

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

Sec.

- 4.000 Scope of part.
- 4.001 Definitions.

Subpart 4.1—Contract Execution

- 4.101 Contracting officer's signature.
- 4.102 Contractor's signature.
- 4.103 Contract clause.

Subpart 4.2—Contract Distribution

- 4.201 Procedures.
- 4.202 Agency distribution requirements.
- 4.203 Taxpayer identification information.

Subpart 4.3 [Reserved]

Subpart 4.4—Safeguarding Classified Information Within Industry

- 4.401 [Reserved]
- 4.402 General.
- 4.403 Responsibilities of contracting officers.
- 4.404 Contract clause.

Subpart 4.5—Electronic Commerce in Contracting

- 4.500 Scope of subpart.
- 4.501 [Reserved]
- 4.502 Policy.

Subpart 4.6—Contract Reporting

- 4.600 Scope of subpart.
- 4.601 Definitions.
- 4.602 General.
- 4.603 Policy.
- 4.604 Responsibilities.
- 4.605 Procedures.
- 4.606 Reporting Data.
- 4.607 Solicitation provisions and contract clause.

Subpart 4.7—Contractor Records Retention

- 4.700 Scope of subpart.
- 4.701 Purpose.
- 4.702 Applicability.
- 4.703 Policy.
- 4.704 Calculation of retention periods.
- 4.705 Specific retention periods.
- 4.705-1 Financial and cost accounting records.
- 4.705-2 Pay administration records.
- 4.705-3 Acquisition and supply records.
- 4.706 [Reserved]

Subpart 4.8—Government Contract Files

- 4.800 Scope of subpart.
- 4.801 General.

- 4.802 Contract files.
- 4.803 Contents of contract files.
- 4.804 Closeout of contract files.
- 4.804-1 Closeout by the office administering the contract.
- 4.804-2 Closeout of the contracting office files if another office administers the contract.
- 4.804-3 Closeout of paying office contract files.
- 4.804-4 Physically completed contracts.
- 4.804-5 Procedures for closing out contract files.
- 4.805 Storage, handling, and contract files.

Subpart 4.9—Taxpayer Identification Number Information

- 4.900 Scope of subpart.
- 4.901 Definition.
- 4.902 General.
- 4.903 Reporting contract information to the IRS.
- 4.904 Reporting payment information to the IRS.
- 4.905 Solicitation provision.

Subpart 4.10—Uniform Use of Line Items

- 4.1000 Scope.
- 4.1001 Policy.
- 4.1002 Applicability.
- 4.1003 Establishing line items.
- 4.1004 Establishing subline items.
- 4.1005 Data elements for line items and subline items.
- 4.1005-1 Required data elements.
- 4.1005-2 Exceptions.
- 4.1006 Modifications.
- 4.1007 Solicitation alternative line item proposal.
- 4.1008 Solicitation provision.

Subpart 4.11—System for Award Management

- 4.1100 Scope.
- 4.1101 Definitions.
- 4.1102 Policy.
- 4.1103 Procedures.
- 4.1104 Disaster Response Registry.
- 4.1105 Solicitation provision and contract clauses.

Subpart 4.12—Representations and Certifications

- 4.1200 Scope.
- 4.1201 Policy.
- 4.1202 Solicitation provision and contract clause.

Subpart 4.13—Personal Identity Verification

- 4.1300 Scope of subpart.
- 4.1301 Policy.

Federal Acquisition Regulation

4.001

- 4.1302 Acquisition of approved products and services for personal identity verification.
- 4.1303 Contract clause.

Subpart 4.14—Reporting Executive Compensation and First-Tier Subcontract Awards

- 4.1400 Scope of subpart.
- 4.1401 Applicability.
- 4.1402 Procedures.
- 4.1403 Contract clause.

Subpart 4.15 [Reserved]

Subpart 4.16—Unique Procurement Instrument Identifiers

- 4.1600 Scope of subpart.
- 4.1601 Policy.
- 4.1602 Identifying the PIID and supplementary PIID.
- 4.1603 Procedures.

Subpart 4.17—Service Contracts Inventory

- 4.1700 Scope of subpart.
- 4.1701 Definitions.
- 4.1702 Applicability.
- 4.1703 Reporting requirements.
- 4.1704 Contracting officer responsibilities.
- 4.1705 Contract clauses.

Subpart 4.18—Commercial and Government Entity Code

- 4.1800 Scope of subpart.
- 4.1801 Definitions.
- 4.1802 Policy.
- 4.1803 Verifying CAGE codes prior to award.
- 4.1804 Solicitation provisions and contract clause.

Subpart 4.19—Basic Safeguarding of Covered Contractor Information Systems

- 4.1901 Definitions.
- 4.1902 Applicability.
- 4.1903 Contract clause.

Subpart 4.20—Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab

- 4.2001 Definitions.
- 4.2002 Prohibition.
- 4.2003 Notification.
- 4.2004 Contract clause.

Subpart 4.21—Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

- 4.2100 Scope of subpart.

- 4.2101 Definitions.
- 4.2102 Prohibition.
- 4.2103 Procedures.
- 4.2104 Waivers.
- 4.2105 Solicitation provisions and contract clause.

Subpart 4.22—Prohibition on a ByteDance Covered Application

- 4.2201 Definitions.
- 4.2202 Prohibition.
- 4.2203 Contract clause.

Subpart 4.23—Federal Acquisition Security Council

- 4.2300 Scope of subpart.
- 4.2301 Definitions.
- 4.2302 Sharing supply chain risk information.
- 4.2303 FASCSA orders.
- 4.2304 Procedures.
- 4.2305 Waivers.
- 4.2306 Solicitation provision and contract clauses.

AUTHORITY: 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.

SOURCE: 48 FR 42113, Sept. 19, 1983, unless otherwise noted.

4.000 Scope of part.

This part prescribes policies and procedures relating to the administrative aspects of contract execution, contractor-submitted paper documents, distribution, reporting, retention, and files.

[60 FR 28493, May 31, 1995]

4.001 Definitions.

As used in this part—
Procurement Instrument Identifier (PIID) means the Government-unique identifier for each solicitation, contract, agreement, or order. For example, an agency may use as its PIID for procurement actions, such as delivery and task orders or basic ordering agreements, the order or agreement number in conjunction with the contract number (see 4.1602).

Supplementary procurement instrument identifier means the non-unique identifier for a procurement action that is used in conjunction with the Government-unique identifier. For example, an agency may use as its PIID for an amended solicitation, the Government-unique identifier for a solicitation

4.101

number (*e.g.*, N0002309R0009) in conjunction with a non-unique amendment number (*e.g.*, 0001). The non-unique amendment number represents the supplementary PIID.

[76 FR 39235, July 5, 2011]

Subpart 4.1—Contract Execution

4.101 Contracting officer's signature.

Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

[60 FR 34736, July 3, 1995]

4.102 Contractor's signature.

(a) *Individuals*. A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words “, an individual doing business as _____” [*insert name of firm*].

(b) *Partnerships*. A contract with a partnership shall be signed in the partnership name. Before signing for the Government, the contracting officer shall obtain a list of all partners and ensure that the individual(s) signing for the partnership have authority to bind the partnership.

(c) *Corporations*. A contract with a corporation shall be signed in the corporate name, followed by the word “by” and the signature and title of the person authorized to sign. The contracting officer shall ensure that the person signing for the corporation has authority to bind the corporation.

(d) *Joint venturers*. A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) of this sec-

48 CFR Ch. 1 (10–1–24 Edition)

tion for each type of participant. When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.

(e) *Agents*. When an agent is to sign the contract, other than as stated in paragraphs (a) through (d) of this section, the agent's authorization to bind the principal must be established by evidence satisfactory to the contracting officer.

[48 FR 42113, Sept. 19, 1983, as amended at 62 FR 235, Jan. 2, 1997; 84 FR 19840, May 6, 2019]

4.103 Contract clause.

The contracting officer shall insert the clause at 52.204–1, Approval of Contract, in solicitations and contracts if required by agency procedures.

[49 FR 26741, June 29, 1984]

Subpart 4.2—Contract Distribution

4.201 Procedures.

Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall—

(a) Distribute simultaneously one signed copy or reproduction of the signed contract to the contractor and the paying office;

(b) When a contract is assigned to another office for contract administration (see subpart 42.2), provide to that office—

(1) One copy or reproduction of the signed contract and of each modification; and

(2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur;

(c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative contracting officer and mark the copy “FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY” (see 30.601(b));

Federal Acquisition Regulation

4.203

(e) Provide one copy of each contract or modification that requires audit service to the appropriate field audit office listed in the “Directory of Federal Contract Audit Offices” (see 42.103); and

(f) Provide copies of contracts and modifications to those organizations required to perform contract administration support functions (e.g., when manufacturing is performed at multiple sites, the contract administration office cognizant of each location).

[48 FR 42113, Sept. 19, 1983, as amended at 60 FR 34736, July 3, 1995; 84 FR 19840, May 6, 2019]

4.202 Agency distribution requirements.

Agencies shall limit additional distribution requirements to the minimum necessary for proper performance of essential functions. When contracts are assigned for administration to a contract administration office located in an agency different from that of the contracting office (see part 42), the two agencies shall agree on any necessary distribution in addition to that prescribed in 4.201.

[48 FR 42113, Sept. 19, 1983, as amended at 84 FR 19840, May 6, 2019]

4.203 Taxpayer identification information.

(a) If the contractor has furnished a Taxpayer Identification Number (TIN) when completing the solicitation provision at 52.204-3, Taxpayer Identification, or paragraph (1) of the solicitation provision at 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services, the contracting officer shall, unless otherwise provided in agency procedures, attach a copy of the completed solicitation provision as the last page of the copy of the contract sent to the payment office.

(b) If the TIN or type of organization is derived from a source other than the provision at 52.204-3 or 52.212-3(1), the contracting officer shall annotate the last page of the contract or order for-

warded to the payment office to state the contractor's TIN and type of organization, unless this information is otherwise provided to the payment office in accordance with agency procedures.

(c) If the contractor provides its TIN or type of organization to the contracting officer after award, the contracting officer shall forward the information to the payment office within 7 days of its receipt.

(d) *Federal Supply Schedule contracts.* Each contracting officer that places an order under a Federal Supply Schedule contract (see Subpart 8.4) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (b) of this section.

(e) *Basic ordering agreements and indefinite-delivery contracts (other than Federal Supply Schedule contracts).* (1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract (if the contractor is not required to provide this information to the System for Award Management)—

(i) A copy of the agreement or contract with a copy of the completed solicitation provision at 52.204-3 or 52.212-3(1) as the last page of the agreement or contract; or

(ii) The contractor's TIN and type of organization information.

(2) Each contracting officer that places an order under a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (a) or (b) of this section.

[63 FR 58588, Oct. 30, 1998, as amended at 68 FR 56672, Oct. 1, 2003; 73 FR 33638, June 12, 2008; 78 FR 37677, June 21, 2013; 86 FR 61020, Nov. 4, 2021]

Subpart 4.3 [Reserved]

Subpart 4.4—Safeguarding Classified Information Within Industry

4.401 [Reserved]

4.402 General.

(a) Executive Order 12829, January 6, 1993 (58 FR 3479, January 8, 1993), entitled “National Industrial Security Program” (NISP), establishes a program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. Executive Order 12829 amends Executive Order 10865, February 20, 1960 (25 FR 1583, February 25, 1960), entitled “Safeguarding Classified Information Within Industry,” as amended by Executive Order 10909, January 17, 1961 (26 FR 508, January 20, 1961).

(b) The National Industrial Security Program Operating Manual (NISPOM) incorporates the requirements of these Executive orders. The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, the Director of National Intelligence, and the Secretary of Homeland Security is responsible for issuance and maintenance of this Manual. The following publications implement the program:

(1) *National Industrial Security Program Operating Manual* (NISPOM) (32 CFR part 117).

(2) DoD Manual 5220.22, Volume 2, National Industrial Security Program: Industrial Security Procedures for Government Activities.

(c) Procedures for the protection of information relating to foreign classified contracts awarded to U.S. industry, and instructions for the protection of U.S. information relating to classified contracts awarded to foreign firms, are prescribed in 32 CFR 117.19.

(d) Nondefense agencies that have industrial security services agreements with DoD, and DoD components, shall use the DD Form 254, Contract Security Classification Specification, to provide security classification guidance to U.S. contractors, and subcontractors as applicable, requiring ac-

cess to information classified as “Confidential”, “Secret”, or “Top Secret”.

(1) Provided that the data submittal is unclassified, the DD Form 254 shall be completed electronically in the NISP Contract Classification System (NCCS), which is accessible <https://www.dcsa.mil/is/nccs/>. Nondefense agencies with an existing DD Form 254 information system may use that system.

(2)(i) A contractor, or subcontractor (if applicable), requiring access to classified information under a contract shall be identified with a Commercial and Government Entity (CAGE) code on the DD Form 254 (see subpart 4.18 for information on obtaining and validating CAGE codes).

(ii) Each location of contractor or subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a Government facility, in which case the agency location code shall be used. Each subcontractor location requiring access to classified information must be listed on the DD Form 254.

(iii) Contractor and subcontractor performance locations listed on the DD Form 254 are not required to be separately registered in the System for Award Management (SAM) solely for the purposes of a DD Form 254 (see subpart 4.11 for information on registering in SAM).

(e) Part 27, Patents, Data, and Copyrights, contains policy and procedures for safeguarding classified information in patent applications and patents.

[48 FR 42113, Sept. 19, 1983, as amended at 61 FR 31617, June 20, 1996; 73 FR 21781, Apr. 22, 2008; 84 FR 19840, May 6, 2019; 85 FR 40063, July 2, 2020; 86 FR 13794, Mar. 10, 2021; 87 FR 24844, Apr. 26, 2022; 87 FR 25572, May 2, 2022; 87 FR 49502, Aug. 10, 2022]

4.403 Responsibilities of contracting officers.

(a) *Presolicitation phase.* Contracting officers shall review all proposed solicitations to determine whether access to classified information may be required by offerors, or by a contractor during contract performance.

