application.

(a)(1) A letter contract may be used when the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract is not possible in sufficient time to meet the requirement.

(2) A letter contract should be as complete and definite as feasible under the circumstances.

(b) When a letter contract award is based on price competition, include an overall price ceiling in the letter contract.

(c)(1) Each letter contract must, as required by the clause at 52.216–25, Contract Definitization, contain a negotiated definitization schedule including—

(i) Dates for submission of the contractor's price proposal, required certified cost or pricing data and data other than certified cost or pricing data, and make-or-buy and subcontracting plans if required;

(ii) A date for the start of negotiations; and

(iii) A target date for definitization, which must be the earliest practicable date for definitization.

(2) The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. However, the contracting officer may, in extreme cases and according to agency procedures, authorize an additional period.

(3) If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216–25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31, subject to appeal as provided in the Disputes clause.

(d) The maximum liability of the Government inserted in the clause at 52.216–24, Limitation of Government Liability, must be the estimated amount necessary to cover the contractor's requirements for funds before definitization. However, it must not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.

(e) Assign a priority rating to the letter contract if it is appropriate under part 11.

16.703 Limitations.

(a) A letter contract may be used only after the head of the contracting activity determines in writing that no other contract is suitable.

(b) The agency head must approve a justification if required by 16.104.

(c) Letter contracts must not—

(1) Commit the Government to a definitive contract exceeding the funds available at the time the letter contract is executed;

(2) Be entered into without competition when competition is required by part 6; or

(3) Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

16.704 Contract clauses.

(a) Insert in each letter contract the clauses required by this regulation for the type of definitive contract contemplated and any additional clauses known to be appropriate for it.

(b) Insert the following clauses in solicitations and contracts, including those for commercial products or commercial services, when a letter contract is contemplated:

(1) The clause at 52.216–23, Execution and Commencement of Work, except that this clause may be omitted from letter contracts awarded on SF 26.

(2) The clause at 52.216–24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with 16.702(d).

(3) The clause at 52.216–25, Contract Definitization, with its paragraph (b)

completed in a manner consistent with 16.702(c). If at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of part 15 for not requiring submission of certified cost or pricing data, the words ''and certified cost or pricing data in accordance with FAR 15.408–2, Table 15–1 supporting its proposal'' may be deleted from paragraph (a) of the clause. If the letter contract is being awarded on the basis of price competition, use the clause with its *Alternate I.*

(c) Insert the clause at 52.216–26, Payments of Allowable Costs Before Definitization, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships.

Subpart 16.8—Agreements

16.801 Scope.

This subpart prescribes policies and procedures for establishing and using basic agreements and basic ordering agreements.

16.802 Basic agreements.

16.802–1 Description.

(a) A basic agreement is a written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that—

(1) Contains contract clauses applying to future contracts between the parties during its term; and

(2) Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement.

(b) A basic agreement is not a contract.

16.802–2 Application.

A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

(a) Basic agreements must contain—

(1) Clauses required for negotiated contracts by statute, executive order, and this regulation; and

(2) Other clauses prescribed in this regulation or agency acquisition regulations that the parties agree to include in each contract as applicable.

(b) Each basic agreement must provide for discontinuing its future applicability upon 30 days written notice by either party.

(c) Each basic agreement must be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic agreements may need to be revised due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement.

(d) Discontinuing or modifying a basic agreement must not affect any prior contract incorporating the basic agreement.

(e) Contracting officers of one agency should obtain and use existing basic agreements of another agency to the maximum practical extent.

16.802–3 Limitations.

(a) *General.* A basic agreement must not—

(1) Cite appropriations or obligate funds;

(2) State or imply any agreement by the Government to place future contracts or orders with the contractor; or

(3) Be used in any manner to restrict competition.

(b) *Contracts incorporating basic agreements.* (1) Each contract incorporating a basic agreement must include a scope of work and price, delivery, and other appropriate terms that apply to the particular contract. The basic agreement must be incorporated into the contract by specific reference (including reference to each amendment) or by attachment.

(2) Include clauses pertaining to subjects not covered by the basic agreement, but applicable to the contract being negotiated, in the same manner as if there were no basic agreement.

(3) When new work is added to an existing contract, the modification must incorporate the most recent basic agreement. These terms will apply only to work added by the modification. This is not required if the contract or modification already includes all clauses required by statute, executive order, and this regulation as of the date of the modification. If it is in the Government's interest and the contractor agrees, the modification may incorporate the most recent basic agreement for application to the entire contract as of the date of the modification.

16.803 Basic ordering agreements.

16.803–1 Description.

(a) A basic ordering agreement is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains—

(1) Terms and clauses applying to future contracts (orders) between the parties during its term;

(2) A description, as specific as practicable, of supplies or services to be provided, and

(3) Methods for pricing, issuing, and delivering future orders under the basic ordering agreement.

(b) A basic ordering agreement is not a contract.

16.803–2 Application.

A basic ordering agreement is used to expedite contracting for supplies or services when specific items, quantities, and prices are uncertain at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor. These procedures, when applied appropriately, can result in benefits and cost savings by reducing administrative lead-time, inventory investment, and inventory obsolescence due to design changes.

16.803–3 Limitations.

(a) A basic ordering agreement must not state or imply any agreement by the Government to place future contracts or orders with the contractor or be used in any manner to restrict competition.

(b) Each basic ordering agreement must—

(1) Describe the method for determining prices to be paid to the contractor for the supplies or services;

(2) Include delivery terms and conditions or specify how they will be determined;

(3) List one or more Government activities authorized to issue orders under the agreement;

(4) Specify the point at which each order becomes a binding contract (*e.g.,* issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days);

(5) Provide that failure to reach agreement on price for any order issued before its price is established (see paragraph (d)(3) of this section) is a dispute under the Disputes clause included in the basic ordering agreement; and

(6) If fast payment procedures will apply to orders, include the special data required at part 32.

(c) Basic ordering agreements may need to be revised due to mandatory statutory requirements. A basic ordering agreement must be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement must not retroactively affect orders previously issued under it.

(d) A contracting officer representing any Government activity listed in a basic ordering agreement may issue orders for required supplies or services covered by that agreement.

(1) Before issuing an order under a basic ordering agreement—

(i) Obtain competition in accordance with part 6;

(ii) If the order is being placed after competition, ensure that use of the basic ordering agreement is not prejudicial to other offerors; and

(iii) Sign or obtain any applicable justifications and approvals, and any determination and findings, and comply with other requirements in accordance with part 1, as if the order were a contract awarded independently of a basic ordering agreement.

(2) Contracting officers must—

(i) Issue orders under basic ordering agreements on Optional Form (OF) 347, Order for Supplies or Services, or on any other appropriate contractual instrument;

(ii) Incorporate by reference the provisions of the basic ordering agreement;

(iii) If applicable, cite the authority under part 6 in each order; and

(iv) Comply with publicizing and response time requirements given in part 5 or part 12, as applicable, when a notice is required.

(3) Do not make any final commitment nor authorize the contractor to begin work on an order under a basic ordering agreement until prices have been established, unless the order establishes a ceiling price limiting the Government's obligation and either—

(i) The basic ordering agreement provides adequate procedures for timely pricing of the order early in its performance period; or

(ii) The need for the supplies or services is compelling and unusually urgent (*i.e.,* when the Government would be seriously injured, financially or otherwise, if the requirement is not met sooner than would be possible if prices were established before the work began). Proceed with pricing as soon as practical. An entire order must never be priced retroactively.

PART 17—SPECIAL CONTRACTING METHODS

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.

17.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including—

(a) Multiyear contracting;
(b) Options;
(c) Leader company contracting;
(d) Interagency acquisitions;
(e) Management and operating contracts; and
(f) Reverse auctions.

Subpart 17.1—Multiyear Contracting

17.101 Authority.

This subpart prescribes policies and procedures for acquiring supplies or services through multiyear contracting, as authorized by 10 U.S.C. 3501, 10 U.S.C. 3531, and 41 U.S.C. 3903. It addresses requirements for presolicitation planning, solicitation content, evaluation and award, funding, and cancellation provisions unique to multiyear contracts.

17.102 Definitions.

As used in this subpart—

Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer—

(1) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year, or

(2) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Cancellation ceiling means the maximum cancellation charge that the contractor can receive if the contract is cancelled.

Cancellation charge means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the canceled term.

Multiyear contract means a contract for the purchase of supplies or services for more than 1, but not more than 5 program years, unless otherwise authorized by statute. A multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multiyear contracts and multiple year contracts is that multiyear contracts buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

Nonrecurring costs means costs that are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, preliminary design effort, initial spoilage and rework, and specialized work force training.

Recurring costs means costs that vary with the quantity being produced, such as labor and materials, and are the ongoing expenses associated with its production and maintenance.

17.103 Presolicitation.

17.103–1 Policy.

(a) Except for DoD, NASA, and the Coast Guard, the contracting officer may enter into a multiyear contract if the head of the contracting activity determines that—

(1) The need for the supplies or services is reasonably firm and continuing throughout the contract period; and

(2) A multiyear contract will serve the best interest of the Government by either encouraging competition or promoting economy in program administration, performance, and operation.

(b) For DoD, NASA, and the Coast Guard, the head of the agency may enter into a multiyear contract for supplies if—

(1) The contract will save significant costs compared to using annual contracts, or will provide necessary stability to the defense industrial base not otherwise achievable through annual contracts;

(2) The purchase amounts are expected to remain substantially unchanged throughout the contract period, in terms of production and procurement rates and total quantities;

(3) The agency head is reasonably expected to request sufficient funding throughout the contract period at the level required to avoid contract cancellation;

(4) The design of the supplies is stable, and technical risks are not excessive;

(5) Both the contract cost estimates and projected cost avoidance through the use of a multiyear contract are realistic;

(6) For Department of Defense purchases, the contract will promote national security of the United States; and

(7) For Department of Defense contracts valued at $500,000,000 or more, the Secretary certifies that the conditions in 10 U.S.C. 3501 paragraphs (i)(3)(C) through (G) will be met.

(c) For DoD, NASA, and the Coast Guard, the head of the agency may enter into a multiyear contract for services, and for items of supply related to such services, if—

(1) The services are of one or more of the following types—

(i) Operation, maintenance, and support of facilities and installations;

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(iii) Specialized training necessitating high quality instructor skills;

(iv) Base services; or

(v) Environmental remediation services for—

(A) An active military installation, as defined in 10 U.S.C. 2801;

(B) A military installation being closed or realigned under a base closure law; or

(C) A site formerly used by the Department of Defense;

(2) There will be a continuing need for the services;

(3) The furnishing of such services will require a substantial initial investment (*e.g.,* equipment, training, or specialized workforce);

(4) The contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation; and

(5) All further restrictions listed in 10 U.S.C. 3531, or any other statute, are adhered to.

17.103–2 Procedures.

(a) Agency funding of multiyear contracts must follow the policies in OMB Circular A–11 (Preparation, Submission, and Execution of the Budget) and other applicable guidance on funding multiyear contracts.