(1) If access to classified information of another agency may be required, the contracting officer shall—

(i) Determine if the agency is covered by the NISP; and

(ii) Follow that agency's procedures for determining the security clearances of firms to be solicited.

(2) If the classified information required is from the contracting officer's agency, the contracting officer shall follow agency procedures.

(b) *Solicitation phase.* Contracting officers shall—

(1) Ensure that the classified acquisition is conducted as required by the NISP or agency procedures, as appropriate; and

(2) Include—

(i) An appropriate Security Requirements clause in the solicitation (see 4.404); and

(ii) As appropriate, in solicitations and contracts when the contract may require access to classified information, a requirement for security safeguards in addition to those provided in the clause (52.204-2, Security Requirements).

(c) *Award phase.* Contracting officers shall inform contractors and subcontractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract as identified in the requirement documentation as follows:

(1) Nondefense agencies that have industrial security services agreements with DoD, and DoD components, shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized agency representative, is the approving official for the DD Form 254 associated with the prime contract and shall ensure the DD Form 254 is properly prepared, distributed by and coordinated with requirements and security personnel in accordance with agency procedures, see 4.402(d)(1).

(2) Contracting officers in agencies not covered by the NISP shall follow agency procedures.

[48 FR 42113, Sept. 19, 1983, as amended at 61 FR 31617, June 20, 1996; 73 FR 21781, Apr. 22, 2008; 84 FR 19840, May 6, 2019; 85 FR 40063, July 2, 2020]

4.404 Contract clause.

(a) The contracting officer shall insert the clause at 52.204-2, Security Requirements, in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in paragraph (d) of this section apply.

(b) If a cost contract (see 16.302) for research and development with an educational institution is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) If a construction or architect-engineer contract where employee identification is required for security reasons is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the contracting agency is not covered by the NISP and has prescribed a clause and alternates that are substantially the same as those at 52.204-2, the contracting officer shall use the agency-prescribed clause as required by agency procedures.

[48 FR 42113, Sept. 19, 1983, as amended at 61 FR 31617, June 20, 1996; 84 FR 19840, May 6, 2019]

Subpart 4.5—Electronic Commerce in Contracting

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 63 FR 58592, Oct. 30, 1998, unless otherwise noted.

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of electronic commerce in Federal acquisition as required by 41 U.S.C. 2301.

[79 FR 24197, Apr. 29, 2014]

4.501 [Reserved]

4.502 Policy.

(a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (e.g., “copy,” “document,” “page,” “printed,” “sealed envelope,” and “stamped”) shall not be interpreted to restrict the use of electronic commerce. Contracting officers

4.600

may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the FAR (e.g., transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, as required by 41 U.S.C. 2301, the head of each agency, after consulting with the Administrator of OFPP, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

(1) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(2) Are implemented only after considering the full or partial use of existing infrastructures;

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns;

(4) Include a single means of providing widespread public notice of acquisition opportunities through the Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

(5) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(c) Before using electronic commerce, the agency head shall ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

[63 FR 58592, Oct. 30, 1998, as amended at 66 FR 27409, May 16, 2001; 68 FR 28094, May 22, 2003; 70 FR 14954, Mar. 23, 2005; 72 FR 63076, Nov. 7, 2007; 79 FR 24197, Apr. 29, 2014]

48 CFR Ch. 1 (10–1–24 Edition)

Subpart 4.6—Contract Reporting

SOURCE: 73 FR 21776, Apr. 22, 2008, unless otherwise noted.

4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Definitions.

As used in this subpart—

Contract action means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Contract action does not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.

Contract action report (CAR) means contract action data required to be entered into the Federal Procurement Data System (FPDS).

Definitive contract means any contract that must be reported to FPDS other than an indefinite delivery vehicle. This definition is only for FPDS, and is not intended to apply to Part 16.

Entitlement program means a Federal program that guarantees a certain level of benefits to persons or other entities who meet requirements set by law, such as Social Security, farm price supports, or unemployment benefits.

Generic entity identifier means a number or other identifier assigned to a category of vendors and not specific to any individual or entity.

Indefinite delivery vehicle (IDV) means an indefinite delivery contract or agreement that has one or more of the following clauses:

(1) 52.216–18, Ordering.

(2) 52.216–19, Order Limitations.

(3) 52.216–20, Definite Quantity.

(4) 52.216–21, Requirements.

(5) 52.216–22, Indefinite Quantity.

(6) Any other clause allowing ordering.

[73 FR 21776, Apr. 22, 2008, as amended at 74 FR 2713, Jan. 15, 2009; 75 FR 77735, Dec. 13, 2010; 81 FR 67738, Sept. 30, 2016]

4.602 General.

(a) The FPDS provides a comprehensive web-based tool for agencies to report contract actions. The resulting data provides—

(1) A basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the effect of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and AbilityOne nonprofit agencies operating under 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled, are sharing in Federal contracts;

(3) A means of measuring and assessing the effect of Federal contracting for promoting sustainable technologies, materials, products, services, and high-performance sustainable buildings. This is accomplished by collecting and reporting agency data on sustainable acquisition, including types of products purchased, the purchase costs, and the exceptions used for other than sustainable acquisition; and

(4) A means of measuring and assessing the effect of other policy and management initiatives (*e.g.*, performance based acquisitions and competition).

(b) FPDS does not provide reports for certain acquisition information used in the award of a contract action (*e.g.*, subcontracting data, funding data, or accounting data).

(c) The FPDS Web site, <https://www.fpd.gov>, provides instructions for submitting data. It also provides—

(1) A complete list of departments, agencies, and other entities that submit data to the FPDS;

(2) Technical and end-user guidance;

(3) A computer-based tutorial; and

(4) Information concerning reports not generated in FPDS.

[73 FR 21776, Apr. 22, 2008, as amended at 73 FR 53994, Sept. 17, 2008; 76 FR 31397, May 31, 2011; 79 FR 24197, Apr. 29, 2014; 89 FR 30236, Apr. 22, 2024]

4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), all unclassified Federal award data must be publicly accessible.

(b) Executive agencies shall use FPDS to maintain publicly available information about all unclassified contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Program/Funding Agency and Office Codes from the applicable agency codes maintained by each agency at FPDS. These codes represent the agency and office that has provided the predominant amount of funding for the contract action. For assisted acquisitions, the requesting agency will receive socioeconomic credit for meeting agency small business goals, where applicable. Requesting agencies shall provide the appropriate agency/bureau component code as part of the written interagency agreement between the requesting and servicing agencies (see 17.502-1(a)(1)).

(d) Agencies awarding contract actions with a mix of appropriated and non-appropriated funding shall only report the full appropriated portion of the contract action in FPDS.

[77 FR 69721, Nov. 20, 2012, as amended at 84 FR 19838, May 6, 2019]

4.604 Responsibilities.

(a) The Senior Procurement Executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS.

(b)(1) The responsibility for the completion and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action. CARs in a draft or error status in FPDS are not considered complete.

(2) The CAR must be confirmed for accuracy by the contracting officer prior to release of the contract award.

The CAR must then be completed in FPDS within three business days after contract award.

(3) For any action awarded in accordance with 6.302-2 or pursuant to any of the authorities listed at subpart 18.2, the CAR must be completed in FPDS within 30 days after contract award.

(4) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, the contracting officer shall update the size status in FPDS within 30 days after receipt of contractor's notification of rerepresentation.

(5) If after award of a contract, the contracting officer receives written notification of SBA's final decision on a protest concerning a size determination, the contracting officer shall update FPDS to reflect the final decision.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, within 120 days after the end of each fiscal year, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

[73 FR 21776, Apr. 22, 2008, as amended at 76 FR 68044, Nov. 2, 2011; 77 FR 69717, Nov. 20, 2012; 79 FR 43582, July 25, 2014; 84 FR 19840, May 6, 2019]

4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIID reported to FPDS is unique Government-wide, for all solicitations, contracts, blanket purchase agreements, basic agreements, basic ordering agreements, or orders in accordance with 4.1601 to 4.1603, and will remain so for at least 20 years from the date of contract award. Other pertinent PIID instructions for FPDS reporting can be found at <https://www.fpds.gov>.

(b) *Unique entity identifier*. The contracting officer shall identify and report a unique entity identifier for the successful offeror on a contract action. The unique entity identifier shall correspond to the successful offeror's

name and address as stated in the offer and resultant contract, and as registered in the System for Award Management in accordance with the provision at 52.204-7, System for Award Management. The contracting officer shall ask the offeror to provide its unique entity identifier by using either the provision at 52.204-6, Unique Entity Identifier, the provision at 52.204-7, System for Award Management, or the provision at 52.212-1, Instructions to Offerors—Commercial Products and Commercial Services. (For a discussion of the Commercial and Government Entity (CAGE) Code, which is a different identifier, see subpart 4.18.)

(c) *Generic entity identifier*. (1) The use of a generic entity identifier should be limited, and only used in the situations described in paragraph (c)(2) of this section. Use of a generic entity identifier does not supersede the requirements of provisions 52.204-6, Unique Entity Identifier or 52.204-7, System for Award Management (if present in the solicitation) for the contractor to have a unique entity identifier assigned.

(2) Authorized generic entity identifiers, maintained by the Integrated Award Environment (IAE) program office (<http://www.gsa.gov/portal/content/105036>), may be used to report contracts in lieu of the contractor's actual unique entity identifier only for—

(i) Contract actions valued at or below \$30,000 that are awarded to a contractor that is—

(A) A student;

(B) A dependent of either a veteran, foreign service officer, or military member assigned outside the United States and its outlying areas (as defined in 2.101); or

(C) Located outside the United States and its outlying areas for work to be performed outside the United States and its outlying areas and the contractor does not otherwise have a unique entity identifier;

(ii) Contracts valued above \$30,000 awarded to individuals located outside the United States and its outlying areas for work to be performed outside the United States and its outlying areas; or

(iii) Contracts when specific public identification of the contracted party

could endanger the mission, contractor, or recipients of the acquired goods or services. The contracting officer must include a written determination in the contract file of a decision applicable to authority under this paragraph (c)(2)(iii).

(d) *American Recovery and Reinvestment Act actions.* The contracting officer, when entering data in FPDS, shall use the instructions at <https://www.fpds.gov> to identify any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(e) *Office codes.* Agencies shall by March 31, 2016—

(1) Use the Activity Address Code (AAC), as defined in 2.101, assigned to the issuing contracting office as the contracting office code, and

(2) Use the AAC assigned to the program/funding office providing the predominance of funding for the contract action as the program/funding office code.

[73 FR 21776, Apr. 22, 2008, as amended at 74 FR 14638, Mar. 31, 2009; 76 FR 39235, July 5, 2011; 77 FR 69717, Nov. 20, 2012; 78 FR 37677, June 21, 2013; 79 FR 43590, July 25, 2014; 79 FR 31190, May 30, 2014; 79 FR 61740, Oct. 14, 2014; 79 FR 63562, Oct. 24, 2014; 80 FR 53439, Sept. 3, 2015; 80 FR 38296, July 2, 2015; 83 FR 48695, Sept. 26, 2018; 81 FR 67738, Sept. 30, 2016; 86 FR 61020, Nov. 4, 2021]

4.606 Reporting Data.

(a) *Actions required to be reported to FPDS.* (1) As a minimum, agencies must report the following contract actions over the micro-purchase threshold, regardless of solicitation process used, and agencies must report any modification to these contract actions that change previously reported contract action data, regardless of dollar value:

(i) Definitive contracts, including purchase orders and imprest fund buys over the micro-purchase threshold awarded by a contracting officer.

(ii) Indefinite delivery vehicle (identified as an “IDV” in FPDS). Examples of IDVs include the following:

(A) Task and Delivery Order Contracts (see Subpart 16.5), including—

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

(C) Blanket Purchase Agreements (see 13.303).

(D) Basic Ordering Agreements (see 16.703).

(E) Any other agreement or contract against which individual orders or purchases may be placed.

(iii) All calls and orders awarded under the indefinite delivery vehicles identified in paragraph (a)(1)(ii) of this section.

(2) The GSA Office of Charge Card Management will provide the Government purchase card data, at a minimum annually, and GSA will incorporate that data into FPDS for reports.

(3) Agencies may use the FPDS Express Reporting capability for consolidated multiple action reports for a vendor when it would be overly burdensome to report each action individually. When used, Express Reporting should be done at least monthly.

(b) *Reporting other actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section only if they are able to be segregated from FAR-based actions and this is approved in writing by the FPDS Program Office. Prior to the commencement of reporting, agencies must contact the FPDS Program Office if they desire to submit any of the following types of activity:

(1) Transactions at or below the micro-purchase threshold, except as provided in paragraph (a)(2) of this section.

(2) Any non-appropriated fund (NAF) or NAF portion of a contract action using a mix of appropriated and non-appropriated funding.

(3) Lease and supplemental lease agreements for real property.

(4) Grants and entitlement actions.

(c) *Actions not reported.* The following types of contract actions are not to be reported to FPDS:

(1) Imprest fund transactions below the micro-purchase threshold, including those made via the Government purchase card (unless specific agency procedures prescribe reporting these actions).

(2) Orders from GSA stock and the GSA Global Supply Program.

(3) Purchases made at GSA or AbilityOne service stores, as these

4.607

items stocked for resale have already been reported by GSA.

(4) Purchases made using non-appropriated fund activity cards, chaplain fund cards, individual Government personnel training orders, and Defense Printing orders.

(5) Actions that, pursuant to other authority, will not be entered in FPDS (*e.g.*, reporting of the information would compromise national security).

(6) Contract actions in which the required data would constitute classified information.

(7) Resale activity (*i.e.*, commissary or exchange activity).

(8) Revenue generating arrangements (*i.e.*, concessions).

(9) Training expenditures not issued as orders or contracts.

(10) Interagency agreements other than inter-agency acquisitions required to be reported at 4.606(a)(1).

(11) Letters of obligation used in the A-76 process.

(d) *Agencies not subject to the FAR.* Agencies not subject to the FAR may be required by other authority (*e.g.*, statute, OMB, or internal agency policy) to report certain information to FPDS. Those agencies not subject to the FAR must first receive approval from the FPDS Program Office prior to reporting to FPDS.

[73 FR 21776, Apr. 22, 2008, as amended at 73 FR 53994, Sept. 17, 2008; 75 FR 34264, June 16, 2010; 75 FR 82567, Dec. 30, 2010; 77 FR 69717, Nov. 20, 2012]

4.607 Solicitation provisions and contract clause.

(a) Insert the provision at 52.204-5, Women-Owned Business (Other Than Small Business), in all solicitations that—

(1) Are not set aside for small business concerns;

(2) Exceed the simplified acquisition threshold; and

(3) Are for contracts that will be performed in the United States or its outlying areas.

(b) Insert the provision at 52.204-6, Unique Entity Identifier, in solicitations that do not contain the provision at 52.204-7, System for Award Management, or meet a condition at 4.605(c)(2).

(c) Insert the clause at 52.204-12, Unique Entity Identifier Maintenance,

48 CFR Ch. 1 (10-1-24 Edition)

in solicitations and resulting contracts that contain the provision at 52.204-6, Unique Entity Identifier.

[73 FR 21776, Apr. 22, 2008, as amended at 77 FR 69717, Nov. 20, 2012; 78 FR 37677, June 21, 2013; 81 FR 67738, Sept. 30, 2016; 84 FR 19841, May 6, 2019]

Subpart 4.7—Contractor Records Retention

4.700 Scope of subpart.

This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms “contracts” and “contractors” include “subcontracts” and “subcontractors.”

4.701 Purpose.

The purpose of this subpart is to generally describe records retention requirements and to allow reductions in the retention period for specific classes of records under prescribed circumstances.

4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

(1) Audit and Records—Sealed Bidding (52.214-26).

(2) Audit and Records—Negotiation (52.215-2).

(b) This subpart is not mandatory on Department of Energy contracts for which the Comptroller General allows alternative records retention periods. Apart from this exception, this subpart applies to record retention periods under contracts that are subject to 10 U.S.C. chapter 137 legacy provisions (10 U.S.C. 3064) and 10 U.S.C. 3016 and chapter 203 or 40 U.S.C. 101, *et seq.*

[48 FR 42113, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 42650, Aug. 16, 1995; 60 FR 48211, Sept. 18, 1995; 62 FR 258, Jan. 2, 1997; 70 FR 57454, Sept. 30, 2005; 87 FR 73896, Dec. 1, 2022]

4.703 Policy.

(a) Except as stated in 4.703(b), contractors shall make available records, which includes books, documents, accounting procedures and practices, and

other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for—

(1) 3 years after final payment; or

(2) For certain records, the period specified in 4.705 through 4.705-3, whichever of these periods expires first.

(b) Contractors shall make available the foregoing records and supporting evidence for a longer period of time than is required in 4.703(a) if—

(1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or

(2) The contractor, for its own purposes, retains the foregoing records and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.

(3) The contractor does not meet the original due date for submission of final indirect cost rate proposals specified in paragraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original due date.

(c) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

[48 FR 42113, Sept. 19, 1983, as amended at 51 FR 2649, Jan. 17, 1986; 53 FR 43388, Oct. 26, 1988; 54 FR 48982, Nov. 28, 1989; 59 FR 67015, Dec. 28, 1994; 60 FR 42650, Aug. 16, 1995; 62 FR 64915, Dec. 9, 1997; 72 FR 27383, May 15, 2007; 84 FR 19841, May 6, 2019]

4.704 Calculation of retention periods.

(a) The retention periods in 4.705 are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the final entry is made. The contractor should cut off the records in annual blocks and retain them for block disposal under the prescribed retention periods.

(b) When records generated during a prior contract are relied upon by a contractor for certified cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.

(c) If two or more of the record categories described in 4.705 are interfiled and screening for disposal is not practical, the contractor shall retain the

4.705

entire record series for the longest period prescribed for any category of records.

[48 FR 42113, Sept. 19, 1983, as amended at 75 FR 53142, Aug. 30, 2010]

4.705 Specific retention periods.

The contractor shall retain the records identified in 4.705-1 through 4.705-3 for the periods designated, provided retention is required under 4.702. Records are identified in this subpart in terms of their purpose or use and not by specific name or form number. Although the descriptive identifications may not conform to normal contractor usage or filing practices, these identifications apply to all contractor records that come within the description.

4.705-1 Financial and cost accounting records.

(a) Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices: Retain 4 years.

(b) Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies: Retain 4 years.

(c) Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses: Retain 4 years.

(d) Paid, canceled, and voided checks, other than those issued for the payment of salary and wages: Retain 4 years.

(e) Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda: Retain 4 years.

(f) Labor cost distribution cards or equivalent documents: Retain 2 years.

(g) Petty cash records showing description of expenditures, to whom

48 CFR Ch. 1 (10-1-24 Edition)

paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents: Retain 2 years.

4.705-2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

(b) Clock cards or other time and attendance cards: Retain 2 years.

(c) Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees: Retain 2 years.

[48 FR 42113, Sept. 19, 1983, as amended at 65 FR 36022, June 6, 2000; 67 FR 70517, Nov. 22, 2002]

4.705-3 Acquisition and supply records.

(a) Store requisitions for materials, supplies, equipment, and services: Retain 2 years.

(b) Work orders for maintenance and other services: Retain 4 years.

(c) Equipment records, consisting of equipment usage and status reports and equipment repair orders: Retain 4 years.

(d) Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract: Retain 4 years.

(e) Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials: Retain 4 years.

(f) Purchase order files for supplies, equipment, material, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda; e.g., memoranda of negotiations showing the principal elements of subcontract price negotiations (see 52.244-2): Retain 4 years.

(g) Production records of quality control, reliability, and inspection: Retain 4 years.

(h) Property records (see FAR 45.101 and 52.245-1): Retain 4 years.

[48 FR 42113, Sept. 19, 1983, as amended at 63 FR 34060, June 22, 1998; 75 FR 38679, July 2, 2010]

4.706 [Reserved]**Subpart 4.8—Government Contract Files****4.800 Scope of subpart.**

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files.

[65 FR 36022, June 6, 2000]

4.801 General.

(a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.

(b) The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of—

(1) Providing a complete background as a basis for informed decisions at each step in the acquisition process;

(2) Supporting actions taken;

(3) Providing information for reviews and investigations; and

(4) Furnishing essential facts in the event of litigation or congressional inquiries.

(c) The files to be established include—

(1) A file for cancelled solicitations;

(2) A file for each contract; and

(3) A file such as a contractor general file, containing documents relating, for example, to—

(i) No specific contract;

(ii) More than one contract; or

(iii) The contractor in a general way (*e.g.*, contractor's management systems, past performance, or capabilities).

[48 FR 42113, Sept. 19, 1983, as amended at 84 FR 19841, May 6, 2019]

4.802 Contract files.

(a) A contract file should generally consist of—

(1) The contracting office contract file, that documents the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office;

(2) The contract administration office contract file, that documents ac-

tions reflecting the basis for and the performance of contract administration responsibilities; and

(3) The paying office contract file, that documents actions prerequisite to, substantiating, and reflecting contract payments.

(b) Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined; *e.g.*, if all functions or any combination of the functions are performed by the same office.

(c) Files must be maintained at organizational levels that ensure—

(1) Effective documentation of contract actions;

(2) Ready accessibility to principal users;

(3) Minimal establishment of duplicate and working files;

(4) The safeguarding of classified documents; and

(5) Conformance with agency regulations for file location and maintenance.

(d) If the contract files or file segments are decentralized (*e.g.*, by type or function) to various organizational elements or to other outside offices, responsibility for their maintenance must be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 2.101 must be protected from disclosure to unauthorized persons (see 3.104-4).

(f) Agencies may retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied.

[48 FR 42113, Sept. 19, 1983, as amended at 54 FR 20496, May 11, 1989; 55 FR 36794, Sept. 6, 1990; 59 FR 67016, Dec. 28, 1994; 62 FR 232, Jan. 2, 1997; 67 FR 13063, Mar. 20, 2002]

4.803 Contents of contract files.

The following are examples of the records normally contained, if applicable, in contract files:

(a) *Contracting office contract file.* (1) Purchase request, acquisition planning information, and other presolicitation documents.

(2) Justifications and approvals, determinations and findings, and associated documents.

(3) Evidence of availability of funds.

(4) Synopsis of proposed acquisition as required by part 5 or a reference to the synopsis.

(5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.

(6) Set-aside decision (see 19.506) including the type and extent of market research conducted.

(7) Government estimate of contract price.

(8) A copy of the solicitation and all amendments thereto.

(9) Security requirements and evidence of required clearances.

(10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are—

(i) Completed solicitation sections A, B, and K;

(ii) Technical and management proposals;

(iii) Cost/price proposals; and

(iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.

(11) Contractor's representations and certifications (see 4.1201(c)).

(12) Preaward survey reports or reference to previous preaward survey reports relied upon.

(13) Source selection documentation.

(14) Contracting officer's determination of the contractor's responsibility.

(15) Small Business Administration Certificate of Competency.

(16) Records of contractor's compliance with labor policies including equal employment opportunity policies.

(17) Data and information related to the contracting officer's determination of a fair and reasonable price. This may include—

(i) Certified cost or pricing data;

(ii) Data other than certified cost or pricing data;

(iii) Justification for waiver from the requirement to submit certified cost or pricing data; or

(iv) Certificates of Current Cost or Pricing Data.

(18) Packaging and transportation data.

(19) Cost or price analysis.

(20) Audit reports or reasons for waiver.

(21) Record of negotiation.

(22) Justification for type of contract.

(23) Authority for deviations from this regulation, statutory requirements, or other restrictions.

(24) Required approvals of award and evidence of legal review.

(25) Notice of award.

(26) The original of—

(i) The signed contract or award;

(ii) All contract modifications; and

(iii) Documents supporting modifications executed by the contracting office.

(27) Synopsis of award or reference thereto.

(28) Notice to unsuccessful quoters or offerors and record of any debriefing.

(29) Acquisition management reports (see subpart 4.6).

(30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.

(31) Report of postaward conference.

(32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.

(33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.

(34) Approvals or disapprovals of requests for waivers or deviations from contract requirements.

(35) Rejected engineering change proposals.

(36) Royalty, invention, and copyright reports (including invention disclosures) or reference thereto.

(37) Contract completion documents.

(38) Documentation regarding termination actions for which the contracting office is responsible.

(39) Cross-references to pertinent documents that are filed elsewhere.

(40) Any additional documents on which action was taken or that reflect

Federal Acquisition Regulation

4.804-1

actions by the contracting office pertinent to the contract.

(41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.

(42) When limiting competition, or awarding on a sole source basis, to economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program in accordance with subpart 19.15, include documentation—

(i) Of the type and extent of market research; and

(ii) That the NAICS code assigned to the acquisition is for an industry that SBA has designated as—

(A) Underrepresented for EDWOSB concerns; or

(B) Substantially underrepresented for WOSB concerns.

(b) *Contract administration office contract file.* (1) Copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.

(2) Any document modifying the normal assignment of contract administration functions and responsibility.

(3) Security requirements.

(4) Certified cost or pricing data, Certificates of Current Cost or Pricing Data, or data other than certified cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

(5) Preaward survey information.

(6) Purchasing system information.

(7) Consent to subcontract or purchase.

(8) Performance and payment bonds and surety information.

(9) Postaward conference records.

(10) Orders issued under the contract.

(11) Notice to proceed and stop orders.

(12) Insurance policies or certificates of insurance or references to them.

(13) Documents supporting advance or progress payments.

(14) Progressing, expediting, and production surveillance records.

(15) Quality assurance records.

(16) Property administration records.

(17) Documentation regarding termination actions for which the contract administration office is responsible.

(18) Cross reference to other pertinent documents that are filed elsewhere.

(19) Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract.

(20) Contract completion documents.

(c) *Paying office contract file.* (1) Copy of the contract and any modifications.

(2) Bills, invoices, vouchers, and supporting documents.

(3) Record of payments or receipts.

(4) Other pertinent documents.

[48 FR 42113, Sept. 19, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting section 4.803, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

4.804 Closeout of contract files.

4.804-1 Closeout by the office administering the contract.

(a) Except as provided in paragraph (c) of this section, time standards for closing out contract files are as follows:

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

(3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

(4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

(b) When closing out the contract files at 4.804-1(a)(2), (3), and (4), the

4.804-2

contracting officer shall use the closeout procedures at 4.804-5. However, these closeout actions may be modified to reflect the extent of administration that has been performed. Quick closeout procedures (see 42.708) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

(c) A contract file shall not be closed if—

(1) The contract is in litigation or under appeal; or

(2) In the case of a termination, all termination actions have not been completed.

[48 FR 42113, Sept. 19, 1983, as amended at 54 FR 34752, Aug. 21, 1989; 60 FR 34746, July 3, 1995; 84 FR 19841, May 6, 2019]

4.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

(b) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

[48 FR 42113, Sept. 19, 1983, as amended at 60 FR 34746, July 3, 1995]

4.804-3 Closeout of paying office contract files.

The paying office shall close the contract file upon issuance of the final payment voucher.

4.804-4 Physically completed contracts.

(a) Except as provided in paragraph (b) of this section, a contract is considered to be physically completed when—

(1)(i) The contractor has completed the required deliveries and the Govern-

48 CFR Ch. 1 (10-1-24 Edition)

ment has inspected and accepted the supplies;

(ii) The contractor has performed all services and the Government has accepted these services; and

(iii) All option provisions, if any, have expired; or

(2) The Government has given the contractor a notice of complete contract termination.

(b) Rental, use, and storage agreements are considered to be physically completed when—

(1) The Government has given the contractor a notice of complete contract termination; or

(2) The contract period has expired.