(b) Multiyear contracts for fixed assets should be either—

(1) Fully funded; or

(2) Incrementally funded in economically or programmatically viable stages. See 32.703 for incremental funding of fixed-price and cost-reimbursement contracts.

17.103–3 Solicitations.

(a) In solicitations for multiyear contracts, include—

(1) The supply or service requirements for the first program year, and the entire multiyear contract period, broken down by program year;

(2) A statement that if the Government only needs the first-year requirements, evaluation will be based on first year pricing;

(3) A provision requiring a cancellation ceiling (as a percentage or dollar amount) and applicable dates for each program year that could be cancelled; and

(4) A statement that the Government will not award less than the first program year requirements.

(b) The solicitation must explain how the Government will compare offers for the first year against offers for the entire multiyear period. This applies to both sealed bidding and negotiated acquisitions.

17.104 Evaluation and Award.

17.104–1 General.

Follow the appropriate acquisition policies and procedures (such as those in parts 12, 14 and 15). In addition, contracting officers must comply with the requirements unique to multiyear contracting in this section, including cancellation procedures, congressional notification, and funding obligations at award.

17.104–2 Cancellation provisions.

(a) *Cancellation procedures.*

(1) All program years except the first are subject to cancellation.

(2) For each program year subject to cancellation—

(i) Set a cancellation ceiling;

(ii) Do not include amounts for requirements from prior program years; and

(iii) Lower the cancellation ceiling proportionally as requirements are completed.

(3) When calculating cancellation ceilings—

(i) Estimate reasonable startup costs, learning curve costs, and other nonrecurring costs; and

(ii) Do not include labor, materials, or other costs related to future program years.

(4) Set specific cancellation dates for each program year based on production needs and funding availability. These dates must be in the contract schedule.

(b) *Revising ceilings or dates.* The contracting officer may revise cancellation ceilings or dates after solicitation release when necessary. For sealed bidding, changes must be made by amendment before bid opening. In negotiated acquisitions, discussions may reveal a need for changes before final award.

17.104–3 Congressional notification.

(a) Except for DoD, NASA, and the Coast Guard, a multiyear contract with a cancellation ceiling over $20 million may not be awarded until the agency head notifies Congress in writing.

(b) For DoD, NASA, and the Coast Guard, when the ceiling is over $200 million, the agency head must notify the

House and Senate armed services and appropriations committees in writing.

(c) When Congressional notification is required by paragraph (a) or (b) of this section, do not award the contract for 31 days.

17.104–4 Funding at award.

(a) At award, obligated funds must cover either—

(1) The full contract period; or

(2) The first fiscal year plus any potential cancellation and termination costs.

(b) The contract must state the funded amount for the first program year and any amounts for cancellation or termination.

17.104–5 Special procedures for DoD, NASA, and the Coast Guard.

(a) *Participation by subcontractors and suppliers.* To the extent practicable, structure multiyear contracts to attract and retain a diverse defense industrial base.

(b) *Protection of existing authority.* To the extent practicable, multiyear contracting must not limit an agency's ability to maintain competition or terminate contracts based on performance deficiencies related to cost, quality, or schedule.

(c) *Level unit prices.* Where appropriate, negotiate level unit prices for the items to be delivered in each program year.

17.105 Postaward.

(a) *Termination vs. cancellation.* The termination for convenience procedure applies to any Government contract, including multiyear contracts. Termination differs from cancellation as follows:

(1) *Timing.* Termination can occur anytime during the contract life, while cancellation happens between fiscal years.

(2) *Quantity.* Termination can apply to total or partial quantities, while cancellation must apply to all quantities for future fiscal years.

(b) *Funding limitations upon termination.* If funds are not available to continue a multiyear contract into the next fiscal year, cancel or terminate the contract. If the Government terminates the entire contract for convenience, including all cancelable requirements, the Government obligation is no more than—

(1) The amount specified as available for contract performance; plus

(2) The applicable cancellation ceiling.

17.106 Contract clauses.

(a) Insert the clause at 52.217–2, Cancellation Under Multiyear Contracts, in solicitations and contracts, including those for commercial products or commercial services, when a multiyear contract is contemplated.

(b) When the production period may cause an offeror to include a labor or material cost contingency in the contract price, consider using an economic price adjustment clause (see part 16).

(c) For service contracts, the contracting officer may use an economic price adjustment clause authorized by part 16, when price changes require coverage and are not included in and not already addressed by the clause at 52.222–43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts).

Subpart 17.2—Options

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of options in contracts.

(a) Except as provided in agency regulations, this subpart does not apply to contracts for—

(1) Construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other real property;

(2) Architect-engineer services; or

(3) Research and development services.

(b) Agencies may still use options in these contracts according to their own regulations.

17.201 Presolicitation.

17.201–1 Use of options.

(a) In contracting by sealed bidding or negotiation, the contracting officer may add options to contracts when beneficial to the Government, within the limitations in paragraphs (b) and (c). For sealed bidding, before including the provision at 52.217–5, Evaluation of Options, document in writing that there is a reasonable likelihood that the Government will exercise the options.

(b) Inclusion of an option is normally not beneficial to the Government when:

(1) The Government's needs involve—

(i) Minimum economic quantities (enough volume to permit the recovery of startup costs and the production of supplies at reasonable prices); and

(ii) Delivery needs far enough in the future to allow for a new competitive contract.

(2) An indefinite quantity or requirements contract better meets the Government's needs. However, these contract types may still include options if appropriate.

(c) Do not use options when—

(1) Price or availability of necessary material or labor is not reasonably foreseeable, introducing significant risk into option pricing; or

(2) Market prices for the supplies or services are likely to change significantly.

17.202 Evaluation and award.

(a) Prior to awarding the basic contract, evaluate offers for option quantities or periods included in the solicitation.

(b)(1) The contracting officer is not required to evaluate option quantities when such evaluation would not benefit the Government. This exception should be reserved for rare instances.

(2) This decision must be—

(i) In writing;

(ii) Approved at least one level above the contracting officer; and

(iii) Included in the contract file.

17.202–1 Solicitation and Contract Requirements.

(a) The solicitation and contract must clearly state limits on—

(1) The additional supplies or services the Government may purchase including the number, type, frequency or duration; or

(2) The contract duration, including any extensions.

(b) Specify in the contract the period within which the option may be exercised, allowing adequate lead time for the contractor to ensure continuous production.

(c) Follow any statutory or regulatory limits on contract duration (*e.g.,* see 10 U.S.C. 3403 for indefinite-delivery contracts or 41 U.S.C. 6707(d) for service contracts).

17.203 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 52.217–3, Evaluation Exclusive of Options, in solicitations, including those for commercial products or commercial services, when the solicitation includes an option clause but does not include the provision described in either paragraph (b) or (c) of this section.

(b) Insert a provision substantially the same as the provision at 52.217–4, Evaluation of Options Exercised at Time of Contract Award, in solicitations, including those for commercial products or commercial services, when—

(1) The solicitation includes an option clause; and

(2) There is a reasonable likelihood that the option will be exercised when the contract is awarded.

(c) Insert a provision substantially the same as the provision at 52.217–5, Evaluation of Options, in solicitations, including those for commercial products or commercial services, when—

(1) The solicitation includes an option clause; and

(2) There is a reasonable likelihood of exercise, and the option will not be exercised at the time of contract award.

(d) Insert a clause substantially the same as the clause at 52.217–6, Option for Increased Quantity, in solicitations and contracts, including those for commercial products or commercial services, when adding an option is appropriate (see 17.201), and the option quantity appears as a percentage of the basic contract quantity or as additional quantities of a specific line item.

(e) Insert a clause substantially the same as the clause at 52.217–7, Option for Increased Quantity—Separately Priced Line Item, in solicitations and contracts, including those for commercial products or commercial services, when adding an option is appropriate (see 17.201), and the option quantity appears as a separate line item with the same name as a corresponding basic line item.

(f) Insert a clause substantially the same as the clause at 52.217–8, Option to Extend, in solicitations and contracts, including those for commercial products or commercial services, when adding an option to extend the period of performance for services, ordering period for any requirement, or both is appropriate. (See 17.201 and part 37).

(g) Insert a clause substantially the same as the clause at 52.217–9, Option to Extend the Term of the Contract, in solicitations and contracts, including those for commercial products or commercial services, when adding an option is appropriate (see 17.201) and the contract needs to include any of these elements:

(1) A requirement for the Government to give the contractor advance written notice of intent to extend.

(2) A statement that an extension of the contract also extends the option.

(3) A specific limit on the total contract duration.

17.204 Postaward.

17.204–1 Exercise of options.

(a) If the contract includes an economic price adjustment clause and the contractor requests a price revision, determine how the adjustment affects option prices before exercising the option.

(b) The contracting officer may exercise options only after—

(1) Providing written notice to the contractor of the Government's intention to exercise the option, within the time specified in the contract;

(2) Confirming that funds are available; and

(3) Determining that—

(i) The option fulfills an existing Government requirement;

(ii) The option was synopsized as required, unless exempt (see part 5 and part 12);

(iii) The contractor does not have an active exclusion record in the System for Award Management (see part 9);

(iv) The contractor's performance on the current contract has been acceptable (for example, satisfactory or better performance ratings);

(v) After reviewing price and other factors, the option price is fair and reasonable based on current market conditions and exercise of the option is in the Government's best interest; and

(vi) The option exercise complies with the requirements of part 6 for full and open competition, *i.e.,* the option was evaluated as part of the initial competition and is exercisable at an amount specified in or reasonably determinable from the terms of the contract.

Subpart 17.3—Leader Company Contracting

17.301 Policy.

Leader company contracting is an extraordinary acquisition technique, limited to special circumstances, and may only be used in accordance with agency procedures. Under this technique, a developer or sole producer of a product or system is designated as the leader company. The leader company is responsible for furnishing assistance and proprietary know-how under an approved contract to one or more designated follower companies. The purpose is to enable those follower companies to qualify as sources of supply for the product or system, thereby expanding the industrial base and promoting competition.

Subpart 17.4—Interagency Acquisitions

17.400 Scope of subpart.

(a) This subpart prescribes policies and procedures for all interagency acquisitions under any authority, except as provided in paragraph (c) of this section. When nondefense agencies acquire supplies or services on behalf of the Department of Defense, the requirements in subpart 17.5 also apply.

(b) This subpart applies to interagency acquisitions when an agency—

(1) Requires supplies or services and uses another agency's contract; or

(2) Requests another agency to provide acquisition assistance, including but not limited to awarding or administering a contract, task order, or delivery order.

(c) This subpart does not apply to reimbursable work performed by one agency's employees for another agency (except acquisition assistance), or interagency activities where contracting is not the primary purpose.

17.401 General.

(a) Interagency acquisitions are commonly conducted through indefinite-delivery contracts.

(b) Do not use an interagency acquisition to circumvent statutory or regulatory restrictions on the obligation or use of funds.