[48 FR 42113, Sept. 19, 1983, as amended at 72 FR 27383, May 15, 2007; 84 FR 19841, May 6, 2019]

4.804-5 Procedures for closing out contract files.

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that—

(1) Disposition of classified material is completed;

(2) *Final patent report is cleared.* If a final patent report is required, the contracting officer may proceed with contract closeout in accordance with the following procedures, or as otherwise prescribed by agency procedures:

(i) Final patent reports should be cleared within 60 days of receipt.

(ii) If the final patent report is not received, the contracting officer shall notify the contractor of the contractor's obligations and the Government's rights under the applicable patent rights clause, in accordance with 27.303. If the contractor fails to respond to this notification, the contracting officer may proceed with contract closeout upon consultation with the agency legal counsel responsible for patent matters regarding the contractor's failure to respond.

Federal Acquisition Regulation

4.805

- (3) Final royalty report is cleared;
 - (4) There is no outstanding value engineering change proposal;
 - (5) Plant clearance report is received;
 - (6) Property clearance is received;
 - (7) All interim or disallowed costs are settled;
 - (8) Price revision is completed;
 - (9) Subcontracts are settled by the prime contractor;
 - (10) Prior year indirect cost rates are settled;
 - (11) Termination docket is completed;
 - (12) Contract audit is completed;
 - (13) Contractor's closing statement is completed;
 - (14) Contractor's final invoice has been submitted; and
 - (15) Contract funds review is completed and excess funds deobligated.
- (b) When the actions in paragraph (a) of this section have been verified, the contracting officer administering the contract must ensure that a contract completion statement, containing the following information, is prepared:
- (1) Contract administration office name and address (if different from the contracting office).
 - (2) Contracting office name and address.
 - (3) Contract number.
 - (4) Last modification number.
 - (5) Last call or order number.
 - (6) Contractor name and address.
 - (7) Dollar amount of excess funds, if any.
 - (8) Voucher number and date, if final payment has been made.
 - (9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown.
 - (10) A statement that all required contract administration actions have been fully and satisfactorily accomplished.
 - (11) Name and signature of the contracting officer.
 - (12) Date.
- (c) When the statement is completed, the contracting officer must ensure that—
- (1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract

administration office is different from the contracting office); and

- (2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

[48 FR 42113, Sept. 19, 1983, as amended at 54 FR 34752, Aug. 21, 1989; 64 FR 72445, Dec. 27, 1999; 76 FR 31408, May 31, 2011; 84 FR 19841, May 6, 2019]

4.805 Storage, handling, and contract files.

- (a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files, in accordance with the National Archives and Records Administration (NARA) General Records Schedule 1.1, Financial Management and Reporting Records. The Financial Management and Reporting Records can be found at <http://www.archives.gov/records-mgmt/grs.html>.

These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of this part, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. When original documents have been converted to alternate media for storage, the requirements in Table 4-1 of this section also apply to the record copies in the alternate media.

- (b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the

4.900

48 CFR Ch. 1 (10–1–24 Edition)

table, they should be treated in the same manner as the files of which they are a part.

(c) An agency that requires a shorter retention period than those identified

in Table 4–1 shall request approval from NARA through the agency's records officer.

TABLE 4–1—RETENTION PERIODS

Record	Retention period
(1) Contracts (and related records or documents, including successful and unsuccessful proposals, except see paragraph (c)(2) of this section regarding contractor payrolls submitted under construction contracts).	6 years after final payment.
(2) Contractor's payrolls submitted under construction contracts in accordance with Department of Labor regulations (29 CFR 5.5(a)(3)), with related certifications, anti-kickback affidavits, and other related records..	3 years after contract completion unless contract performance is the subject of an enforcement action on that date (see paragraph (c)(8) of this section).
(3) Unsolicited proposals not accepted by a department or agency..	Retain in accordance with agency procedures.
(4) Files for canceled solicitations.	6 years after cancellation.
(5) Other copies of procurement file records used for administrative purposes..	When business use ceases.
(6) Documents pertaining generally to the contractor as described at 4.801(c)(3)..	Until superseded or obsolete.
(7) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements exceeding the micro-purchase threshold, and information required under 4.603..	6 years after submittal to FPDS.
(8) Investigations, cases pending or in litigation (including protests), or similar matters (including enforcement actions)..	Until final clearance or settlement, or, if related to a document identified in paragraphs (c)(1) through (7) of this section, for the retention period specified for the related document, whichever is later.

[80 FR 75914, Dec. 4, 2015, as amended at 84 FR 19841, May 6, 2019]

Subpart 4.9—Taxpayer Identification Number Information

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 63 FR 58589, Oct. 30, 1998, unless otherwise noted.

4.900 Scope of subpart.

This subpart provides policies and procedures for obtaining—

(a) Taxpayer Identification Number (TIN) information that may be used for debt collection purposes; and

(b) Contract information and payment information for submittal to the payment office for Internal Revenue Service (IRS) reporting purposes.

4.901 Definition.

Common parent, as used in this subpart, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated

basis, and of which the offeror is a member.

[60 FR 28493, May 31, 1995, as amended at 66 FR 2127, Jan. 10, 2001]

4.902 General.

(a) *Debt collection*. 31 U.S.C. 7701(c) requires each contractor doing business with a Government agency to furnish its TIN to that agency. 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government.

(b) *Information reporting to the IRS*. The TIN is also required for Government reporting of certain contract information (see 4.903) and payment information (see 4.904) to the IRS.

Federal Acquisition Regulation

4.1002

4.903 Reporting contract information to the IRS.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by \$50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of \$25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and TIN of the contractor;

(2) Name and TIN of the common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

4.904 Reporting payment information to the IRS.

26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Government agencies, to report to the IRS, on Form 1099, payments made to certain contractors. 26 U.S.C. 6109 requires a contractor to provide its TIN if a Form 1099 is required. The payment office is responsible for submitting reports to the IRS.

4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204-3, Taxpayer Identification, in solicitations that—

(a) Do not include the provision at 52.204-7, System for Award Management; and

(b) Are not conducted under the procedures of part 12.

[68 FR 56672, Oct. 1, 2003, as amended at 77 FR 69718, Nov. 20, 2012; 78 FR 37678, June 21, 2013; 80 FR 26427, May 7, 2015]

Subpart 4.10—Uniform Use of Line Items

SOURCE: 82 FR 4711, Jan. 13, 2017, unless otherwise noted.

4.1000 Scope.

This subpart prescribes policies and procedures for assigning line items and subline items and their identifiers. However, in order to provide agencies with time to transition their information systems, agencies have until October 1, 2019, to apply the requirements of 4.1002 through 4.1008.

4.1001 Policy.

In order to improve the accuracy, traceability, and usability of procurement data, procurement instruments shall identify the supplies or services to be acquired as separately identified line items and, as needed, subline items.

(a) Line items are established to define deliverables or organize information about deliverables. Each line item describes characteristics for the item purchased, *e.g.*, pricing, delivery, and funding information.

(b) Each line item may be subdivided into separate unique subsets (called subline items) to ease administration. If a line item has deliverable subline items, the line item is informational. Subline items differentiate between or among certain characteristics of the line item, such as colors or sizes, dates of delivery, destinations, or places of performance. Subline items are established to define deliverables or organize information about deliverables.

4.1002 Applicability.

The policies of this subpart shall apply to the following procurement instruments, to include amendments, modifications, and change orders thereto:

(a) Solicitations.

(b) Contracts, including, but not limited to, Governmentwide acquisition contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, indefinite-delivery contracts, and purchase orders.

(c) Agreements that include pre-priced supplies or services.

4.1003

(d) Task and delivery orders.

4.1003 Establishing line items.

Establish separate line items for deliverables that have the following characteristics except as provided at 4.1005-2:

(a) Separately identifiable.

(1) A supply is separately identifiable if it has its own identification (*e.g.*, national stock number (NSN), item description, manufacturer's part number).

(2) Services are separately identifiable if they have no more than one statement of work or performance work statement.

(3) If the procurement instrument involves a first article (see subpart 9.3), establish a separate line item for each item requiring a separate approval. If the first article consists of a lot composed of a mixture of items that will be approved as a single lot, a single line item may be used.

(b) Single unit price or total price.

(c) Single accounting classification citation. A single deliverable may be funded by multiple accounting classifications when the deliverable effort cannot be otherwise subdivided.

(d) Separate delivery schedule, destination, period of performance, or place of performance.

(e) Single contract pricing type (*e.g.*, fixed-price or cost-reimbursement).

4.1004 Establishing subline items.

Subline items may be used to facilitate tracking of performance, deliverables, payment, and contract funds accounting or for other management purposes. Subline items may be either deliverable or informational. The list of characteristics at 4.1003 applies to deliverable subline items, but it is not applicable to informational subline items. A line item with subline items shall contain only that information that is common to all subline items thereunder. All subline items under one line item shall be the same contract type as the line item.

(a) *Deliverable subline items.* Deliverable subline items may be used for several related items that require separate identification. For example, instead of establishing multiple separate line

48 CFR Ch. 1 (10-1-24 Edition)

items, subline items may be established for—

(1) Items that are basically the same, except for minor variations such as—

(i) Size or color;

(ii) Accounting classification, but see also 4.1005-1(a)(4); or

(iii) Date of delivery, destination, or period or place of performance;

(2) Separately priced collateral functions that relate to the primary product, such as packaging and handling, or transportation; or

(3) Items to be separately identified at the time of shipment or performance.

(b) *Informational subline items.* (1) Informational subline items may be used by agencies for administrative purposes. This type of subline item identifies information that relates directly to the line item and is an integral part of it (*e.g.*, parts of an assembly or parts of a kit).

(2) Position informational subline items within the line item description, not in the quantity or price fields.

4.1005 Data elements for line items and subline items.

4.1005-1 Required data elements.

(a) Except as provided in 4.1005-2, each line item or subline item shall include in the schedule (described at 12.303(b)(4), 14.201-2, or 15.204-2, or in a comparable section of the procurement instrument), at a minimum, the following information as separate, distinct data elements:

(1) Line item or subline item number established in accordance with agency procedures.

(2) Description of what is being purchased.

(3) Product or Service Code (PSC).

(4) Accounting classification citation.

(i) Line items or deliverable subline items. If multiple accounting classifications for a single deliverable apply, include the dollar amount for each accounting classification in the schedule (or a comparable section of the procurement instrument).

(ii) Informational subline items. An accounting classification citation is not required. (See 4.1004).

(5)(i) For fixed-price line items:

(A) Unit of measure.

Federal Acquisition Regulation

4.1007

- (B) Quantity.
- (C) Unit price.
- (D) Total price.
- (ii) For cost-reimbursement line items:
 - (A) Unit of measure.
 - (B) Quantity.
 - (C) Estimated cost.
 - (D) Fee (if any).
 - (E) Total estimated cost plus any fee.
- (b) If a contract contains a combination of fixed-price, time-and-materials, labor-hour, or cost-reimbursable line items, identify the contract type for each line item in the schedule (or a comparable section of the procurement instrument) to facilitate payment.
- (c) Each deliverable line item or deliverable subline item shall have its own delivery schedule, destination, period of performance, or place of performance expressly stated in the appropriate section of the procurement instrument (“as required” constitutes an expressly stated delivery term). When a line item has deliverable subline items, the delivery schedule, destination, period of performance, or place of performance shall be identified at the subline item level, rather than the line item level.
- (d) Terms and conditions in other sections of the contract (such as contract clauses or payment instructions) shall also specify applicability to individual line items if not applicable to the contract as a whole.

4.1005–2 Exceptions.

- (a) *Indefinite-delivery contracts*—(1) *General*. The following required data elements are not known at time of issuance of an indefinite-delivery contract, but shall be provided in each order at the time of issuance: accounting classification, delivery date and destination, or period and place of performance.
- (2) *Indefinite-delivery indefinite-quantity (IDIQ) and requirements contracts*. (i) IDIQ and requirements contracts may omit the quantity at the line item level for the base award provided that the total contract minimum and maximum, or the estimate, respectively, is stated.
- (ii) Multiple-award IDIQ contracts awarded using the procedures at 13.106–1(a)(2)(iv)(A) or 15.304(c)(1)(ii)(A) may

omit price or cost at the line item or subline item level for the contract award, provided that the total contract minimum and maximum is stated (see 16.504(a)(1)).

(b) *Item description and PSC*. These data elements are not required in the line item if there are associated deliverable subline items that include the actual detailed identification. When this exception applies, use a general narrative description for the line item.

(c) *Single unit price or single total price*. The requirement for a single unit price or single total price at the line item level does not apply if any of the following conditions are present:

- (1) There are associated deliverable subline items that are priced.
- (2) The line item or subline item is not separately priced.
- (3) The supplies or services are being acquired on a cost-reimbursement, time-and-materials, or labor-hour basis.
- (4) The procurement instrument is for services and firm prices have been established for elements of the total price, but the actual number of the elements is not known until performance (e.g., a labor-hour contract for maintenance/repair). The contracting officer may structure these procurement instruments to reflect a firm or estimated total amount for each line item.

[82 FR 4711, Jan. 13, 2017, as amended at 84 FR 19841, May 6, 2019; 85 FR 40071, July 2, 2020]

4.1006 Modifications.

- (a) When a new item (such as an increased quantity) is added to the procurement instrument, assign a new line item number.
- (b) If the modification relates to existing line items, the modification shall refer to those items.

4.1007 Solicitation alternative line item proposal.

Solicitations should be structured to allow offerors to propose alternative line items (see 4.1008 and 52.212–1(e)). For example, when soliciting certain items using units of measure such as kit, set, or lot, the offeror may not be able to group and deliver all items in a single shipment.

4.1008

48 CFR Ch. 1 (10–1–24 Edition)

4.1008 Solicitation provision.

Insert the provision at 52.204-22, Alternative Line Item Proposal, in all solicitations.

Subpart 4.11—System for Award Management

SOURCE: 68 FR 56672, Oct. 1, 2003, unless otherwise noted.

4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the System for Award Management (SAM) to—

(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and

(b) Establish a common source of vendor data for the Government.

[68 FR 56672, Oct. 1, 2003, as amended at 77 FR 188, Jan. 3, 2012; 78 FR 37678, June 21, 2013; 83 FR 48695, Sept. 26, 2018]

4.1101 Definition.

As used in this subpart—

Agreement means basic agreement, basic ordering agreement, or blanket purchase agreement.

[48 FR 42113, Sept. 19, 1983, as amended at 69 FR 76345, Dec. 20, 2004]

4.1102 Policy.

(a) Offerors and quoters are required to be registered in SAM at the time an offer or quotation is submitted in order to comply with the annual representations and certifications requirements except for—

(1) Purchases under the micro-purchase threshold that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card for payment only;

(2) Classified contracts (*see* 2.101) when registration in SAM, or use of SAM data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peace-

keeping operations as defined in 10 U.S.C. 3015(2);

(ii) Contracting officers located outside the United States and its outlying areas, as defined in 2.101, for work to be performed in support of diplomatic or developmental operations, including those performed in support of foreign assistance programs overseas, in an area that has been designated by the Department of State as a danger pay post (*see* <https://aoprals.state.gov/>); or

(iii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts with individuals for performance outside the United States and its outlying areas;

(5) Contracts awarded without providing for full and open competition due to unusual or compelling urgency (*see* 6.302-2);

(6) Contract actions at or below \$30,000 awarded to foreign vendors for work performed outside the United States, if it is impractical to obtain SAM registration; and

(7) Micro-purchases that do not use the electronic funds transfer (EFT) method for payment and are not required to be reported (*see* subpart 4.6).

(b) If practical, the contracting officer shall modify the contract or agreement awarded under paragraph (a)(3) of this section to require SAM registration.

(c) Contracting officers shall use the legal business name or “doing business as” name and physical address from the contractor’s SAM registration for the provided unique entity identifier to identify the contractor in section A of the contract schedule, similar sections of non-uniform contract formats and agreements, and all corresponding forms and data exchanges. Contracting officers shall make no changes to the data retrieved from SAM.

(d)(1)(i) If a contractor has legally changed its business name or “doing business as” name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and

Federal Acquisition Regulation

4.1105

change-of-name agreements in subpart 42.12, the contractor is required to provide the responsible contracting officer a minimum of one business day's written notification of its intention to change the name in SAM, comply with the requirements of subpart 42.12, and agree in writing to the timeline and procedures specified by the responsible contracting officer. Along with the notification, the contractor is required to provide the contracting officer sufficient documentation to support the legally changed name.

(ii) If the contractor fails to comply with the requirements of paragraph (d)(1)(i) of the clause at 52.204-13, System for Award Management Maintenance, or fails to perform the agreement at 52.204-13, paragraph (d)(1)(i)(C), and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of the contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see subpart 32.8, Assignment of Claims).

(3) Assignees shall be separately registered in SAM. Information provided to the contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of the contract.

[48 FR 42113, Sept. 19, 1983, as amended at 43586, July 27, 2005; 77 FR 69718, Nov. 20, 2012; 78 FR 37678, June 21, 2013; 80 FR 38296, July 2, 2015; 81 FR 30439, May 16, 2016; 83 FR 48695, Sept. 26, 2018; 85 FR 27101, May 6, 2020; 87 FR 73896, Dec. 1, 2022]

4.1103 Procedures.

(a) Unless the acquisition is exempt under 4.1102(a), the contracting officer—

(1) Shall verify that the offeror or quoter is registered in SAM (see paragraph (b) of this section) at the time an offer or quotation is submitted;

(2) Should use the unique entity identifier to verify SAM registration—

(i) Via <https://www.sam.gov>; or

(ii) As otherwise provided by agency procedures; or

(3) Need not verify SAM registration before placing an order or call if the contract or agreement includes the clause at 52.204-13, System for Award Management Maintenance, or a similar agency clause, except when use of the Governmentwide commercial purchase card is contemplated as a method of payment. (See 32.1108(b)(2).)

(b) If the contract action is being awarded in accordance with 4.1102(a)(5), the contractor is required to be registered in SAM within 30 days after contract award, or at least three days prior to submission of the first invoice, whichever occurs first.

(c) Agencies shall protect against improper disclosure of information contained in SAM.

(d) The contracting officer shall, on contractual documents transmitted to the payment office, provide the unique entity identifier, or, if applicable, the Electronic Funds Transfer indicator, in accordance with agency procedures.

83 FR 48695, Sept. 26, 2018, as amended at 86 FR 61020, Nov. 4, 2021; 87 FR 24844, Apr. 26, 2022]

4.1104 Disaster Response Registry.

Contracting officers shall consult the Disaster Response Registry via <https://www.sam.gov>, Search Records, Advanced Search, Disaster Response Registry Search when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

[74 FR 52849, Oct. 14, 2009, as amended at 77 FR 188, Jan. 3, 2012; 83 FR 48695, Sept. 26, 2018]

4.1105 Solicitation provision and contract clauses.

(a)(1) Insert the provision at 52.204-7, System for Award Management, in all solicitations except when the conditions in 4.1102(a) apply.

4.1200

(2) Insert the provision at 52.204-7, System for Award Management, with its Alternate I when the solicitation is anticipated to be awarded in accordance with 4.1102(a)(5).

(b) Insert the clause at 52.204-13, System for Award Management Maintenance, in solicitations that contain the provision at 52.204-7, and resulting contracts.

[83 FR 48695, Sept. 26, 2018]

Subpart 4.12—Representations and Certifications

SOURCE: 69 FR 76345, Dec. 20, 2004, unless otherwise noted.

4.1200 Scope.

This subpart prescribes policies and procedures for requiring submission and maintenance of representations and certifications via the System for Award Management (SAM) to—

(a) Eliminate the administrative burden for contractors of submitting the same information to various contracting offices;

(b) Establish a common source for this information to procurement offices across the Government; and

(c) Incorporate by reference the contractor's representations and certifications in the awarded contract.

[69 FR 76345, Dec. 20, 2004, as amended at 72 FR 36854, July 5, 2007; 78 FR 37678, June 21, 2013; 79 FR 70341, Nov. 25, 2014; 84 FR 19841, May 6, 2019]

4.1201 Policy.

(a) Offerors and quoters are required to complete electronic annual representations and certifications in SAM accessed via <https://www.sam.gov> as a part of required registration (see FAR 4.1102).

(b)(1) All registrants are required to review and update the representations and certifications submitted to SAM as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from date of submission or update to SAM.

(2) A contractor that represented itself as a small business prior to award of a contract must update the

48 CFR Ch. 1 (10-1-24 Edition)

representations and certifications in SAM in accordance with 52.219-28. A contractor that represented itself as other than small business before contract award and qualifies as a small business may update its representations and certifications in SAM in accordance with 52.219-28.

(c) Data in SAM is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically in SAM, the contracting officer must reference the date of SAM verification in the contract file to satisfy contract file documentation requirements of 4.803(a)(11). However, if an offeror identifies changes to SAM data pursuant to the FAR provisions at 52.204-8(d) or 52.212-3(b), the contracting officer must include a copy of the changes in the contract file.

(d) The contracting officer shall incorporate the representations and certifications by reference in the contract (see 52.204-19, or for acquisitions of commercial products or commercial services see 52.212-4(v)).

[83 FR 48696, Sept. 26, 2018, as amended at 86 FR 61020, Nov. 4, 2021]

4.1202 Solicitation provision and contract clause.

(a) Insert the provision at 52.204-8, Annual Representations and Certifications, in solicitations, except for solicitations for commercial products or commercial services issued under part 12. The contracting officer shall check the applicable provisions at 52.204-8(c)(2). Use the provision with its Alternate I in solicitations issued after October 1, 2028, that will result in a multiple-award contract with more than one North American Industry Classification System code assigned (see 19.102(b)). When the provision at 52.204-7, System for Award Management, is included in the solicitation, do not separately include the following representations and certifications:

(1) 52.203-2, Certificate of Independent Price Determination.

(2) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(3) 52.203-18, Prohibition on Contracting with Entities that Require

Federal Acquisition Regulation

4.1301

Certain Internal Confidentiality Agreements or Statements—Representation.

(4) 52.204-3, Taxpayer Identification.

(5) 52.204-5, Women-Owned Business (Other Than Small Business).

(6) 52.204-17, Ownership or Control of Offeror.

(7) 52.204-20, Predecessor of Offeror.

(8) 52.204-26, Covered Telecommunications Equipment or Services—Representation.

(9) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.

(10) 52.209-5, Certification Regarding Responsibility Matters.

(11) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

(12) 52.214-14, Place of Performance—Sealed Bidding.

(13) 52.215-6, Place of Performance.

(14) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II).

(15) 52.219-2, Equal Low Bids.

(16) [Reserved]

(17) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

(18) 52.222-22, Previous Contracts and Compliance Reports.

(19) 52.222-25, Affirmative Action Compliance.

(20) 52.222-38, Compliance with Veterans' Employment Reporting Requirements.

(21) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification.

(22) 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification.

(23) 52.223-1, Biobased Product Certification.

(24) 52.223-4, Recovered Material Certification.

(25) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

(26) 52.225-2, Buy American Certificate.

(27) 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act

Certificate (Basic, Alternates II and III).

(28) 52.225-6, Trade Agreements Certificate.

(29) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(30) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.

(31) 52.226-2, Historically Black College or University and Minority Institution Representation.

(32) 52.227-6, Royalty Information (Basic & Alternate I).

(33) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(b) The contracting officer shall insert the clause at 52.204-19, Incorporation by Reference of Representations and Certifications, in solicitations and contracts.

[69 FR 76345, Dec. 20, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting section 4.1202, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

Subpart 4.13—Personal Identity Verification

SOURCE: 72 FR 46335, Aug. 17, 2007, unless otherwise noted.

4.1300 Scope of subpart.

This subpart provides policy and procedures associated with Personal Identity Verification as required by—

(a) Federal Information Processing Standards Publication (FIPS PUB) Number 201, “Personal Identity Verification of Federal Employees and Contractors”; and

(b) Office of Management and Budget (OMB) Guidance M-05-24, dated August 5, 2005, “Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors.”

4.1301 Policy.

(a) Agencies must follow FIPS PUB Number 201 and the associated OMB

4.1302

implementation guidance for personal identity verification for all affected contractor and subcontractor personnel when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(b) Agencies must include their implementation of FIPS PUB 201 and OMB Guidance M-05-24 in solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(c) Agencies must designate an official responsible for verifying contractor employee personal identity.

(d)(1) Agency procedures for the return of Personal Identity Verification (PIV) products shall ensure that Government contractors account for all forms of Government-provided identification issued to Government contractor employees under a contract, *i.e.*, the PIV cards or other similar badges, and shall ensure that contractors return such identification to the issuing agency as soon as any of the following occurs, unless otherwise determined by the agency:

(i) When no longer needed for contract performance.

(ii) Upon completion of a contractor employee's employment.

(iii) Upon contract completion or termination.

(2) The contracting officer may delay final payment under a contract if the contractor fails to comply with these requirements.

[72 FR 46335, Aug. 17, 2007, as amended at 75 FR 82576, Dec. 30, 2010]

4.1302 Acquisition of approved products and services for personal identity verification.

(a) In order to comply with FIPS PUB 201, agencies must purchase only approved personal identity verification products and services.

(b) Agencies may acquire the approved products and services from the GSA, Federal Supply Schedule 70, Special Item Number (SIN) 132-62, HSPD-12 Product and Service Components, in

48 CFR Ch. 1 (10-1-24 Edition)

accordance with ordering procedures outlined in FAR Subpart 8.4.

(c) When acquiring personal identity verification products and services not using the process in paragraph (b) of this section, agencies must ensure that the applicable products and services are approved as compliant with FIPS PUB 201 including—

(1) Certifying the products and services procured meet all applicable Federal standards and requirements;

(2) Ensuring interoperability and conformance to applicable Federal standards for the lifecycle of the components; and

(3) Maintaining a written plan for ensuring ongoing conformance to applicable Federal standards for the lifecycle of the components.

(d) For more information on personal identity verification products and services see <http://www.idmanagement.gov>.

4.1303 Contract clause.

The contracting officer shall insert the clause at 52.204-9, Personal Identity Verification of Contractor Personnel, in solicitations and contracts when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. The clause shall not be used when contractors require only intermittent access to Federally-controlled facilities.

Subpart 4.14—Reporting Executive Compensation and First-Tier Subcontract Awards

SOURCE: 75 FR 39419, July 8, 2010, unless otherwise noted.

4.1400 Scope of subpart.

This subpart implements section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), which requires contractors to report subcontract award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor. The public may

Federal Acquisition Regulation

4.1601

view first-tier subcontract award data at <https://www.usaspending.gov>.

[75 FR 39419, July 8, 2010, as amended at 81 FR 67781, Sept. 30, 2016]

4.1401 Applicability.

(a) This subpart applies to all contracts with a value of \$30,000 or more. Nothing in this subpart requires the disclosure of classified information.

(b) Reporting of subcontract information will be limited to the first-tier subcontractor.

[77 FR 44058, July 26, 2012, as amended at 80 FR 38296, July 2, 2015]

4.1402 Procedures.

(a) Agencies shall ensure that contractors comply with the reporting requirements of 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards. Agencies shall review contractor reports on a quarterly basis to ensure the information is consistent with contract information. The agency is not required to address data for which the agency would not normally have supporting information, such as the compensation information required of contractors and first-tier subcontractors. However, the agency shall inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation as to why it believes the information is correct. Agencies may review the reports at <http://www.fsrs.gov>.