(c) An interagency acquisition must not conflict with another agency's statutory authority or responsibility. For example, the Administrator of General Services has authority under 40 U.S.C. ''Public Buildings, Property, and Works'' and 41 U.S.C. division C of subtitle I (''Procurement'').

17.402 Procedures.

17.402–1 General.

(a) *Written agreement on responsibility for management and administration.*

(1) *Assisted acquisitions.*

(i) Before issuing a solicitation, both the servicing agency and requesting agency must sign a written interagency agreement that establishes the basic terms and conditions governing the relationship, which must include—

(A) The roles and responsibilities for acquisition planning;

(B) Contract execution; and

(C) Administration and management of the contract(s) or order(s).

(ii) The requesting agency must—

(A) Provide the servicing agency for incorporation into the order or contract, any unique requesting agency terms, conditions and applicable agency-specific statutes, regulations, directives, and other applicable requirements, or

(B) Inform the servicing agency contracting officer in writing that there are no special requirements beyond the FAR.

(iii) For assisted acquisitions for the Department of Defense, also see subpart 17.5.

(iv) Both agencies must keep the signed agreement in their files along with sufficient documentation to permit a proper audit.

(2) *Direct acquisitions.* When the requesting agency administers the order itself, no written agreement with the servicing agency is required.

(b) *Business-case analysis requirements for establishing a multi-agency contract or Governmentwide acquisition contract.* In accordance with section 865 of Public Law 110–417, the agency business case must address how the contract will be administered, analyze all direct and indirect costs of awarding and administering the contract, and describe the impact the contract will have on the Government's ability to leverage its purchasing power. For example, the analysis should address whether the new contract could dilute the effectiveness of existing contracts. For additional requirements see OMB Memorandum M–19–13.

17.402–2 The Economy Act.

(a) The Economy Act (31 U.S.C. 1535)—

(1) Authorizes agencies to enter into agreements to obtain supplies or services from other agencies. The FAR applies when one agency uses another agency's contract. If the transaction between agencies does not result in a contract or order, the FAR does not apply;

(2) Allows orders between major organizational units within the same agency. Agencies should address the procedures for these intra-agency transactions in agency regulations; and

(3) Applies when more specific statutory authority does not exist, such as 40 U.S.C. 501 for Federal Supply Schedules (see part 8) or 40 U.S.C. 11302(e) for Governmentwide acquisition contracts (GWACs).

(b) *Payment.* (1) The servicing agency may request advance payment for estimated costs in writing.

(2) If the servicing agency approves, the requesting agency may pay actual costs after receiving the supplies or services.

(3) Bills rendered or advance payment requests must not be subject to audit or certification in advance of payment.

(4) The servicing agency must not charge, and the requesting agency must not pay, any fee exceeding the actual cost (or estimated cost if actual cost is unknown) of entering into and administering the contract or agreement under which the order is filled.

17.403 Ordering procedures.

(a) Before placing an order for supplies or services with another Government agency, the requesting agency must follow the procedures in 17.402–1 and, if under the Economy Act, 17.402–2.

(b) The order may use any form or document that both agencies accept. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.402–2(b) for Economy Act orders); and

(5) Acquisition authority as appropriate (see 17.403(d)).

(c) The requesting and servicing agencies should agree to procedures for resolving disagreements that may arise under interagency acquisitions. When appropriate, this may include using a third-party forum. If a third party is proposed, that party should provide their written consent.

(d) When an interagency acquisition requires the servicing agency to award a contract, these additional procedures apply:

(1) If law or regulation requires a justification and approval or a D&F, the servicing agency must prepare and issue the document. The requesting agency must provide any information needed for the justification and approval or D&F.

(2) The requesting agency must provide other assistance, such as information or special contract terms needed to comply with any conditions or limitations on the requesting agency's funds.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements for the contract, including—

(i) Having proper legal authority for the contract action; and

(ii) Following all competition requirements in part 6. If the servicing agency is not subject to the FAR, the requesting agency must verify that contracts used to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions required by part 31). The requesting agency must also verify that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement allow work from agencies other than the sponsor. Work given to the FFRDC requires the sponsor's acceptance and must fall within the FFRDC's purpose, mission, general scope of effort, or special competency. (See part 35 and part 6 for procedures when using other than full and open competition.) The nonsponsoring agency must provide documentation to the sponsoring agency showing that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.404 Reporting requirements.

The contracting officer for the servicing agency must ensure all service contractor reporting requirements are met in accordance with part 4.

Subpart 17.5—Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

17.500 Scope of subpart.

(a) Compliance with this subpart is required in addition to the policies and procedures for interagency acquisitions in subpart 17.4. This subpart establishes policies and procedures specifically for acquisitions of supplies and services by nondefense agencies on behalf of the Department of Defense (DoD).

(b) This subpart implements Public Law 110–181, section 801 (10 U.S.C. 3201 note prec.).

17.501 Definitions.

As used in this subpart—

Department of Defense (DoD) acquisition official means—

(1) A DoD contracting officer; or

(2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

Nondefense agency means any department or agency of the Federal Government other than the Department of Defense.

Nondefense agency that is an element of the intelligence community means the agencies identified in 50 U.S.C. 3003(4).

17.502 Applicability.

(a) This subpart applies to all acquisitions made by nondefense agencies on behalf of DoD.

(b) This subpart does not apply to contracts entered into by a nondefense agency that is an element of the intelligence community for a joint program that meets the needs of both DoD and the nondefense agency.

17.503 Policy.

(a) A DoD acquisition official may request a nondefense agency to conduct an acquisition on behalf of DoD exceeding the simplified acquisition threshold only if the head of the nondefense agency has certified that the agency will comply with applicable procurement requirements for that fiscal year, except when waived as provided by paragraph (e) of this section.

(b) A nondefense agency is compliant with applicable procurement requirements if its procurement policies, procedures, and internal controls for acquisitions on behalf of DoD, and their administration, adequately ensure the nondefense agency complies with—

(1) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of supplies and services by Federal agencies; and

(2) Laws and regulations that apply to procurements of supplies and services made by DoD through other Federal agencies, including DoD financial management regulations, the Defense Federal Acquisition Regulation Supplement (DFARS), DoD class deviations, and the DFARS Procedures, Guidance, and Information (PGI). (The DFARS, DoD class deviations, and PGI are available at: *http://www.acq.osd.mil/dpap/dars*).

(c) Within 30 days of the beginning of each fiscal year, submit nondefense agency certifications of compliance to the Principal Director, Defense Pricing and Contracting at: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Sustainment), Defense Pricing and Contracting, Contract Policy, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060.

(d)(1) The DoD acquisition official must provide the servicing nondefense agency contracting officer with any DoD-unique terms, conditions, other related statutes, regulations, directives, or other applicable requirements for incorporation into the order or contract.

(2) If there are no DoD-unique requirements beyond the FAR, the DoD acquisition official must inform the servicing nondefense agency contracting officer in writing.

(3) Nondefense agency contracting officers are responsible for ensuring support provided in response to DoD's request complies with paragraph (b) of this section.

(e) The limitation in paragraph (a) of this section does not apply to acquisitions of supplies and services on behalf of DoD by a nondefense agency during any fiscal year for which the Under Secretary of Defense for Acquisition and Sustainment has determined in writing that it is necessary in DoD's interest to acquire certain supplies and services through the nondefense agency during that fiscal year.

(f) Nondefense agency certifications, determinations, and additional information are available at *https://www.acq.osd.mil/asda/dpc/cp/policy/interagency-acquisition.html.*

Subpart 17.6—Management and Operating Contracts

17.600 Scope of subpart.

This subpart establishes policies and procedures for management and operating contracts for the Department of Energy and any other agencies with the necessary statutory authority.

17.601 Definition.

Management and operating contract means an agreement where the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing facility that primarily serves one or more major programs of the Federal agency.

17.602 Presolicitation.

17.602–1 Policy.

The head of an agency, without power of delegation, and with statutory authority, may authorize contracting officers, in writing, to enter into or renew management and operating contracts. This authorization must comply with the agency's statutory authority or 41 U.S.C. chapter 33, and the agency's regulations for such contracts. Every authorized contract must state this authorization on its face.

17.602–2 Limitations.

(a) Do not authorize management and operating contracts for—

(1) Functions involving direction, supervision, or control of Government personnel, except supervision related to training;

(2) Functions involving the exercise of police or regulatory powers in the Government's name, other than guard or plant protection services;

(3) Functions determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or any of its elements; or

(5) Functions that may be better accomplished by the use or rental of Government property under subpart 45.3, Authorizing the Use and Rental of Government Property.

(b) An authorization under 17.602–1 is considered sufficient proof of compliance with paragraph (a) of this section. Nothing in paragraph (a) affects the validity or legality of such an authorization.

(c) For use of project labor agreements, see part 22.

17.603 Award, renewal, and extension.

(a) Effective performance under management and operating contracts typically requires high expertise levels and continuity in operations and personnel. Therefore, contracting officers must take extraordinary steps before award to ensure that—

(1) The prospective contractor has sufficient technical and managerial capacity,

(2) Organizational conflicts of interest are adequately addressed; and

(3) The contract gives the Government broad and continuing rights to involve itself in technical and managerial decision making about performance, when necessary.

(b) Review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years.

(1) The review should determine if meaningful improvement in performance or cost might reasonably be achieved.

(2) Any extension or renewal of a management and operating contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized under 17.602–1.

Subpart 17.7—Reverse Auctions

17.700 Scope of subpart.

This subpart prescribes policies and procedures for conducting reverse auctions and using reverse auction service providers.

17.701 Definitions.

As used in this subpart—

Complex, specialized, or substantial design and construction services (section 2 of the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117–28)) means—

(1) Site planning and landscape design;

(2) Architectural and engineering services (as defined in 40 U.S.C. 1102);

(3) Interior design;

(4) Performance of substantial construction work for facility, infrastructure, and environmental restoration projects; or

(5) Construction or substantial alteration of public buildings or public works.

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (*e.g.,* financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

17.702 Presolicitation.

17.702–1 Policy.

(a) Reverse auctions may be appropriate when market research shows that—

(1) A competitive marketplace exists for the supplies or services being acquired;

(2) Multiple offerors can meet the agency's requirement; and

(3) The nature of the supplies or services (such as clearly defined specifications or less complex requirements) supports an iterative bidding process.

(b) The reverse auction process is used to obtain pricing for an acquisition. When using reverse auctions, contracting officers must still follow the appropriate acquisition policies and procedures (such as those in parts 8, 12, 13, 15 or 16).

(c) When acquiring reverse auction services from a commercial provider, agencies must—

(1) Use competitive procedures, unless an exception applies;

(2) Detail the provider's fee structure in the resulting contract or agreement; and

(3) Make the contract or agreement details, including the fee structure, available to contracting officers to consider when deciding whether to use that provider, as required by 17.702–3.

(d) When acquiring reverse auction services, ensure the solicitation and contract include—

(1) Descriptions of Government data and Government-related data;

(2) Data ownership, licensing, delivery, and disposition instructions for relevant types of Government data and Government-related data (such as DD Form 1423, Contract Data Requirements List, work statement task, line item); and

(3) Disposition instructions that must allow for data transition in commercially available or open and non-proprietary format and for permanent records according to National Archives and Records Administration guidance.

(e) Contracting officers must only use reverse auction service providers that—

(1) Do not claim or imply they can or will obtain a Government contract for auction participants;

(2) Allow entities to register for free as potential offerors for Government reverse auctions on their platform;

(3) Allow each entity, during registration, to sign a proprietary data protection agreement with the provider that does not affect Government solicitation or contract terms;

(4) Protect from unauthorized use or disclosure and do not release outside the Government—

(i) All contractor bid or proposal information and source selection information related to providing reverse auction services to the Government;

(ii) All information generated to support issuing a task order, delivery order, or order under a blanket purchase agreement; and

(iii) Information an offeror identifies as restricted from duplication, use, or disclosure for any purpose except evaluating the reverse auction participant's price or proposal;

(5) Allow offerors to see the successive lowest price(s) offered in the auction without revealing the identities of other offerors;

(6) At the close of each auction—

(i) Provide the Government with the apparent successful offer, including information that separately identifies the offeror's price and the price for each provider fee or charge in the total price; and

(ii) Provide the Government with all information and documentation received from offerors responding to the reverse auction;

(7) Do not participate as an offeror in any reverse auction they host for the Government. This prohibition includes participation by any entity with which the provider has a relationship creating an actual or potential conflict of interest; and

(8) Assert no rights or license in the data gathered or generated during a reverse auction.

(f) Only a contracting officer may—

(1) Exclude an offeror from participating in an auction;

(2) Determine the awardee(s) of any reverse auction; or

(3) Determine that the offeror is a responsible prospective contractor (see part 9).

17.702–2 Applicability.

Do not use reverse auction processes for—

(a) Complex, specialized, or substantial design and construction services.

(1) Do not use reverse auctions for an award of a contract, blanket purchase agreement, or order if the award is anticipated to exceed the simplified acquisition threshold for complex, specialized, or substantial design and construction services (see 17.701) in accordance with the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117–28).

(2) Contracting officers may use reverse auctions for procurements for complex, specialized, or substantial design and construction services at or below the simplified acquisition threshold—

(i) If market research indicates it may be appropriate; and

(ii) Use of a reverse auction is not otherwise prohibited by regulation or statute (see 36.002(c) and 36.102).

(b) Procurements using sealed bidding procedures (see part 14); or

(c) Acquisition of personal protective equipment, in accordance with Sections 813 and 814 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328); Section 882 of the NDAA for FY 2018 (Pub. L. 115–91); and Section 880 of the John S. McCain NDAA for FY 2019 (Pub. L. 115–232, 41 U.S.C. 3701 note).

17.702–3 Reverse auction service provider.

When considering using a reverse auction service provider—

(a) Conduct market research of available sources of reverse auction services (such as existing agency contracts or agreements, commercial service providers, or Government service providers);

(b) Evaluate the fee structure for each reverse auction service provider; and

(c) Document in the contract file that using a reverse auction service provider is cost effective.

17.703 Evaluation and award.

(a) When conducting a reverse auction—

(1) Do not reveal the identity of offeror(s) except for the awardee's identity after making an award from the auction;

(2) Allow offerors to continually revise their prices downward during the reverse auction until it closes; and

(3) Allow an offeror to withdraw an offer before the auction closes.

(b) When using reverse auction service providers, contracting officers must—

(1) Include contact information, including the contracting officer name and email address, in the synopsis and solicitation so offerors can contact the contracting officer directly with questions;

(2) Upon receiving a successful offer, verify that any provider fees or charges in the price match the provider's fee structure; and

(3) Include in the contract file any information or documentation received by the reverse auction service provider from offerors responding to the reverse auction.

(c) If only one offeror participates in an auction, the contracting officer may—

(1) Cancel the auction and document the contract file with evidence of single offeror participation; or

(2) Accept the offer, but only if the price is determined to be fair and reasonable.

17.704 Solicitation provision and contract clauses.

(a) Insert the provision at 52.217–10, Reverse Auction, in solicitations, including those for commercial products or commercial services, when using a reverse auction to award a contract or blanket purchase agreement.

(b) Insert the clause at 52.217–11, Reverse Auction—Orders, in solicitations and contracts, including those for commercial products or commercial services, for a multiple-award contract or blanket purchase agreement when a reverse auction may be used to place orders under the basic contract or blanket purchase agreement.

(c) Insert the clause at 52.217–12, Reverse Auction Services, in solicitations and contracts, including those for commercial products or commercial services, for the purchase of reverse auction services.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

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.

35.000 Scope of part.

(a) This part prescribes policies and procedures specifically for research and development (R&D) contracting.

(b) This part does not address acquisitions for independent research and development (IR&D) (see 31.205–18).

(c) The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals.

(d) R&D contracts initially awarded from the competitive selection of a proposal may contain a line item or option(s) for—

(1) The development and demonstration or initial production of technology developed under the contract; or

(2) The delivery of initial or additional items if the item or a prototype is created as the result of research and development work performed under the contract.

35.001 Definitions.

As used in this subpart—

Applied research

(1) Means the effort that—

(i) Normally follows basic research, but may not be severable from the related basic research;

(ii) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and

(iii) Attempts to advance the state of the art; and

(2) Does not include development (as defined in this section).

Development means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing. It excludes subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product.

35.002 Policy.

(a) *Use of contracts.* Use contracts only when the principal purpose of the acquisition is for the direct benefit or use of the Federal Government.

(b) *Use of grants, cooperative agreements, and other transaction authorities not subject to this regulation.*

(1) Use grants when—

(i) The principal purpose of the transaction is to stimulate or support research and development for a purpose other than the direct benefit or use of the Federal Government; and

(ii) Substantial involvement is not expected between the Government and the recipient.

(2) Use cooperative agreements when—

(i) The principal purpose of the transaction is to stimulate or support research and development for a purpose other than the direct benefit or use of the Federal Government; and

(ii) Substantial involvement is expected between the Government and the recipient.

(3) Use other transaction authorities and purchases through procurement for experimental purposes in accordance with the agency's authority.

(c) *Cost sharing.* Cost sharing policies (which are not otherwise required by law) under Government contracts must be in accordance with part 16, part 42, and agency procedures.

Subpart 35.1—Presolicitation and Solicitation

35.101 Solicitations.

(a) This section applies to all solicitations for research and development. Solicitations for research and development may use the evaluation procedures in this section alone, or in conjunction with section 35.102 or part 15.

(b) Publicize the solicitation through the Governmentwide point of entry (GPE) in accordance with part 5. In addition to the GPE, information about the solicitation may be published in scientific, technical, or engineering periodicals, or other electronic platforms and communities used by the target audience.

(c) Solicitations must require offerors to—

(1) Describe their technical and management approach;

(2) Identify any technical uncertainties;

(3) Propose specific solutions to resolve uncertainties; and

(4) Disclose any planned subcontracting of scientific or technical work.

(d) R&D solicitations should include evaluation factors to identify the most technically competent offerors, such as:

(1) The offeror's understanding of the scope of work.

(2) The quality of the offeror's proposed approach to meet the scientific and technical objectives, or the merit of the ideas or concepts presented.

(3) The offeror's access to qualified engineering, scientific, or other technical staff.

(4) The offeror's relevant experience.

(5) Any innovative ideas the offeror proposes in the specific scientific or technical field.

(6) The offeror's access to the necessary research, testing, laboratory, or shop facilities.

(e) Besides technical evaluation factors, also consider management capability, as appropriate, including—

(1) Management capabilities, including cost control methods;

(2) Experience and past performance;

(3) Subcontracting practices; and

(4) Any other significant evaluation criteria (*e.g.,* unrealistically low cost estimates in proposals for cost-reimbursement or fixed-price incentive contracts).

(f) Although cost or price is not usually the deciding factor in selecting a contractor to perform R&D, cost or price remains a mandatory evaluation factor.

(g) The contracting officer should ensure potential offerors completely understand the details of the work, especially the Government interpretation of the work statement. For complex requirements, the contracting officer should give potential offerors a chance to comment on the details of the requirements as contained in the work statement, the contract schedule, and any related specifications. This may be done at a preproposal conference or other forum for communicating with industry.

(h) When appropriate, solicitations should allow offerors to propose an alternative contract type (see subpart 16.1).

(i) The Government may issue an exploratory request to identify existing ideas or prior work in a specific field of research. Any such request must clearly state that it does not impose any obligation on the Government or signify a firm intention to enter into a contract or otherwise pay for the information provided in responses.

35.102 Broad agency announcement.

(a) *General.* This paragraph prescribes procedures for the use of the broad agency announcement (BAA) with peer or scientific review (see 6.101(b)(3)(ii)) for the acquisition of basic and applied research, as well as that part of development not related to developing a specific system or hardware procurement.

(1) BAAs may be used by agencies to fulfill their requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution.

(2) Use the BAA technique when meaningful proposals with varying technical/scientific approaches are reasonably expected.

(b) The BAA and its supporting documentation must—

(1) Describe what research the agency is interested in, either for specific program needs or broad areas covering a range of agency requirements;

(2) Explain how proposals will be selected, the relative importance of selection criteria, and the evaluation method;

(3) Specify the period of time during which responses will be accepted; and

(4) Contain clear instructions for preparing and submitting proposals.

(c) Publicize the BAA through the GPE in accordance with part 5 at least once per year. In addition to the GPE, the BAA may also be published in scientific, technical, or engineering periodicals, or other electronic platforms and communities used by the target audience.

(d) Use a peer or scientific review process to evaluate proposals. Written evaluation reports are required for each proposal; however, proposals are not required to be evaluated against each other since they are responding to broad research areas rather than a common work statement.

(e) Proposals should be selected based on—

(1) Technical merit;

(2) Importance to agency programs;

(3) Availability of funds; and

(4) Cost realism and reasonableness, to the extent appropriate.

(f) A presolicitation notice under part 5 is not required for individual contract actions awarded as a result of selection from a BAA. The notice published pursuant to paragraph (c) of this section fulfills the requirement to publicize the presolicitation and solicitation notice.

Subpart 35.2—Evaluation and Award

35.201 Evaluation for award.

(a) R&D contracts should be awarded to the organization, including educational institutions, with the best ideas and highest level of expertise, but not such that the capabilities exceed the requirement.

(b) Use the procedures in part 15 to notify and debrief offerors.

(c) Evaluating a contractor's cost or price estimate serves multiple purposes: it determines whether the estimate is reasonable, reveals the offeror's understanding of the project, shows how the offeror perceives risks, and demonstrates the offeror's ability to organize and perform the work. Cost or price analysis is an effective tool for this evaluation as appropriate (see part 15).

Subpart 35.3—Postaward

35.301 Scientific and technical reports.

(a) R&D contracts must require contractors provide scientific and technical reports, consistent with the project's objectives. These reports serve as a permanent record of work completed under the contract.