(b) When contracting officers report the contract action to the Federal Procurement Data System (FPDS) in accordance with FAR subpart 4.6, certain data will then pre-populate from FPDS, to assist contractors in completing and submitting their reports. If data originating from FPDS is found by the contractor to be in error when the contractor completes the subcontract report, the contractor should notify the Government contracting officer, who is responsible for correcting the data in FPDS. Contracts reported using the generic entity identifier allowed at FAR 4.605(c)(2) will interfere with the contractor's ability to comply with this reporting requirement, be-

cause the data will not pre-populate from FPDS.

(c) If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies. In addition, the contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under Subpart 42.15.

(d) There is a reporting exception in 52.204-10(g) for contractors and subcontractors who had gross income in the previous tax year under \$300,000.

[75 FR 39419, July 8, 2010, as amended at 77 FR 44058, July 26, 2012; 77 FR 69718, Nov. 20, 2012; 81 FR 67738, Sept. 30, 2016]

4.1403 Contract clause.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall insert the clause at 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards, in all solicitations and contracts of \$30,000 or more.

(b) The clause is not prescribed for contracts that are not required to be reported in the Federal Procurement Data System (FPDS) (see subpart 4.6).

[77 FR 44058, July 26, 2012, as amended at 80 FR 38296, July 2, 2015]

Subpart 4.15 [Reserved]

Subpart 4.16—Unique Procurement Instrument Identifiers

SOURCE: 76 FR 39235, July 5, 2011, unless otherwise noted.

4.1600 Scope of subpart.

This subpart prescribes policies and procedures for assigning unique Procurement Instrument Identifiers (PIID) for each solicitation, contract, agreement, or order and related procurement instrument.

4.1601 Policy.

(a) *Establishment of a Procurement Instrument Identifier (PIID).* Agencies shall have in place a process that ensures that each PIID used to identify a solicitation or contract action is unique Governmentwide, and will remain so for at least 20 years from the

date of contract award. The PIID shall be used to identify all solicitation and contract actions. The PIID shall also be used to identify solicitation and contract actions in designated support and reporting systems (*e.g.*, Federal Procurement Data System, System for Award Management), in accordance with regulations, applicable authorities, and agency policies and procedures.)

(b) *Transition of PIID numbering.* No later than October 1, 2017, agencies shall comply with paragraph (a) of this section and use the requirements in 4.1602 and 4.1603 for all new solicitations and contract awards. Until an agency's transition is complete, it shall maintain its 2013 PIID format that is on record with the General Services Administration's Integrated Award Environment Program Office (which maintains a registry of the agency unique identifier scheme). The 2013 PIID format consisted of alpha characters in the first positions to indicate the agency, followed by alphanumeric characters; the 2017 format instead has the AAC in the beginning 6 positions.

(c) *Change in the Procurement Instrument Identifier after its assignment.* (1) Agencies shall not change the PIID unless one of the following two circumstances apply:

(i) The PIID serial numbering system is exhausted. In this instance, the contracting officer may assign a new PIID by issuing a contract modification.

(ii) Continued use of a PIID is administratively burdensome (*e.g.*, for implementations of new agency contract writing systems). In this instance, the contracting officer may assign a new PIID by issuing a contract modification.

(2) The modification shall clearly identify both the original and the newly assigned PIID. Issuance of a new PIID is an administrative change (see 43.101).

[79 FR 61741, Oct. 14, 2014]

4.1602 Identifying the PIID and supplementary PIID.

(a) *Identifying the PIID in solicitation and contract award documentation (including forms and electronic generated formats).* Agencies shall include all

PIIDs for all related procurement actions as identified in paragraphs (a)(1) through (5) of this section.

(1) *Solicitation.* Identify the PIID for all solicitations. For amendments to solicitations, identify a supplementary PIID, in conjunction with the PIID for the solicitation.

(2) *Contracts and purchase orders.* Identify the PIID for contracts and purchase orders.

(3) *Delivery and task orders.* For delivery and task orders placed by an agency under a contract (*e.g.*, indefinite delivery indefinite quantity (IDIQ) contracts, multi-agency contracts (MAC), Governmentwide acquisition contracts (GWACs), or Multiple Award Schedule (MAS) contracts), identify the PIID for the delivery and task order and the PIID for the contract.

(4) *Blanket purchase agreements and basic ordering agreements.* Identify the PIID for blanket purchase agreements issued in accordance with 13.303, and for basic agreements and basic ordering agreements issued in accordance with subpart 16.7. For blanket purchase agreements issued in accordance with subpart 8.4 under a MAS contract, identify the PIID for the blanket purchase agreement and the PIID for the MAS contract.

(i) *Orders.* For orders against basic ordering agreements or blanket purchase agreements issued in accordance with 13.303, identify the PIID for the order and the PIID for the blanket purchase agreement or basic ordering agreement.

(ii) *Orders under subpart 8.4.* For orders against a blanket purchase agreement established under a MAS contract, identify the PIID for the order, the PIID for the blanket purchase agreement, and the PIID for the MAS contract.

(5) *Modifications.* For modifications to actions described in paragraphs (a)(2) through (4) of this section, and in accordance with agency procedures, identify a supplementary PIID for the modification in conjunction with the PIID for the contract, order, or agreement being modified.

(b) *Placement of the PIID on forms.* When the form (including electronic generated format) does not provide

Federal Acquisition Regulation

4.1603

spaces or fields for the PIID or supplementary PIID required in paragraph (a) of this section, identify the PIID in accordance with agency procedures.

(c) *Additional agency specific identification information.* If agency procedures require additional identification information in solicitations, contracts, or other related procurement instruments for administrative purposes, separate and clearly identify the additional information from the PIID.

[76 FR 39235, July 5, 2011, as amended at 79 FR 61745, Oct. 14, 2014; 79 FR 61741, Oct. 14, 2014]

4.1603 Procedures.

(a) *Elements of a PIID.* The PIID consists of a combination of thirteen to seventeen alpha and/or numeric characters sequenced to convey certain information. Do not use special characters (such as hyphens, dashes, or spaces).

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the AAC assigned to the

issuing office for positions 1 through 6. Civilian agency points of contact for obtaining an AAC are on the AAC Contact list maintained by the General Services Administration and can be found at <https://community.max.gov/x/24foL>. For Department of Defense (DoD) inquiries, contact the service/agency Central Service Point or DoDAAC Monitor, or if unknown, email DODAADHQ@DLA.MIL for assistance.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the procurement instrument is issued or awarded. This is the date the action is signed, not the effective date if the effective date is different.

(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine. Departments and independent agencies may assign those letters identified for department use below in accordance with their agency policy; however, any use must be applied to the entire department or agency.

Instrument	Letter designation
(i) Blanket purchase agreements	A
(ii) Invitations for bids	B
(iii) Contracts of all types except indefinite-delivery contracts (see subpart 16.5)	C
(iv) Indefinite-delivery contracts (including Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), and multi-agency contracts)	D
(v) Reserved for future Federal Governmentwide use	E
(vi) Task orders, delivery orders or calls under—	F
• Indefinite-delivery contracts (including Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), and multi-agency contracts);	
• Blanket purchase agreements; or	
• Basic ordering agreements.	
(vii) Basic ordering agreements	G
(viii) Agreements, including basic agreements and loan agreements, but excluding blanket purchase agreements, basic ordering agreements, and leases. Do not use this code for contracts or agreements with provisions for orders or calls	
(ix) Do not use this letter	H
(x) Reserved for future Federal Governmentwide use	I
(xi) Reserved for departmental or agency use	J
(xii) Lease agreements	K
(xiii) Reserved for departmental or agency use	L
(xiv) Reserved for departmental or agency use	M
(xv) Do not use this letter	N
(xvi) Purchase orders (assign V if numbering capacity of P is exhausted during a fiscal year)	O
(xvii) Requests for quotations (assign U if numbering capacity of Q is exhausted during a fiscal year)	P
(xviii) Requests for proposals	Q
(xix) Reserved for departmental or agency use	R
(xx) Reserved for departmental or agency use	S
(xxi) See Q, requests for quotations	T
(xxii) See P, purchase orders	U
(xxiii) Reserved for future Federal Governmentwide use	V
(xxiv) Reserved for future Federal Governmentwide use	W
(xxv) Imprest fund	X
(xxvi) Reserved for future Federal Governmentwide use	Y
	Z

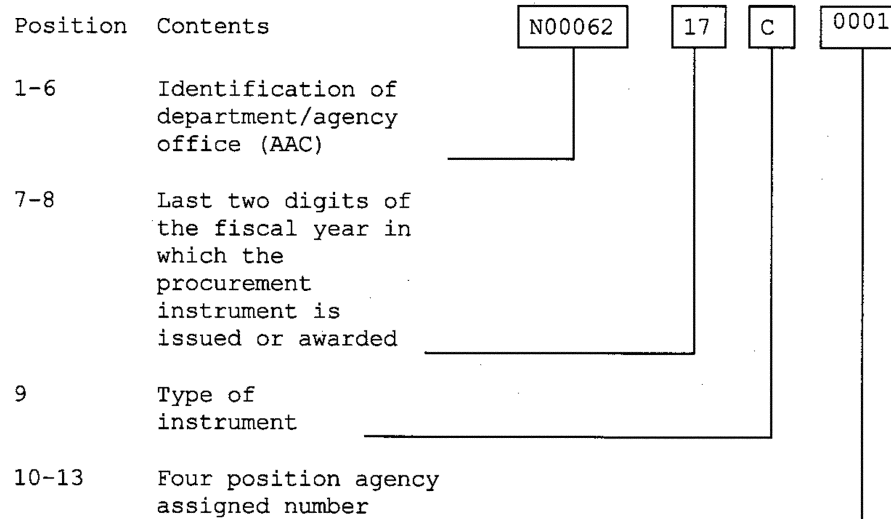
4.1603

48 CFR Ch. 1 (10-1-24 Edition)

(4) *Positions 10 through 17.* Enter the number assigned by the issuing agency in these positions. Agencies may choose a minimum of four characters up to a maximum of eight characters to be used, but the same number of characters must be used agency-wide. If a number less than the maximum is used, do not use leading or trailing zeroes to make it equal the maximum in any system or data transmission. A

separate series of numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. An agency may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(5) *Illustration of PIID.* The following illustrates a properly configured PIID using four characters in the final positions:



(b) *Elements of a supplementary PIID.* Use the supplementary PIID to identify amendments to solicitations and modifications to contracts, orders, and agreements. The supplementary PIID is reported as a separate data element used in conjunction with, but not appended to, the PIID.

(1) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number in addition to the 13-17 character PIID beginning with 0001.

(2) *Modifications to contracts, orders, and agreements.* Number modifications to contracts, orders, and agreements using a six position alpha or numeric, or a combination thereof, in addition to the 13-17 character PIID. For example, a modification could be numbered

P00001. This would be in addition to the 13-17 character PIID illustrated in paragraph (a)(5) of this section.

(i) *Position 1.* Identify the office issuing the modification. The letter P shall be designated for modifications issued by the procuring contracting office. The letter A shall be used for modifications issued by the contract administration office (if other than the procuring contracting office).

(ii) *Positions 2 through 6.* These positions may be alpha, numeric, or a combination thereof, in accordance with agency procedures.

(iii) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence (unless provided otherwise in agency procedures). Do not assign the

Federal Acquisition Regulation

4.1703

numbers until it has been determined that a modification is to be issued.

[79 FR 61741, Oct. 14, 2014, as amended at 83 FR 42572, Aug. 22, 2018; 85 FR 40076, July 2, 2020]

Subpart 4.17—Service Contracts Inventory

SOURCE: 78 FR 80374, Dec. 31, 2013, unless otherwise noted.

4.1700 Scope of subpart.

This subpart implements section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117), which requires agencies to report annually to the Office of Management and Budget (OMB) on activities performed by service contractors. Section 743(a) applies to executive agencies, other than the Department of Defense (DoD), covered by the Federal Activities Inventory Reform Act (Pub. L. 105-270) (FAIR Act). The information reported in the inventory will be publicly accessible.

4.1701 Definitions.

As used in this subpart—

FAIR Act agencies means the agencies required under the FAIR Act to submit inventories annually of the activities performed by Government personnel.

First-tier subcontract means a subcontract awarded directly by the contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

4.1702 Applicability.

(a) This subpart applies to—

(1) All FAIR Act agencies, except DoD as specified in 4.1705;

(2) Solicitations, contracts, and orders for services (including construction) that meet or exceed the thresholds at 4.1703; and

(3) Contractors and first-tier subcontractors.

(b) Procedures for compiling and submitting agency service contract inventories are governed by section 743(a)(3) of Division C of Pub. L. 111-117 and Office of Federal Procurement Policy (OFPP) guidance. The guidance is available at the following Web site: https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2017/service_contract_inventories.pdf

(c) This subpart addresses requirements for obtaining information from, and reporting by, agency service contractors.

[78 FR 80374, Dec. 31, 2013, as amended at 83 FR 42572, Aug. 22, 2018; 89 FR 30253, Apr. 22, 2024]

4.1703 Reporting requirements.

(a) *Thresholds.* (1) Except as exempted by OFPP guidance, service contractor reporting shall be required for contracts and first-tier subcontracts for services based on type of contract and estimated total value. For indefinite-delivery contracts, reporting shall be determined based on the type and estimated total value of each order under the contract. Indefinite-delivery contracts include, but are not limited to, contracts such as indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule contracts (FSSs), Governmentwide acquisition contracts (GWACs), and multi-agency contracts.

(2) Reporting is required according to the following thresholds:

(i) All cost-reimbursement, time-and-materials, and labor-hour service contracts and orders with an estimated total value above the simplified acquisition threshold.

(ii) All fixed-price service contracts awarded and orders issued according to the following thresholds:

(A) Awarded or issued in Fiscal Year 2014, with an estimated total value of \$2.5 million or greater.

(B) Awarded or issued in Fiscal Year 2015, with an estimated total value of \$1 million or greater.

(C) Awarded or issued in Fiscal Year 2016, and subsequent years, with an estimated total value of \$500,000 or greater.