(b) Agencies should share R&D contract results with other Government activities and the private sector. Follow agency regulations regarding national security, protection of data, and policies for sharing new technology. Reports should be sent to *https://www.ntis.gov/contact-us/index.xhtml* or National Technical Information Service (NTIS), 5301 Shawnee Road, Alexandria, VA 22312.

Subpart 35.4—Federally Funded Research and Development Centers

35.401 Definitions.

As used in this subpart—

Nonsponsor means any other organization, in or outside of the Federal Government, which funds specific work to be performed by the Federally Funded Research and Development Center (FFRDC) and is not a party to the sponsoring agreement.

Primary sponsor means the lead agency responsible for managing, administering, or monitoring overall use of the FFRDC under a multiple sponsorship agreement.

Sponsor means the executive agency which manages, administers, monitors, funds, and is responsible for the overall use of a FFRDC. Multiple agency sponsorship is possible as long as one agency agrees to act as the ''primary sponsor.'' In the event of multiple sponsors, ''sponsor'' refers to the primary sponsor.

35.402 Policy.

(a) This section explains Federal policy on establishing, using, reviewing, and terminating Federally Funded Research and Development Centers (FFRDCs) and related sponsoring agreements.

(b) A FFRDC meets special long-term research or development needs that cannot be met as effectively by existing Government or contractor resources. FFRDCs allow agencies to use private sector resources for work integral to the agency's mission. To fulfill its responsibilities, a FFRDC has special access to—

(1) Government and supplier data, including sensitive and proprietary information;

(2) Government employees; and

(3) Government facilities, equipment, and real property.

(c) The FFRDC must—

(1) Conduct business appropriately considering its special relationship with the Government;

(2) Operate in the public interest with objectivity and independence;

(3) Be free of organizational conflicts of interest; and

(4) Fully disclose its affairs to the sponsoring agency.

(d) FFRDCs must not use their privileged access to information or facilities to compete with the private sector. However, a FFRDC may perform work for agencies other than its sponsor under the Economy Act or other applicable laws when the work is not otherwise available from the private sector.

(e) FFRDCs are operated, managed, or administered by—

(1) A university or consortium of universities;

(2) A nonprofit organization; or

(3) An industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization.

(f) Long-term relationships between the Government and FFRDCs are encouraged to provide the continuity that attracts high-quality personnel. This relationship should help the FFRDC stay current in its field(s) of expertise, maintain its objectivity and independence, understand its sponsor's needs, and provide a quick response capability.

35.403 Sponsoring agreements.

(a)(1) When establishing an FFRDC, the Government and the FFRDC must create a written sponsorship agreement. This agreement serves three key purposes—

(i) Establishes a long-term relationship;

(ii) Defines the FFRDC's purpose and mission; and

(iii) Ensures regular evaluation of the FFRDC.

(2) Regardless of its form, the sponsor must clearly identify it as a sponsoring agreement.

(b) While specific content will vary based on circumstances, all sponsoring agreements or sponsoring agency policies and procedures must include the following requirements at a minimum—

(1) A clear statement of the FFRDC's purpose;

(2) Provisions for orderly termination or nonrenewal, including how to handle assets and liabilities. The agreement must clearly define ownership of capital assets in the event the relationship ends;

(3) A method to identify retained earnings (reserves) and a plan for using and disposing of these funds;

(4) A prohibition preventing the FFRDC from competing with non-FFRDCs for Federal contracts except for FFRDC operations. This restriction does not apply to the FFRDC's parent organization or other subsidiaries in their non-FFRDC activities. The FFRDC may respond to requests for information, qualifications or capabilities unless restricted by the Sponsor; and

(5) Clear rules about whether the FFRDC may accept work from organizations other than its sponsor(s). If allowed, the agreement must outline—

(i) Procedures to follow for non-sponsor work; and

(ii) Any limitations on which non-sponsors may provide work (*e.g.,* other Federal agencies, State or local governments, or non-profit organizations).

(c) The sponsoring agreement or agency policies may also include other provisions as needed, such as—

(1) Cost elements requiring advance agreement when using cost-type contracts; and

(2) Factors affecting fee negotiations when the sponsor determines fee is appropriate.

(d) The agreement term must not exceed 5 years, but may be renewed after review in increments of up to 5 years.

35.404 Establishing or changing an FFRDC.

To establish a FFRDC, or change its basic purpose and mission, the sponsor must—

(a) Verify existing alternative sources cannot effectively meet the special research or development needs;

(b) Publish at least one notice to the GPE 90 days or more before issuing the contract action, indicating the agency's intention, and requesting comments. Notice is not required when the action is required by law;

(c) Ensure the Government has expertise available to adequately and objectively evaluate the FFRDC's work;

(d) Notify the Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506;

(e) Establish controls to ensure the Government pays reasonable costs for services;

(f) Define the FFRDC's purpose and mission clearly enough to distinguish work appropriate for the FFRDC vs. work for non-FFRDCs;

(g) Maintain reasonable continuity in support levels, consistent with agency needs and the sponsoring agreement;

(h) Ensure the FFRDC—

(1) Is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization;

(2) Works in the public interest;

(3) Remains free from organizational conflict of interest; and

(4) Discloses its affairs (as an FFRDC) to the primary sponsor;

(i) Not allow quantity production or manufacturing unless authorized by legislation; and

(j) Obtain approval from the head of the sponsoring agency.

35.405 Using an FFRDC.

(a) All work placed with the FFRDC must align with its purpose, mission, general scope of effort, or special competency.

(b) When permitted by the sponsor, a nonsponsoring Federal agency may contract directly with the FFRDC, in which case that Federal agency is responsible for compliance with part 6. The nonsponsoring agency must provide the documentation regarding competition with domestic private industry required by 17.403(e) to the sponsoring agency.

35.406 Limitation on the creation of new FFRDCs.

Pursuant to 10 U.S.C. 4126, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until—

(a) The head of the agency submits a report to Congress describing the center's purpose, mission, and general scope of the center's effort; and

(b) A period of 60 days, beginning on the date such report is received by Congress, has elapsed.

35.407 Reviewing FFRDCs.

(a) Before extending a FFRDC contract or agreement, the sponsor must conduct a comprehensive review of its use and need. Coordinate the review with any co-sponsors. If the sponsor decides to end its sponsorship, it must inform other agencies that use the FFRDC of its decision and give them an opportunity to assume sponsorship.

(b) The head of the sponsoring agency must approve continuing or terminating sponsorship, based on the following:

(1) An examination of the sponsor's special technical needs and mission requirements that are performed by the FFRDC to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the sponsor's needs.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.

(4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.

(5) A determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement is in compliance with the requirements of this subpart.

35.408 Terminating an FFRDC.

When a sponsor no longer needs the FFRDC, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it must be phased out.

35.409 Master list of FFRDCs.

The National Science Foundation (NSF) maintains a master Government list of FFRDCs. Primary sponsors must provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.

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 51 U.S.C. 20113.

■ 3. Revise sections 52.216–1 through 52.216–12 and sections 52.216–15 through 52.216–32 to read as follows:

52.216–1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision:

Type of Contract (DATE)

The Government contemplates award of a ______ *[Contracting Officer insert specific type of contract]* contract resulting from this solicitation.

(End of provision)

Alternate I (DATE). As prescribed in 16.105, add the following sentence to the end of the basic provision:

Offerors may propose an alternative contract type.

52.216–2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203–4(a), insert the following clause:

Economic Price Adjustment—Standard Supplies (DATE)

(a) The Contractor warrants that the unit price stated in the Schedule for ______ [*Offeror insert Schedule line item number*] does not exceed the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term unit price excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term established price means a price that—

(1) Is an established catalog or market price for a commercial product or commercial service sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor must promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price will be decreased by the same percentage that the established price is decreased. The decrease will apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract will be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price will be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract will be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause must not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price will be effective—

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price must not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price will be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor must continue deliveries according to the contract delivery schedule, and the Government must pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

52.216–3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203–4(b), insert the following clause:

Economic Price Adjustment—Semistandard Supplies (DATE)

(a) The Contractor warrants that the supplies identified as line items ______ [*Offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term established price means a price that—

(1) Is an established catalog or market price for a commercial product or commercial service sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.

(c) The Contractor must promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) will be decreased by the same percentage that the established price is decreased. The decrease will apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract will be modified accordingly.

(d) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) will be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract will be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause must not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price will be effective—

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price must not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price will be executed under this paragraph (d) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(e) During the time allowed for the cancellation provided for in paragraph (d)(5) of this clause, and thereafter if there is no cancellation, the Contractor must continue deliveries according to the contract delivery schedule, and the Government must pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (d) of this clause.

(End of clause)

52.216–4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203–4(c), insert the following clause:

Economic Price Adjustment—Labor and Material (DATE)

(a) The Contractor must notify the Contracting Officer if, at any time during contract performance, the rates of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor must furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice must include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and must include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor will negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer will modify this contract to include the price adjustment and its effective date and to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor must continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment must be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There must be no adjustment for—

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment will apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There will be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation will not apply, however, if, after final delivery of all line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause must not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified for contractor record retention in part 4 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

52.216–5 Price Redetermination—Prospective.

As prescribed in 16.204–4, insert the following clause:

Price Redetermination—Prospective (DATE)

(a) *General.* The unit prices and the total price stated in this contract must be periodically redetermined in accordance with this clause, except that—

(1) The prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) must remain fixed; and

(2) In no event will the total amount paid under this contract exceed any ceiling price included in the contract.

(b) *Definition.* Costs, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Price redetermination periods.* For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period will extend from the date of the contract to ______, [*see Note (1)*] and the second and each succeeding period will extend for ______ [*insert appropriate number*] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period will be the effective date of price redetermination for that period.

(d) *Data submission.* (1) Not more than ______ nor less than ______ [*see Note (2)*] days before the end of each redetermination period, except the last, the Contractor must submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15–1, FAR 15.408–2, or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the ______ month (see Note (3)) before the submission of proposed prices in the format of Table 15–1, FAR 15.408–2 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor must also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in paragraph (d)(1)(ii) of this clause for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by paragraphs (d)(1) and (2) of this clause, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor must repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess will bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) of this clause, the Contracting Officer and the Contractor must promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications.* Each negotiated redetermination of prices must be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (f) of this clause), the Contractor must submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties must negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment must be reflected in a contract modification and must not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers must be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits must be made promptly.

(h) *Quarterly limitation on payments statement.* This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor must submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by paragraph (h)(1) of this clause need not be submitted for any quarter for which either no costs are to be reported under paragraph (h)(1)(ii) of this clause, or revised billing prices have been established in accordance with paragraph (g) of this clause, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under paragraph (h)(1)(iv) of this clause exceeds the sum due the Contractor, as computed in accordance with paragraphs (h)(1)(i), (ii), and (iii) of this clause, the Contractor must immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor must provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor must repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess will bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this clause are to be submitted, the Contracting Officer will promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this clause, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision will be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, will continue to be negotiated as provided in this clause.

(k) *Termination.* If this contract is terminated, prices must continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination will be resolved in accordance with other applicable clauses of this contract.

(End of clause)

Notes: (1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.

(2) Insert the number of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert ''first,'' except that ''second'' may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

52.216–6 Price Redetermination—Retroactive.

As prescribed in 16.205–4, insert the following clause:

Price Redetermination—Retroactive (DATE)

(a) *General.* The unit price and the total price stated in this contract must be redetermined in accordance with this clause, but in no event will the total amount paid under this contract exceed ______ [*insert dollar amount of ceiling price*].

(b) *Definition.* ''Costs,'' as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within ______ [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor must submit—

(i) Proposed prices;

(ii) A statement in the format of Table 15–1, FAR 15.408–2, or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by paragraph (c)(1) of this clause within the time specified, the Contracting

Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess must be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess will bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price determination.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this clause, the Contracting Officer and the Contractor must promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) *Contract modification.* The negotiated redetermination of price must be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (e) of this clause), the Contractor must submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties must negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment must be reflected in a contract modification and must not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers must be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits must be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) applies until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor must submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under paragraph (g)(1)(iv) of this clause exceeds the sum due the Contractor, as computed in accordance with paragraphs (g)(1)(i), (ii), and (iii) of this clause, the Contractor must immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor must provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor must repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess will bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) of this clause are to be submitted, the Contracting Officer will promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) of this clause, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision will be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated before price redetermination, prices must be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination will be resolved in accordance with other applicable clauses of this contract.

(End of clause)

52.216–7 Allowable Cost and Payment.

As prescribed in 16.305(a), insert the following clause:

Allowable Cost and Payment (DATE)

(a) *Invoicing.* (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains *Alternate I* to the clause at 52.232–25.

(3) The designated payment office will make interim payments for contract financing on the ______ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert ''30th''*] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term ''costs'' includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(*1*) In accordance with the terms and conditions of a subcontract or invoice; and

(*2*) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans

must be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid must be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract must be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government must be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases must be established in accordance with subpart 42.5 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor must submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor must support its proposal with adequate supporting data.

(ii) The proposed rates must be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor must establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal must include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (*i.e.,* General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract expense applied at claimed rates. This schedule must include a summary of total labor and nonlabor billed for Time and Materials (T&M) and Labor Hour contracts, including the total cost billed after applying indirect rates. A subsidiary schedule of Government participation percentages in each of the allocation base amounts is also required. For contracts physically completed during the fiscal year, the schedule must include the contract number, level-of-effort information, the contract ceiling amount, and confirmation of whether the contract is ready to close.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) *Subcontract information.* Listing of subcontracts with a value exceeding the threshold for requiring certified cost or pricing data as prescribed in FAR 15.403–3, awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Listing of decisions/agreements/ approvals and description of accounting/ organizational changes.

(L) Certificate of final indirect costs (see 52.242–4, Certification of Final Indirect Costs).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205–6(p).

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a Cost Accounting Standards (CAS) Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.,* trial balance, compilation, review, etc.).

(G) Management letter from outside Certified Public Accountants (CPAs) concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from paragraph (d)(2)(iv)(G) of this clause.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10–K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor must update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this clause, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative must execute a written understanding setting forth the final indirect cost rates.

(i) The understanding must specify—

(A) The agreed-upon final annual indirect cost rates;

(B) The bases to which the rates apply;

(C) The periods for which the rates apply;

(D) any specific indirect cost items treated as direct costs in the settlement; and

(E) The affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

(ii) The understanding must not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(iii) The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor must submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher must include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the Contracting Officer upon request.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government will reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Will be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.507 are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor must pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts will be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment must execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided,* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

Alternate I (DATE). As prescribed in 16.305(a)(1), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(b)(1)(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled ''Prompt Payment for Construction Contracts.'' Payments must be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

Alternate II (DATE). As prescribed in 16.305(a)(2), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with FAR subpart 31.3 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

Alternate III (DATE). As prescribed in 16.305(a)(3), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with FAR subpart 31.6 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

Alternate IV (DATE). As prescribed in 16.305(a)(4), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with FAR subpart 31.7 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

52.216–8 Fixed Fee.

As prescribed in 16.305(b), insert the following clause:

Fixed Fee (DATE)

(a) The Government will pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee will be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total fixed fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer will release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

52.216–9 Fixed Fee—Construction.

As prescribed in 16.305(c), insert the following clause:

Fixed Fee—Construction (DATE)

(a) The Government will pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee will be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) of this clause.

(c) The Contracting Officer must withhold a reserve not to exceed 15 percent of the total fixed fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer will release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

52.216–10 Incentive Fee.

As prescribed in 16.305(d), insert the following clause:

Incentive Fee (DATE)

(a) *General.* The Government will pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) *Target cost,* as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(2) *Target fee,* as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(c) *Withholding of payment.* (1) Normally, the Government will pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government will pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly greater than the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee.

(2) Payment of the incentive fee will be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total incentive fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer will release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, must be stated in a supplemental agreement to this contract.

(e) *Fee payable.* (1) The fee payable under this contract will be the target fee increased by ______ [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by ______ [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than ______ [*Contracting Officer insert percentage*] percent or less than ____ [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee will be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable must not be subject to an increase or decrease as provided in this paragraph. The termination must be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, *total allowable cost* must not include allowable costs arising out of—

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance—Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in ''total allowable cost'' for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause must be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents must be determined in accordance with this clause.

(End of clause)

52.216–11 Cost Contract—No Fee.

As prescribed in 16.305(e), insert the following clause:

Cost Contract—No Fee (DATE)

(a) The Government will not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve must not exceed one percent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)

Alternate I (DATE). As prescribed in 16.305(e)(2), delete paragraph (b) of the basic clause.

52.216–12 Cost-Sharing Contract—No Fee.

As prescribed in 16.305(f), insert the following clause:

Cost-Sharing Contract—No Fee (DATE)

(a) The Government will not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government's share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve must not exceed one percent of the Government's share of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)

Alternate I (DATE). As prescribed in 16.305(f)(2), delete paragraph (b) of the basic clause.

52.216–15 Predetermined Indirect Cost Rates.

As prescribed in 16.305(g), insert the following clause:

Predetermined Indirect Cost Rates (DATE)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract will be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified in this clause.

(b)(1) The Contractor must submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor must support its proposal with adequate supporting data.

(2) The proposed rates must be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor must establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods will be determined in accordance with FAR subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract will be incorporated into the contract Schedule. The Contracting Officer (or cognizant Federal agency official) and Contractor must negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The indirect cost rate agreement must not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution. The agreement must specify—

(1) The agreed-upon predetermined indirect cost rates;

(2) The bases to which the rates apply;

(3) The period for which the rates apply; and

(4) The specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor will be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause will not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs will be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year (or other period specified in the Schedule) will be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

52.216–16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

Incentive Price Revision—Firm Target (DATE)

(a) *General.* The supplies or services identified in the Schedule as Items ______ [*Contracting Officer insert Schedule line item numbers*] are subject to price revision in accordance with this clause; *provided,* that in no event will the total final price of these items exceed the ceiling price of $______ [*Contracting Officer to insert value*]. The contracting officer will issue a modification identifying any supplies or services that are to be—

(1) Ordered separately under, or otherwise added to, this contract; and

(2) Subject to price revision in accordance with the terms of this clause.

(b) *Definition.* ''Costs,'' as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within ______ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor must submit in the format of Table 15–1, FAR 15.408–2, or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) The Contractor's final indirect cost rates must be settled before contract prices are established, unless the quick-closeout procedure in 42.507 is used. If the Contractor does not have another Federal contract which requires the establishment of final indirect cost rates for the relevant fiscal year, the contractor must submit the data required by, and the parties must follow the procedures identified in, paragraph (d) of 52.216–7, Allowable Cost and Payment, to establish final indirect cost rates.

(3) If the Contractor fails to submit the data required by paragraphs (c)(1) and (c)(2) of this clause within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor must repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess will bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this clause, the Contracting Officer and the Contractor must promptly establish the total final price of the items specified in paragraph (a) of this clause by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) of this clause, together with any other pertinent information, the parties must negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price will be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less ______ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus ______ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) *Contract modification.* The total final price of the items specified in paragraph (a) of this clause must be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price will not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) *Adjusting billing prices.* (1) Pending execution of the contract modification (see paragraph (e) of this clause), the Contractor must submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices must be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under paragraph (g)(2) of this clause that the then-current billing prices will be substantially greater than the estimated final prices, the parties must negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment must be reflected in a contract modification and will not affect the determination of the total final price under paragraph (d) of this clause. After the contract modification establishing the total final price is executed, the total amount

paid or to be paid on all invoices or vouchers will be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits will be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) applies until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor must submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with paragraph (d)(2) of this clause, when the amount stated under paragraph (g)(1)(ii) of this clause differs from the aggregate target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under paragraph (g)(1)(iv) of this clause exceeds the sum due the Contractor, as computed in accordance with paragraphs (g)(1)(i), (ii), and (iii) of this clause, the Contractor must immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor must provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor must repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess will bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) of this clause are to be submitted, the Contracting Officer will promptly issue a decision in accordance with the Disputes clause.

(j) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision will be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination will be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment will be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price will be adjusted.

(l) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation must be at Government expense, that expense will not be included in any target price or in the total final price, but will be reimbursed separately.

(n) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term ''contract price'' includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease will be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

Alternate I (DATE). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

(o) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option will be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option will be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216–17 Incentive Price Revision—Successive Targets.

As prescribed in 16.406(b), insert the following clause:

Incentive Price Revision—Successive Targets (DATE)

(a) *General.* The supplies or services identified in the Schedule as Items______ [*Contracting Officer insert line item numbers*] are subject to price revision in accordance with this clause; *provided,* that in no event will the total final price of these items exceed the ceiling price of $______ [*Contracting Officer to insert value*]. The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of ______ [*Contracting Officer insert percent*] percent of the initial target cost. The contracting officer will issue a modification identifying any supplies or services that are to be—

(1) Ordered separately under, or otherwise added to, this contract; and

(2) Subject to price revision in accordance with this clause.

(b) *Definition.* ''Costs,'' as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Submitting data for establishing the firm fixed price or a final profit adjustment formula.* (1) Within ______ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has completed ______ [*see Note 1*], the Contractor must submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified in paragraph (c) of this clause, in the format of Table 15–1, FAR 15.408–2 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, in the format of Table

15–1, FAR 15.408–2 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor must also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in paragraph (c)(1) of this clause for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) The Contractor's final indirect cost rates must be settled before contract prices are established, unless the quick-closeout procedure in 42.507 is used. If the Contractor does not have another Federal contract which requires the establishment of final indirect cost rates for the relevant fiscal year, the contractor must submit the data required by, and the parties must follow the procedures identified in, paragraph (d) of 52.216–7, Allowable Cost and Payment, to establish final indirect cost rates.