4.1704

(3) Reporting is required for all first-tier subcontracts for services as prescribed in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Agency reporting responsibilities.* (1) Agencies shall ensure that contractors comply with the reporting requirements of 52.204-14, Service Contract Reporting Requirements and 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts. Agencies shall review contractor reported information for reasonableness and consistency with available contract information. The agency is not required to address data for which the agency would not normally have supporting information. In the event the agency believes that revisions to the contractor reported information are warranted, the agency shall notify the contractor no later than November 15. By November 30, the contractor shall revise the report, or document its rationale for the agency. Authorized agency officials may review the reports at www.sam.gov.

(2) Agencies are required to compile annually an inventory of service contracts performed for, or on behalf of, the agency during the prior fiscal year in order to determine the extent of the agency's reliance on service contractors. Agencies shall submit a service contract inventory to OMB by January 15 annually. Then, each agency must post the inventory on its Web site and publish a FEDERAL REGISTER Notice of Availability by February 15 annually.

(3) Most of the required information is already collected in the Federal Procurement Data System (FPDS). Information not collected in FPDS will be provided by the contractor, as specified in 52.204-14, Service Contract Reporting Requirements and 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts.

[78 FR 80374, Dec. 31, 2013, as amended 81 FR 11992, Mar. 7, 2016]

4.1704 Contracting officer responsibilities.

(a) For other than indefinite-delivery contracts, the contracting officer shall ensure that 52.204-14, Service Reporting Requirement, is included in solicitations, contracts, and orders as prescribed at 4.1705. For indefinite-deliv-

48 CFR Ch. 1 (10-1-24 Edition)

ery contracts, the contracting officer who awarded the contract shall ensure that 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, is included in solicitations and contracts as prescribed at 4.1705. The contracting officer at the order level shall verify the clause's inclusion in the contract.

(b) If the contractor fails to submit a report in a timely manner, the contracting officer shall exercise appropriate contractual remedies. In addition, the contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under subpart 42.15.

4.1705 Contract clauses.

(a) The contracting officer shall insert the clause at 52.204-14, Service Contract Reporting Requirements, in solicitations and contracts for services (including construction) that meet or exceed the thresholds at 4.1703, except for indefinite-delivery contracts. This clause is not required for actions entirely funded by DoD, contracts awarded with a generic entity identifier, or in classified solicitations, contracts, or orders.

(b) The contracting officer shall insert the clause at 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, in solicitations and indefinite-delivery contracts for services (including construction) where one or more orders issued thereunder are expected to each meet or exceed the thresholds at 4.1703. This clause is not required for actions entirely funded by DoD, contracts awarded with a generic entity identifier, or in classified solicitations, contracts, or orders.

[78 FR 80374, Dec. 31, 2013, as amended at 81 FR 67738, Sept. 30, 2016]

Subpart 4.18—Commercial and Government Entity Code

SOURCE: 79 FR 31190, May 30, 2014, unless otherwise noted.

4.1800 Scope of subpart.

(a) This subpart prescribes policies and procedures for identification of

Federal Acquisition Regulation

4.1804

commercial and government entities. The Commercial and Government Entity (CAGE) code system may be used, among other things, to—

(1) Exchange data with another contracting activity, including contract administration activities and contract payment activities;

(2) Exchange data with another system that requires the unique identification of a contractor entity; or

(3) Identify when offerors are owned or controlled by another entity.

(b) For information on the unique entity identifier, which is a different identifier, see 4.605 and the provisions at 52.204-6, Unique Entity Identifier, and 52.204-7, System for Award Management.

[78 FR 80374, Dec. 31, 2013, as amended at 81 FR 67738, Sept. 30, 2016]

4.1801 Definitions.

As used in this part—

Highest-level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

Immediate owner means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

[79 FR 31190, May 30, 2014, as amended at 81 FR 45866, July 14, 2016; 84 FR 19841, May 6, 2019; 85 FR 40063, July 2, 2020]

4.1802 Policy.

(a) *Commercial and Government Entity code.* (1) Offerors shall provide the contracting officer the CAGE code assigned to that offeror's location prior to the award of a contract action above the micro-purchase threshold, when there is a requirement to be registered in the System for Award Management (SAM) or a requirement to have a unique entity identifier in the solicitation.

(2) The contracting officer shall include the contractor's CAGE code in

the contract and in any electronic transmissions of the contract data to other systems when it is provided in accordance with paragraph (a)(1) of this section.

(b) *Ownership or control of offeror.* Offerors, if owned or controlled by another entity, shall provide the contracting officer with the CAGE code and legal name of that entity prior to the award of a contract action above the micro-purchase threshold, when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation.

[78 FR 80374, Dec. 31, 2013, as amended at 81 FR 67738, Sept. 30, 2016]

4.1803 Verifying CAGE codes prior to award.

(a) Contracting officers shall verify the offeror's CAGE code by reviewing the entity's registration in the System for Award Management (SAM). Active registrations in SAM have had the associated CAGE codes verified.

(b) For entities not required to be registered in SAM, the contracting officer shall validate the CAGE code using the CAGE code search feature at <https://cage.dla.mil>.

[79 FR 31190, May 30, 2014, as amended at 81 FR 45867, July 14, 2016]

4.1804 Solicitation provisions and contract clause.

(a) Insert the provision at 52.204-16, Commercial and Government Entity Code Reporting, in all solicitations that include—

(1) 52.204-6, Unique Entity Identifier; or

(2) 52.204-7, System for Award Management.

(b) Insert the provision at 52.204-17, Ownership or Control of Offeror, in all solicitations that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.

(c) Insert the clause at 52.204-18, Commercial and Government Entity Code Maintenance, in all solicitations and contracts when the solicitation contains the provision at 52.204-16, Commercial and Government Entity Code Reporting.

4.1901

(d) Insert the provision at 52.204-20, Predecessor of Offeror, in all solicitations that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.

[79 FR 31190, May 30, 2014, as amended at 81 FR 11990, Mar. 7, 2016; 81 FR 67738, Sept. 30, 2016]

Subpart 4.19—Basic Safeguarding of Covered Contractor Information Systems

SOURCE: 81 FR 30445, May 16, 2016, unless otherwise noted.

4.1901 Definitions.

As used in this subpart—

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as that on public Web sites) or simple transactional information, such as that necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

4.1902 Applicability.

This subpart applies to all acquisitions, including acquisitions of commercial products or commercial services, other than commercially available off-the-shelf items, when a con-

48 CFR Ch. 1 (10-1-24 Edition)

tractor's information system may contain Federal contract information.

[81 FR 30445, May 16, 2016, as amended at 86 FR 61020, Nov. 4, 2021]

4.1903 Contract clause.

The contracting officer shall insert the clause at 52.204-21, Basic Safeguarding of Covered Contractor Information Systems, in solicitations and contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

Subpart 4.20—Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab

SOURCE: 83 FR 28143, June 15, 2018, unless otherwise noted.

4.2001 Definitions.

As used in this subpart—

Kaspersky Lab covered article means any hardware, software, or service that—

(1) Is developed or provided by a Kaspersky Lab covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

Kaspersky Lab covered entity means—

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab, including any change in name, *e.g.*, “Kaspersky”;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

[88 FR 69510, Oct. 5, 2023]

4.2002 Prohibition.

Section 1634 of Division A of the National Defense Authorization Act for

Federal Acquisition Regulation

4.2101

Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use on or after October 1, 2018, of any hardware, software, or services developed or provided, in whole or in part, by a covered entity. Contractors are prohibited from—

(a) Providing any Kaspersky Lab covered article that the Government will use on or after October 1, 2018; and

(b) Using any Kaspersky Lab covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

[83 FR 28143, June 15, 2018, as amended at 88 FR 69510, Oct. 5, 2023]

4.2003 Notification.

When a contractor provides notification pursuant to 52.204-23, follow agency procedures.

4.2004 Contract clause.

The contracting officer shall insert the clause at 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities, in all solicitations and contracts.

[83 FR 28143, June 15, 2018, as amended at 88 FR 69510, Oct. 5, 2023]

Subpart 4.21—Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

SOURCE: 84 FR 40220, Aug. 13, 2019, unless otherwise noted.

4.2100 Scope of subpart.

This subpart implements paragraphs (a)(1)(A) and (a)(1)(B) of section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

[84 FR 40220, Aug. 13, 2019, as amended at 85 FR 42676, July 14, 2020]

4.2101 Definitions.

As used in this subpart—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.*, connecting cell phones/towers to the core

telephone network). Backhaul can be wireless (*e.g.*, microwave) or wired (*e.g.*, fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear non-proliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

[84 FR 40220, Aug. 13, 2019, as amended at 85 FR 42676, July 14, 2020]

4.2102 Prohibition.

(a) *Prohibited equipment, systems, or services.* (1) On or after August 13, 2019, agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any

equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

(2) On or after August 13, 2020, agencies are prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(b) *Exceptions.* This subpart does not prohibit agencies from procuring or contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Contracting Officers.* Unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or service is covered by a waiver described in 4.2104, Contracting Officers shall not— (1) Procure or obtain, or extend or renew a contract (*e.g.*, exercise an option) to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(2) Enter into a contract, or extend or renew a contract, with an entity that uses any equipment, system, or

Federal Acquisition Regulation

4.2104

service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(d) *Recording prohibitions in the System for Award Management (SAM).*

(1) Prohibitions on purchases of products or services produced or provided by entities identified in paragraphs (1) and (2) of the definition of “covered telecommunications equipment or services” (including known subsidiaries or affiliates) at 4.2101 will be recorded in SAM (see 9.404).

(2) Prohibitions on purchases of products or services produced or provided by entities identified pursuant to paragraph (4) of the definition of “covered telecommunications equipment or services” (including known subsidiaries or affiliates) at 4.2101 are recorded by the Department of Defense in SAM (see 9.404).

[84 FR 40220, Aug. 13, 2019, as amended at 84 FR 68318, Dec. 13, 2019; 85 FR 42677, July 14, 2020; 85 FR 67629, Oct. 23, 2020]

4.2103 Procedures.

(a) *Representations.*

(1)(i) If the offeror selects “does not” in paragraphs (c)(1) and/or (c)(2) of the provision at 52.204–26 or in paragraphs (v)(2)(i) and/or (v)(2)(ii) of the provision at 52.212–3, the contracting officer may rely on the “does not” representation(s), unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall follow agency procedures.

(ii) If the offeror selects “does” in paragraph (c)(1) of the provision at 52.204–26 or paragraph (v)(2)(i) of the provision at 52.212–3, the offeror will be required to complete the representation in paragraph (d)(1) of the provision at 52.204–24.

(iii) If the offeror selects “does” in paragraph (c)(2) of the provision at 52.204–26 or paragraph (v)(2)(ii) of the provision at 52.212–3, the offeror will be required to complete the representation in paragraph (d)(2) of the provision at 52.204–24.

(2)(i) If the offeror selects “will not” in paragraph (d)(1) of the provision at 52.204–24 or “does not” in paragraph

(d)(2) of the provision at 52.204–24, the contracting officer may rely on the representations, unless the contracting officer has reason to question the representations. If the contracting officer has a reason to question the representations, the contracting officer shall follow agency procedures.

(ii) If an offeror selects “will” in paragraph (d)(1) of the provision at 52.204–24, the offeror must provide the information required by paragraph (e)(1) of the provision at 52.204–24, and the contracting officer shall follow agency procedures.

(iii) If an offeror selects “does” in paragraph (d)(2) of the provision at 52.204–24, the offeror must complete the disclosure at paragraph (e)(2) of the provision at 52.204–24, and the contracting officer shall follow agency procedures.

(b) *Reporting.* If a contractor provides a report pursuant to paragraph (d) of the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, follow agency procedures.

[84 FR 40220, Aug. 13, 2019, as amended at 84 FR 68318, Dec. 13, 2019; 85 FR 42677, July 14, 2020; 85 FR 53133, Aug. 27, 2020]

4.2104 Waivers.

(a) *Executive agencies.* The head of an executive agency may, on a one-time basis, waive the prohibition at 4.2102(a) with respect to a Government entity (*e.g.*, requirements office, contracting office) that requests such a waiver.

(1) *Waiver.* The waiver may be provided, for a period not to extend beyond August 13, 2021 for the prohibition at 4.2102(a)(1), or beyond August 13, 2022 for the prohibition at 4.2102(a)(2), if the Government official, on behalf of the entity, seeking the waiver submits to the head of the executive agency—

(i) A compelling justification for the additional time to implement the requirements under 4.2102(a), as determined by the head of the executive agency; and

(ii) A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and a phase-out

plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(2) *Executive agency waiver requirements for the prohibition at 4.2102(a)(2).* Before the head of an executive agency can grant a waiver to the prohibition at 4.2102(a)(2), the agency must—

(i) Have designated a senior agency official for supply chain risk management, responsible for ensuring the agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy;

(ii) Establish participation in an information-sharing environment when and as required by the Federal Acquisition Security Council (FASC) to facilitate interagency sharing of relevant acquisition supply chain risk information;

(iii) Notify and consult with the Office of the Director of National Intelligence (ODNI) on the waiver request using ODNI guidance, briefings, best practices, or direct inquiry, as appropriate; and

(iv) Notify the ODNI and the FASC 15 days prior to granting the waiver that it intends to grant the waiver.

(3) *Waivers for emergency acquisitions.*

(i) In the case of an emergency, including a declaration of major disaster, in which prior notice and consultation with the ODNI and prior notice to the FASC is impracticable and would severely jeopardize performance of mission-critical functions, the head of an agency may grant a waiver without meeting the notice and consultation requirements under 4.2104(a)(2)(iii) and 4.2104(a)(2)(iv) to enable effective mission critical functions or emergency response and recovery.

(ii) In the case of a waiver granted in response to an emergency, the head of an agency granting the waiver must—

(A) Make a determination that the notice and consultation requirements are impracticable due to an emergency condition; and

(B) Within 30 days of award, notify the ODNI and the FASC of the waiver issued under emergency conditions in addition to the waiver notice to Congress under 4.2104(a)(4).