(4) If the Contractor fails to submit the data required by paragraphs (c)(1), (2), and (3) of this clause within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor must repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess will bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Establishing firm fixed price or final profit adjustment formula.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this clause the Contracting Officer and the Contractor must promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties must negotiate a total firm target cost, based upon the data submitted under paragraph (c) of this clause.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit must be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit must be increased. The initial target profit must be increased or decreased by ______ percent [*see Note 2*] of the difference between the total initial target cost and the total firm target cost. The resulting amount will be the total firm target profit; *provided,* that in no event will the total firm target profit be less than ______ percent or more than ______ percent [*Contracting Officer insert percents*] of the total initial target cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which must be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price will not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer must establish a profit adjustment formula under which the total final price will be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less ______ [*Contracting Officer insert Contractor's participation*] percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus ______ [*Contracting Officer insert Contractor's participation*] percent of the amount by which the total final negotiated cost is less than the total firm target cost.

(iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit must be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph (d) of this clause within ______ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor must submit in the format of Table 15–1, FAR 15.408–2 (or in any other form on which the parties agree)—

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision.* Unless a firm fixed price has been agreed to in accordance with paragraph (d) of this clause, the Contractor and the Contracting Officer must, promptly after submission of the data required by paragraph (e) of this clause, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) of this clause, together with any other pertinent information, the parties must negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price will be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under paragraph (d)(4) of this clause.

(g) *Contract modification.* The total final price of the items specified in paragraph (a) of this clause must be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price will not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) *Adjustment of billing prices.* (1) Pending execution of the contract modification (see paragraph (e) of this clause), the Contractor must submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices will be the initial target prices shown in this contract until firm target prices are established under paragraph (d) of this clause. When established, the firm target prices will be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under paragraph (i)(1) of this clause that the then-current billing prices will be substantially greater than the estimated final prices, the parties must negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices must be reflected in a contract modification and will not affect the determination of any price under paragraph (d) or (f) of this clause. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers will be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits will be made promptly.

(i) *Quarterly limitation on payments statement.* This paragraph (i) applies until a firm fixed price or a total final price is established under paragraph (d)(3) or (f)(2) of this clause.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor must submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with paragraph (d)(4) of this clause when the amount stated under paragraph (i)(1)(ii) of this clause differs from the aggregate firm target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under paragraph (i)(1)(iv) of this clause exceeds the sum due the Contractor, as computed in accordance with paragraphs (i)(1)(i), (ii), and (iii) of this clause the Contractor must immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor must provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor must repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess will bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) of this clause are to be submitted, the Contracting Officer will promptly issue a decision in accordance with the Disputes clause.

(l) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision will be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination must be resolved in accordance with other applicable clauses of this contract.

(m) *Equitable adjustments under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment will be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price will be adjusted.

(n) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation will be at Government expense, that expense will not be included in any target price or in the total final price, but will be reimbursed separately.

(p) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term *contract price* includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease will be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

Notes: (1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (DATE). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

(q) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option will be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option will be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216–18 Ordering.

As prescribed in 16.605(a), insert the following clause:

Ordering (DATE)

(a) Any supplies and services to be furnished under this contract must be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from ______ through ______ [*insert dates*].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract will control.

(c) A delivery order or task order is considered ''issued'' when—

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail; or

(2) If sent electronically, the Government either—

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor's email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

52.216–19 Order Limitations.

As prescribed in 16.605(b), insert a clause substantially the same as follows:

Order Limitations (DATE)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than ______ [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item exceeding ______ [*insert dollar figure or quantity*];

(2) Any order for a combination of items exceeding ______ [*insert dollar figure or quantity*]; or

(3) A series of orders from the same ordering office within ______days that together call for quantities exceeding the limitation in paragraph (b)(1) or (b)(2) of this clause.

(c) If this is a requirements contract (*i.e.,* includes the Requirements clause at 52.216–21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this clause.

(d) Notwithstanding paragraphs (b) and (c) of this clause, the Contractor must honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within ______ days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216–20 Definite Quantity.

As prescribed in 16.605(c), insert the following clause:

Definite Quantity (DATE)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government must order the quantity of supplies or services specified in the Schedule, and the Contractor must furnish them when ordered. Delivery or performance will be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the ordering period of this contract and not completed within that time must be completed by the Contractor within the time specified in the order. The contract will govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided,* that the Contractor will not be required to make any deliveries under this contract after ______ [*insert date*].

(End of clause)

52.216–21 Requirements.

As prescribed in 16.605(d)(1), insert the following clause:

Requirements (DATE)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as *estimated* or *maximum* in the Schedule, that fact will not constitute the basis for an equitable price adjustment.

(b) Delivery or performance must be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor must furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government must order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements exceeding any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the ordering period of this contract and not completed within that period must be completed by the Contractor within the time specified in the order. The contract will govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's ordering period; *provided,* that the Contractor will not be required to make any deliveries under this contract after ______ [*insert date*].

(End of clause)

Alternate I (DATE). As prescribed in 16.605(d)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements exceeding the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government will order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may itself furnish within its own capabilities.

Alternate II (DATE). As prescribed in 16.605(d)(3), add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

Alternate III (DATE). As prescribed in 16.605(d)(4), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government will order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government will allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

Alternate IV (DATE). As prescribed in 16.605(d)(5), substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government will order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government will allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(g) The requirements referred to in this contract are for items to be manufactured according to the Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

52.216–22 Indefinite Quantity.

As prescribed in 16.605(e), insert the following clause:

Indefinite Quantity (DATE)

(a) This is an indefinite-quantity contract for the supplies or services specified, and available for ordering for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance must be made only as authorized by orders issued in accordance with the Ordering clause. The

Contractor must furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the *maximum.* The Government must order at least the quantity of supplies or services designated in the Schedule as the *minimum.*

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the ordering period of this contract and not completed within that period must be completed by the Contractor within the time specified in the order, which may include order options to be exercised after the ordering period of this contract but before the end of the period of performance of the order. The contract will govern the Contractor's and Government's rights and obligations with respect to that order, including options exercised, to the same extent as if the order were completed during the contract's ordering period; *provided,* that the Contractor must not be required to make any deliveries under this contract after ______ [*insert date*].

(End of clause)

Alternate I (DATE). As prescribed in 16.605(e)(1), add a paragraph (e) substantially the same as the following to the basic clause:

(e) Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If either party makes such notification, no further orders may be issued against the contract, but orders already awarded will be completed unless a termination action is taken against the order. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

Alternate II (DATE). As prescribed in 16.605(e)(2), add paragraphs (e) and (f) substantially the same as the following to the basic clause:

(e) The Government may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the contractor receives the notice of cancellation. No further orders may be issued against the contract, but orders already awarded will be completed unless a termination action is taken against the order.

(f) The Contractor may request to cancel this contract by submitting a written cancellation request to the contracting officer. The cancellation will take effect 30 calendar days after the Government receives the cancellation request, unless the contracting officer informs the contractor, before cancellation is effective, that cancellation is not approved. A Contractor who requests cancellation is not eligible for the minimum guarantee. If cancelled, no further orders may be issued against the contract, but orders already awarded will be completed unless a termination action is taken against the order.

52.216–23 Execution and Commencement of Work.

As prescribed in 16.704(b)(1), insert the following clause:

Execution and Commencement of Work (DATE)

The Contractor must indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than ______ [*insert date*]. Upon acceptance by both parties, the Contractor must proceed with performance of the work, including purchase of necessary materials.

(End of clause)

52.216–24 Limitation of Government Liability.

As prescribed in 16.704(b)(2), insert the following clause:

Limitation of Government Liability (DATE)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding ______ [*Contracting Officer insert obligated amount less termination liability*] dollars.

(b) The maximum amount for which the Government is liable if this contract is terminated is ______ [*Contracting Officer insert obligated amount*] dollars.

(End of clause)

52.216–25 Contract Definitization.

As prescribed in 16.704(b)(3), insert the following clause:

Contract Definitization (DATE)

(a) A ______ [*insert specific type of contract*] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a ______ [*insert specific type of proposal (e.g., fixed-price or cost-and-fee)*] proposal, including data other than certified cost or pricing data, and certified cost or pricing data, in accordance with FAR 15.408–2, Table 15–1, supporting its proposal.

(b) The schedule for definitizing this contract is [*insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and certified cost or pricing data*]:

____

____

____

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor must proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract will be governed by—

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this letter contract will continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

Alternate I (DATE). As prescribed in 16.704(b)(3), add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated ______ [*insert ''price ceiling''* or *''firm fixed price''*] in no event to exceed ______ [*insert the proposed price upon which the award was based*].

52.216–26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.704(c), insert the following clause:

Payments of Allowable Costs Before Definitization (DATE)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided,* that the

Government's payments to the Contractor must not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer will determine allowable costs in accordance with the applicable cost principles in part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph must not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing.* Payments must be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term ''*costs*'' includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be—

(1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

52.216–27 Single or Multiple Awards.

As prescribed in 16.605(f), insert the following provision:

Single or Multiple Awards (DATE)

The Government may elect to award a single delivery-order contract or task-order contract or to award multiple delivery-order contracts or task-order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

52.216–28 Multiple Awards for Advisory and Assistance Services.

As prescribed in 16.605(g), insert the following provision:

Multiple Awards for Advisory and Assistance Services (DATE)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

52.216–29 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition.

As prescribed in 16.501–4(a), insert the following provision:

Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition (DATE)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The Offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The Offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The Offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the Offeror under a common control;

(c) The Offeror must establish fixed hourly rates using—

(1) Separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the Offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the Offeror under a common control;

(2) Blended rates for each category of labor to be performed by the Offeror, including labor transferred between divisions, subsidiaries, or affiliates of the Offeror under a common control, and all subcontractors; or

(3) Any combination of separate and blended rates for each category of labor to be performed by the Offeror, affiliates of the Offeror under a common control, and subcontractors.

(End of provision)

52.216–30 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition.

As prescribed in 16.501–4(b), insert the following provision:

Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition (DATE)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The Offeror must specify separate fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(1) The Offeror;

(2) Each subcontractor; and

(3) Each division, subsidiary, or affiliate of the Offeror under a common control.

(c) Unless exempt under paragraph (d) of this provision, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the Offeror under a common control—

(1) Must not include profit for the transferring organization; but

(2) May include profit for the prime Contractor.

(d) The fixed hourly rates for services that meet the definition of ''commercial service'' at Federal Acquisition Regulation 2.101 that are transferred between divisions, subsidiaries, or affiliates of the Offeror under a common control may be the established catalog or market rate when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the Offeror or any division, subsidiary or affiliate of the Offeror under a common control.

(End of provision)

52.216–31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition.

As prescribed in 16.501–4(c), insert the following provision:

Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition (DATE)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The Offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The Offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The Offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the Offeror under a common control.