(4) *Waiver notice.*

(i) For waivers to the prohibition at 4.2102(a)(1), the head of the executive agency shall, not later than 30 days after approval—

(A) Submit in accordance with agency procedures to the appropriate congressional committees the full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain; and

(B) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(ii) For waivers to the prohibition at 4.2102(a)(2), the head of the executive agency shall, not later than 30 days after approval submit in accordance with agency procedures to the appropriate congressional committees—

(A) An attestation by the agency that granting of the waiver would not, to the agency's knowledge having conducted the necessary due diligence as directed by statute and regulation, present a material increase in risk to U.S. national security;

(B) The full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain, to include a description of each category of covered technology equipment or services discovered after a reasonable inquiry, as well as each category of equipment, system, or service used by the entity in which such covered technology is found after conducting a reasonable inquiry; and

(C) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(b) *Director of National Intelligence.* The Director of National Intelligence may provide a waiver if the Director determines the waiver is in the national security interests of the United States.

[84 FR 40220, Aug. 13, 2019, as amended at 85 FR 42677 July 14, 2020]

Federal Acquisition Regulation

4.2203

4.2105 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment—

(1) In all solicitations for contracts; and

(2) Under indefinite delivery contracts, in all notices of intent to place an order, or solicitations for an order (e.g., subpart 8.4 and 16.505).

(b) The contracting officer shall insert the clause at 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations and contracts.

(c) The contracting officer shall insert the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, in all solicitations.

[84 FR 40220, Aug. 13, 2019, as amended at 84 FR 68318, Dec. 13, 2019]

Subpart 4.22—Prohibition on a ByteDance Covered Application

SOURCE: 88 FR 36433, June 2, 2023, unless otherwise noted.

4.2201 Definitions.

As used in this subpart—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

4.2202 Prohibition.

(a) Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on information technology, including certain equipment used by Federal contractors.

(b) This prohibition applies to the presence or use of a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the contractor under a contract, including equipment provided by the contractor’s employees, unless an exception is granted in accordance with OMB Memorandum M-23-13.

4.2203 Contract clause.

The contracting officer shall insert the clause at 52.204-27, Prohibition on a ByteDance Covered Application, in all solicitations and contracts, unless an exception is granted in accordance with OMB Memorandum M-23-13.

Subpart 4.23—Federal Acquisition Security Council

SOURCE: 88 FR 69510, Oct. 5, 2023, unless otherwise noted.

4.2300 Scope of subpart.

This subpart implements the Federal Acquisition Supply Chain Security Act of 2018 (title II of Pub. L. 115–390) and the Federal Acquisition Security Council (FASC) regulation at 41 CFR part 201–1. The authority provided in this subpart expires on December 31, 2033 (see 41 U.S.C. 1328).

4.2301 Definitions.

As used in this subpart—

Covered article, as defined in 41 U.S.C. 4713(k), means—

(1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see 32 CFR part 2002); or

(4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

FASCSA order means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in 41 CFR 201–1.303(d) and (e):

(1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.

(2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.

(3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence com-

munity and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may be referred to as a DNI FASCSA order.

Federal Acquisition Security Council (FASC) means the Council established pursuant to 41 U.S.C. 1322(a).

Intelligence community, as defined by 50 U.S.C. 3003(4), means the following—

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

(9) The Bureau of Intelligence and Research of the Department of State;

(10) The Office of Intelligence and Analysis of the Department of the Treasury;

(11) The Office of Intelligence and Analysis of the Department of Homeland Security; or

(12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

National security system, as defined in 44 U.S.C. 3552, means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of

military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of any covered articles, or any products or services produced or provided by a source. This applies when the covered article or the source is subject to an applicable FASCSA order. A reasonable inquiry excludes the need to include an internal or third-party audit.

Sensitive compartmented information means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

Sensitive compartmented information system means a national security system authorized to process or store sensitive compartmented information.

Source means a non-Federal supplier, or potential supplier, of products or services, at any tier.

Supply chain risk, as defined in 41 U.S.C. 4713(k), means the risk that any person may sabotage, maliciously introduce unwanted functionality, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.

Supply chain risk information includes, but is not limited to, information that describes or identifies:

(1) Functionality and features of covered articles, including access to data and information system privileges;

(2) The user environment where a covered article is used or installed;

(3) The ability of a source to produce and deliver covered articles as expected;

(4) Foreign control of, or influence over, a source or covered article (*e.g.*, foreign ownership, personal and professional ties between a source and any foreign entity, legal regime of any foreign country in which a source is headquartered or conducts operations);

(5) Implications to government mission(s) or assets, national security, homeland security, or critical functions associated with use of a covered source or covered article;

(6) Vulnerability of Federal systems, programs, or facilities;

(7) Market alternatives to the covered source;

(8) Potential impact or harm caused by the possible loss, damage, or compromise of a product, material, or service to an organization's operations or mission; and

(9) Likelihood of a potential impact or harm, or the exploitability of a system;

(10) Security, authenticity, and integrity of covered articles and their supply and compilation chain;

(11) Capacity to mitigate risks identified;

(12) Factors that may reflect upon the reliability of other supply chain risk information; and

(13) Any other considerations that would factor into an analysis of the security, integrity, resilience, quality, trustworthiness, or authenticity of covered articles or sources.

4.2302 Sharing supply chain risk information.

(a) Executive agencies are required to share relevant supply chain risk information with the FASC if the executive agency has determined there is a reasonable basis to conclude a substantial supply chain risk associated with a source or covered article exists (see 41 CFR 201-1.201).

(b) In support of information sharing described in paragraph (a) of this section, the contracting officer shall work with the program office or requiring activity in accordance with agency

procedures regarding the sharing of relevant information on actual or potential supply chain risk determined to exist during the procurement process.

4.2303 FASCSA orders.

(a) Executive agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any covered article, or any products or services produced or provided by a source, including contractor use of covered articles or sources, if that prohibition is established by an applicable FASCSA order issued by the Director of National Intelligence, Secretary of Defense, or Secretary of Homeland Security (the “issuing official”)(see 41 CFR 201–1.304(a)).

(b) If a covered article or the source is subject to an applicable Governmentwide FASCSA order issued collectively by the Director of National Intelligence, Secretary of Defense, and Secretary of Homeland Security, executive agencies responsible for management of the Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts shall facilitate implementation of a collective FASCSA order by removing the covered articles or sources identified in the FASCSA order from such contracts (see 41 CFR 201–1.303(g)).

(c)(1) FASCSA orders regarding sources or covered articles will be found in the System for Award Management (SAM), by searching for the phrase “FASCSA order”. SAM may be updated as new FASCSA orders are issued.

(2) Some FASCSA orders will not be identified in SAM and will need to be identified in the solicitation to be effective for that acquisition. The requiring activity or program office will identify these FASCSA orders to the contracting officer (see 4.2304(d)).

(3) The contracting officer shall work with the program office or requiring activity to identify which FASCSA orders apply to the acquisition.

4.2304 Procedures.

(a) *Identifying applicable FASCSA orders.* The applicability of FASCSA orders to a particular acquisition depends on the contracting office’s agency, the scope of the FASCSA order, the fund-

ing, and whether the requirement involves certain types of information systems (see the definition of FASCSA order at 4.2301). The contracting officer shall coordinate with the program office or requiring activity to identify the FASCSA order(s) that apply to the acquisition as follows:

(1) Unless the program office or requiring activity instructs the contracting officer otherwise, FASCSA orders apply as follows: contracts awarded by civilian agencies will be subject to DHS FASCSA orders, and contracts awarded by the Department of Defense will be subject to DoD FASCSA orders. See paragraph (b) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition.

(2) For acquisitions where the program office or the requiring activity instructs the contracting officer to select specific FASCSA orders, the contracting officer must select “yes” or “no” for each applicable type of FASCSA order (*i.e.*, “DHS FASCSA Order” “DoD FASCSA Order” or “DNI FASCSA Order”). See paragraph (b)(1) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, with its Alternate I.

(b) *Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts specific procedures—(1) Applying FASCSA orders.* An agency awarding this type of contract may choose to apply FASCSA orders in accordance with agency policy as follows:

(i) *Application at the contract level.* The agency awarding the basic contract may choose to apply FASCSA orders to the basic contract award. This is the preferred method, especially if small value orders or orders without a request for quotation (RFQ) are expected. Ordering activity contracting officers may use this contract vehicle without taking further steps to identify applicable FASCSA orders in the order. The contracting officer awarding the basic contract would select “yes” for all FASCSA orders (*i.e.*, “DHS FASCSA Order” “DoD FASCSA Order” and “DNI FASCSA Order”) (see paragraph (b)(1) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, with its Alternate I). If the contracting officer becomes aware of a newly issued applicable

Federal Acquisition Regulation

4.2305

FASCSA order, then the agency awarding the basic contract shall modify the basic contract to remove any covered article, or any products or services produced or provided by a source, prohibited by the newly issued FASCSA order.

(ii) *Application at the order level.* The agency awarding the basic contract may choose to apply FASCSA orders at the order level, as implemented by the ordering activity contracting officer.

(2) *Collective FASCSA orders.* If a new FASCSA order is issued collectively by the Secretary of Homeland Security, Secretary of Defense, and Director of National Intelligence, then the contracting officer shall modify the basic contract based upon the requirements of the order, removing any covered article, or any products or services produced or provided by a source (see 4.2303(b)).

(3) *Interagency acquisitions.* For an interagency acquisition (see subpart 17.5) where the funding agency differs from the awarding agency, the funding agency shall determine the applicable FASCSA orders.

(4) *Inconsistencies.* If any inconsistency is identified between the basic contract and the order, then the FASCSA orders identified in the order will take precedence.

(c) *Updating the solicitation or contract for new FASCSA orders.* The contracting officer shall update a solicitation or contract if the program office or requiring activity determines it is necessary to:

(1) Amend the solicitation to incorporate FASCSA orders in effect after the date the solicitation was issued but prior to contract award; or

(2) Modify the contract to incorporate FASCSA orders issued after the date of contract award.

(i) Any such modification should take place within a reasonable amount of time, but no later than 6 months from the determination of the program office or requiring activity.

(ii) If the contract is not modified within the time specified in paragraph (c)(2)(i) of this section, then the contract file shall be documented providing rationale why the contract could not be modified within this time-frame.

(d) *Agency specific procedures.* The contracting officer shall follow agency procedures for implementing FASCSA orders not identified in SAM (see 4.2303(c)(2)).

(e) *Disclosures.* If an offeror provides a disclosure pursuant to paragraph (e) of 52.204-29, Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures, the contracting officer shall engage with the program office or requiring activity to determine whether to pursue a waiver, if available, in accordance with 4.2305 and agency procedures or not award to that offeror. For FASCSA orders handled at the order level, the disclosures language is found at paragraph (b)(5) of 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, with its Alternate II.

(f) *Waiver.* An acquisition may be either fully or partially covered by a waiver. Partial waiver coverage occurs when only portions of the products or services being procured or provided by a source are covered by an applicable waiver. If the requiring activity notifies the contracting officer that the acquisition is partially covered by an approved individual waiver or class waiver under 4.2305, then the contracting officer shall work with the program office or requiring activity to identify in the solicitation, RFQ, or order, the covered articles or services produced by or provided by a source that are subject to the waiver (see 41 CFR 201-1.304(b)).

(g) *Reporting.* If a contractor provides a report pursuant to paragraph (c) of 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, the contracting officer shall engage with the agency supply chain risk management program in accordance with agency procedures.

4.2305 Waivers.

(a) An executive agency required to comply with a FASCSA order may submit a request that the order or some of its provisions not apply to—

(1) The agency;

(2) Specific actions of the agency or a specific class of acquisitions;

(3) Actions of the agency for a period of time before compliance with the order is practicable; or

(4) Other activities, as appropriate, that the requesting agency identifies.

(b) A request for waiver shall be submitted by the executive agency in writing to the official that issued the order, unless other instructions for submission are provided by the applicable FASCSA order.

(c) The request for waiver shall provide the following information for the issuing official to review and evaluate the request, including—

(1) Identification of the applicable FASCSA order;

(2) A description of the exception sought, including, if limited to only a portion of the order, a description of the order provisions from which an exception is sought;

(3) The name or a description sufficient to identify the covered article or the product or service provided by a source that is subject to the order from which an exception is sought;

(4) Compelling justification for why an exception should be granted, such as the impact of the order on the agency's ability to fulfill its mission-critical functions, or considerations related to the national interest, including national security reviews, national security investigations, or national security agreements;

(5) Any alternative mitigations to be undertaken to reduce the risks addressed by the FASCSA order; and

(6) Any other information requested by the issuing official.

(d) The contracting officer, in accordance with agency procedures and working with the program office or requiring activity, shall decide whether to pursue a waiver or to make award to an offeror that does not require a waiver in accordance with the procedures at 4.2304(f). If a waiver is being pursued, then the contracting officer may not make an award until written approval is obtained that the waiver has been granted.

4.2306 Solicitation provision and contract clauses.

(a) In all Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts where FASCSA orders are applied at the order level, the contracting officer shall insert the clause at 52.204–28, Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts, in the basic contract solicitation and resultant contract (see 4.2304(b)(1)(ii)).

(b) The contracting officer shall insert the provision at 52.204–29, Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures—

(1) In all solicitations, except for Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts.

(2) In all solicitations for Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts, if FASCSA orders are applied at the contract level (see 4.2304(b)(1)(i)).

(c) The contracting officer shall insert the clause at 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition—

(1) In solicitations and contracts if the conditions specified at 4.2304(a)(1) apply, except for Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts. For acquisitions where conditions specified at 4.2304(a)(2) apply, then the contracting officer shall use the clause with its Alternate I.

(2) In Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts—

(i) Where FASCSA orders are applied at the contract level, with its Alternate I in all solicitations and resultant contracts. See 4.2304(b)(1)(i).

(ii) Where FASCSA orders are applied at the order level, with its Alternate II in all RFQs, or in all notices of intent to place an order. See 4.2304(b)(1)(ii).