(End of provision)

52.216–32 Task-Order and Delivery-Order Ombudsman.

As prescribed in 16.605(h), insert the following clause:

Task-Order and Delivery-Order Ombudsman (DATE)

(a) In accordance with 41 U.S.C. 4106(g), the Agency has designated the following task-order and delivery-order Ombudsman for this contract. The Ombudsman must review complaints from the Contractor concerning all task-order and delivery-order actions for this contract and ensure the Contractor is afforded a fair opportunity for consideration in the award of orders, consistent with the procedures in the contract.

[*Contracting Officer to insert name, address, telephone number, and email address for the Agency Ombudsman or provide the URL address where this information may be found.*]

(b) Consulting an ombudsman does not alter or postpone the timeline for any other process (*e.g.,* protests).

(c) Before consulting with the Ombudsman, the Contractor is encouraged to first address complaints with the Contracting Officer for resolution. When requested by the Contractor, the Ombudsman may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

(End of clause)

Alternate I (DATE). As prescribed in 16.605(h), add the following paragraph (d) to the basic clause.

(d) *Contracts used by multiple agencies.*

(1) This is a contract that is used by multiple agencies. Complaints from Contractors concerning orders placed under contracts used by multiple agencies are primarily reviewed by the task-order and delivery-order Ombudsman for the ordering activity.

(2) The ordering activity has designated the following task-order and delivery-order Ombudsman for this order:________________ [*The ordering activity's contracting officer to insert the name, address, telephone number, and email address for the ordering activity's Ombudsman or provide the URL address where this information may be found.*]

(3) Before consulting with the task-order and delivery-order Ombudsman for the ordering activity, the Contractor is encouraged to first address complaints with the ordering activity's Contracting Officer for resolution. When requested by the Contractor, the task-order and delivery-order Ombudsman for the ordering activity may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

(End of clause)

■ 4. Revise sections 52.217–2 through 52.217–12 to read as follows:

52.217–2 Cancellation Under Multiyear Contracts.

As prescribed in 17.106(a), insert the following clause:

Cancellation Under Multiyear Contracts (DATE)

(a) ''*Cancellation,*'' as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation will occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer—

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract will be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only—

(1) Costs—

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract;

(iii) That would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge will be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor must submit the claim promptly but no later than 1 year from the date—

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include—

(1) Reasonable nonrecurring costs (see part 15 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim must not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. ''Useful commercial life'' means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the option clause of this contract will be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

52.217–3 Evaluation Exclusive of Options.

As prescribed in 17.203(a), insert a provision substantially the same as the following:

Evaluation Exclusive of Options (Date)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; *i.e.,* options will not be included in the evaluation for award purposes.

(End of provision)

52.217–4 Evaluation of Options Exercised at Time of Contract Award.

As prescribed in 17.203(b), insert a provision substantially the same as the following:

Evaluation of Options Exercised at Time of Contract Award (DATE)

Except when it is determined in accordance with FAR 17.202(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

52.217–5 Evaluation of Options.

As prescribed in 17.203(c), insert a provision substantially the same as the following:

Evaluation of Options (Date)

Except when it is determined in accordance with FAR 17.202(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

52.217–6 Option for Increased Quantity.

As prescribed in 17.203(d), insert a clause substantially the same as the following:

Option for Increased Quantity (Date)

The Government may increase the quantity of supplies or services called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within ______ [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of the added items or performance of added services must continue at the same rate as the like items or services called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217–7 Option for Increased Quantity-Separately Priced Line Item.

As prescribed in 17.203(e), insert a clause substantially the same as the following:

Option for Increased Quantity-Separately Priced Line Item (DATE)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within ______ [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of added items or performance of added services must continue at the same rate that like items or services are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217–8 Option to Extend.

As prescribed in 17.203(f), insert a clause substantially the same as the following:

Option to Extend (Date)

(a) The Government may require continued performance of the contract within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor.

(b) The option provision may be exercised more than once, but the total extension of the period of performance, ordering period, or both as a result of this clause must not exceed 6 months.

(c) The Contracting Officer may exercise the option by written notice to the Contractor within ______ [*insert the period of time within which the Contracting Officer may exercise the option*].

(d) In the event the period to exercise this option ends during a lapse in appropriations impacting the agency without the Government exercising this option, the Government and Contractor may mutually agree to toll or extend the period to exercise the option until the date that is days after the lapse ends [*30 days unless a different number of days is inserted*].

(End of clause)

52.217–9 Option To Extend the Term of the Contract.

As prescribed in 17.203(g), insert a clause substantially the same as the following:

Option To Extend the Term of the Contract (Date)

(a) The Government may extend the term of this contract by written notice to the Contractor within ______ [*insert the period of time within which the Contracting Officer may exercise the option*]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least ______ days [*60 days unless a different number of days is inserted*] before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract will be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, must not exceed ______ (months) (years).

(d) In the event the period to provide written notice of intent to exercise this option or the period to exercise this option ends during a lapse in appropriations impacting the agency without the Government exercising this option, the Government and Contractor may mutually agree to toll or extend the period to provide written notice of intent to exercise the option or exercise the option until the date that is ______ [*Contracting Officer insert number of days*] days after the lapse ends [*30 days unless a different number of days is inserted*].

(End of clause)

52.217–10 Reverse Auction

As prescribed in 17.704(a), insert the following provision:

Reverse Auction (Date)

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

Reverse auction means a real-time auction generally conducted through an electronic medium among two or more offerors who compete by submitting bids for an award of a supply contract, service contract, purchase order, or blanket purchase agreement, or for an award of an order under a contract or blanket purchase agreement, with the ability to submit revised lower bids at any time before the closing of the auction (section 2 of the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117–28)).

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

(b) *Reverse auction.* The Government intends to conduct a reverse auction under this solicitation to award a contract or blanket purchase agreement.

(c) *Offeror agreement.* By submission of a quote or proposal in response to the solicitation, the Offeror agrees to participate in the reverse auction and agrees that the Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity, except for the awardee's identity subsequent to an award resulting from the auction. The Offeror may withdraw its agreement to further participate in the process by withdrawing its offer before the close of the auction by notifying the Contracting Officer via the contact method identified in the solicitation.

(d) *Only one offer.* If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(e) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction must not be released, outside of the Government, unless otherwise required by law. However, this does not prevent the Government from revealing to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity. Price or proposal information includes, but is not limited to—

(1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104–1; and

(2) Information identified by the Offeror as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Offeror's price or proposal.

(End of provision)

52.217–11 Reverse Auction—Orders.

As prescribed in 17.704(b), insert the following clause:

Reverse Auction—Orders (Date)

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

Reverse auction means a real-time auction generally conducted through an electronic medium among two or more offerors who compete by submitting bids for an award of a supply contract, service contract, purchase order, or blanket purchase agreement, or for an award of an order under a contract or blanket purchase agreement, with the ability to submit revised lower bids at any time before the closing of the auction (section 2 of the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117–28)).

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

(b) *Reverse auction.* The Contracting Officer may conduct a reverse auction to award an order under this contract or blanket purchase agreement.

(c) *Contractor agreement.* When a reverse auction is conducted under this contract or blanket purchase agreement, the following applies:

(1) The Contractor's or blanket purchase agreement holder's submission of a quote or proposal in response to the solicitation for an order constitutes agreement to participate in the auction.

(2) The Contractor agrees that the Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offerors' identity, except for the awardee's identity subsequent to an award resulting from the auction.

(3) The Contractor or blanket purchase agreement holder may withdraw its agreement to further participate in the reverse auction by withdrawing its offer. To withdraw an offer made in response to a reverse auction solicitation issued under this contract or blanket purchase agreement, the Contractor or blanket purchase agreement holder must notify the Contracting Officer of the request before the close of the auction via the contact method identified in the solicitation.

(4) If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(d) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction must not be released, outside of the Government, unless otherwise required by law. However, this does not prevent the Government from revealing to all Contractors or blanket purchase agreement holders the offered price(s) in the auction, without revealing any Contractor or blanket purchase agreement holder's identity. Price or proposal information includes, but is not limited to—

(1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104–1;

(2) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and

(3) Information identified by the Contractor or blanket purchase agreement holder as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Contractor or blanket purchase agreement holder's price or proposal.

(End of clause)

52.217–12 Reverse Auction Services.

As prescribed in 17.704(c), insert the following clause:

Reverse Auction Services (Date)

(a) *Definitions.*

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government, in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (*e.g.,* financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction means a real-time auction generally conducted through an electronic medium among two or more offerors who compete by submitting bids for an award of a supply contract, service contract, purchase order, or blanket purchase agreement, or for an award of an order under a contract or blanket purchase agreement, with the ability to submit revised lower bids at any time before the closing of the auction (section 2 of the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117–28)).

(b) *Duties of the reverse auction service provider.* When providing reverse auction services to the Government, the Contractor must—

(1) Not assert or imply that it can or will obtain a Government contract for the participants of a reverse auction;

(2) Allow entities to register, at no cost, as potential offerors for any reverse auction conducted on behalf of the Government on the provider's reverse auction platform. As part of the registration process, the Contractor must allow each entity the opportunity to execute a proprietary data protection agreement with the Contractor; however, the Contractor must not negotiate terms in the agreement that affect the terms and conditions of a Government solicitation or contract;

(3) Limit access to, use of, and disclosure of Government data and Government-related data.

(i) The Contractor must not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued under this contract.

(ii) If authorized by the terms of this contract or a task order or delivery order issued under this contract, any access to, or use or disclosure of, Government data must only be for purposes specified in this contract or task order or delivery order.

(iii) The Contractor must ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iv) These access, use, and disclosure prohibitions and obligations must survive the expiration or termination of this contract.

(v) The Contractor must notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency. The Contractor must cooperate with the Contracting Officer to take all measures to protect Government data and Government-related data from any unauthorized disclosure.

(4) Assert no right or license in the data gathered or generated during a reverse auction. Use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(5) Protect from unauthorized use or disclosure and not release outside of the Government any price or proposal information or any source selection information (see Federal Acquisition Regulation (FAR) 2.101) received by the Contractor in relation to a reverse auction. Price or proposal information includes, but is not limited to—

(i) Contractor bid or proposal information, as defined at FAR 3.104–1;

(ii) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and

(iii) Information identified by the reverse auction participant as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the reverse auction participant's price or proposal;

(6) Allow offerors to see the successive lowest price(s) offered in the auction without revealing an offeror's identity;

(7) Not participate as an offeror in any reverse auction, which the Contractor is hosting on behalf of the Government. This prohibition includes participation in a reverse auction by any entity with which the Contractor has a relationship that raises an actual or potential conflict of interest;

(8) At the close of each auction—

(i) Provide the Contracting Officer with the successful offer, along with information that separately identifies the offeror's price and the price for each provider fee or charge included in the total price; and

(ii) Provide the Contracting Officer with all information and documentation received from reverse auction participants in response to the reverse auction.

(End of clause)

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