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17.000 Scope of part.

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

(a) Multi-year *contracting*;

(b) *Options*;

(c) Leader company *contracting*; and

(d) The use of *reverse auctions* to obtain competitive *pricing*.

Subpart 17.1 - Multi-year Contracting

17.101 Authority.

This subpart implements 41 U.S.C. 3903 and 10 U.S.C. 3501 and provides policy and procedures for the use of multi-year *contracting*.

17.102 Applicability.

For DoD, NASA, and the Coast Guard, the authorities cited in 17.101 do not apply to contracts for the purchase of *supplies* to which 40 U.S.C.759 applies (information resource management supply contracts).

17.103 Definitions.

As used in this subpart-

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

(1) Notifies the contractor of nonavailability of funds for contract performance for any subsequent

program year; or

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

Cancellation ceiling means the maximum *cancellation charge* that the contractor can receive in the event of *cancellation*.

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

Multi-year contract means a contract for the purchase of *supplies* or services for more than 1, but not more than 5, program years. A *multi-year contract may* provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) *may* provide for a *cancellation* payment to be made to the contractor if appropriations are not made. The key distinguishing difference between *multi-year contracts* and multiple year contracts is that *multi-year contracts*, defined in the statutes cited at 17.101, buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an *option* for each program year after the first.

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

Recurring costs means costs that vary with the quantity being produced, such as labor and materials.

17.104 General.

(a) Multi-year *contracting* is a special *contracting* method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated *may* not be available at the time of contract award. This method *may* be used in sealed bidding or *contracting* by negotiation.

(b) Multi-year *contracting* is a flexible *contracting* method applicable to a wide range of *acquisitions*. The extent to which cancellation terms are used in multi-year contracts will depend on the unique circumstances of each contract. Accordingly, for multi-year contracts, the *agency head may* authorize modification of the requirements of this subpart and the clause at 52.217-2, Cancellation Under Multi-year Contracts.

(c) Agency funding of multiyear contracts *shall* conform to the policies in OMB Circular A-11 (Preparation, Submission, and Execution of the Budget) and other applicable guidance regarding the funding of multiyear contracts. As provided by that guidance, the funds obligated for multi-year contracts *must* be sufficient to cover any potential cancellation and/or termination costs; and multi-year contracts for the *acquisition* of fixed assets *should* be fully funded or funded in stages that are economically or programmatically viable.

(d) The *termination for convenience* procedure *may* apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during

the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation *must* be for all subsequent fiscal years' quantities).

17.105 Policy.

17.105-1 Uses.

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

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

(2) A multi-year contract will serve the best interests of the *United States* by encouraging *full and open competition* or promoting economy in administration, performance, and operation of the agency's programs.

(b) For DoD, NASA, and the Coast Guard, the *head of the agency may* enter into a multi-year contract for *supplies* if-

(1) The use of such a contract will result in significant savings of the total estimated costs of carrying out the program through annual contracts;

(2) The minimum need to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, *procurement* rate, and total quantities;

(3) There is a stable design for the *supplies* to be acquired, and the technical risks associated with such *supplies* are not excessive;

(4) There is a reasonable expectation that, throughout the contemplated contract period, the *head of the agency* will request funding for the contract at a level to avoid contract cancellation; and

(5) The estimates of both the cost of the contract and the cost avoidance through the use of a multi-year contract are realistic.

(c) The multi-year *contracting* method *may* be used for the *acquisition* of *supplies* or services.

(d) If funds are not appropriated to support the succeeding years' requirements, the agency *must* cancel the contract.

17.105-2 Objectives.

Use of multi-year *contracting* is encouraged to take advantage of one or more of the following:

(a) Lower costs.

(b) Enhancement of standardization.

(c) Reduction of administrative burden in the placement and administration of contracts.

(d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.

(e) Stabilization of contractor work forces.

(f) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.

(g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

(h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

17.106 Procedures.

17.106-1 General.

(a) *Method of contracting*. The nature of the requirement *should* govern the selection of the method of *contracting*, since the multi-year procedure is compatible with sealed bidding, including two-step sealed bidding, and negotiation.

(b) *Type of contract.* Given the longer performance period associated with multi-year *acquisition*, consideration in *pricing* fixed-priced contracts *should* be given to the use of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.

(c) Cancellation procedures.

(1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the *contracting officer shall* establish a cancellation ceiling. Ceilings *must* exclude amounts for requirements included in prior program years. The *contracting officer shall* reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.408, Table 15-1, III. Formats for Submission of *Line Item* Summaries C(8)) are estimated at 10 percent of the total multi-year price, and the percentages for each of the program year requirements for 5 years are (i)30 in the firstyear, (ii)30 in the second, (iii)20 in the third, (iv)10 in the fourth, and (v)10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the *contracting officer must* estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multi-year requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, *special tooling* and *special test equipment*, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly, training, and transportation

to and from the job site of a specialized work force, and unrealized labor learning. They *shall* not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs *must* then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the *contracting officer should* obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and the effect of labor learning.

(3) The *contracting* officer *shall* establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The *contracting officer shall* include these dates in the schedule, as appropriate.

(d) *Cancellation ceilings*. Cancellation ceilings and dates *may* be revised after issuing the *solicitation* if necessary. In sealed bidding, the *contracting* officer *shall* change the ceiling by amending the *solicitation* before bid opening. In two-step sealed bidding, discussions conducted during the first step *may* indicate the need for revised ceilings and dates which *may* be incorporated in step two. In a negotiated *acquisition*, negotiations with *offerors may* provide information requiring a change in cancellation ceilings and dates before final negotiation and contract award.

(e) *Payment of cancellation charges*. If cancellation occurs, the Government's liability will be determined by the terms of the applicable contract.

(f) *Presolicitation or pre-bid conferences*. To ensure that all interested sources of supply are thoroughly aware of how multi-year *contracting* is accomplished, use of presolicitation or pre-bid conferences *may* be advisable.

(g) *Payment limit*. The *contracting officer shall* limit the Government's payment obligation to an amount available for contract performance. The *contracting officer shall* insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(h) *Termination payment*. If the contract is terminated for the convenience of the Government in whole, including requirements subject to cancellation, the Government's obligation *shall* not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

17.106-2 Solicitations.

Solicitations for multi-year contracts *shall* reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item of supply or service, for the-

(1) First program year; and

(2) Multi-year contract including the requirements for each program year.

(b) Criteria for comparing the lowest evaluated submission on the first program year requirements to the lowest evaluated submission on the multi-year requirements.

(c) A provision that, if the Government determines before award that only the first program year requirements are needed, the Government's evaluation of the price or estimated cost and fee *shall* consider only the firstyear.

(d) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.106-1(c) and (d)).

(e) A statement that award will not be made on less than the first program year requirements.

(f) The Government's administrative costs of annual *contracting may* be used as a factor in the evaluation only if they can be reasonably established and are stated in the *solicitation*.

(g) The cancellation ceiling *shall* not be an evaluation factor.

17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(a) *Participation by subcontractors, suppliers, and vendors.* In order to broaden the defense industrial base, to the maximum extent practicable-

(1) Multi-year *contracting shall* be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, suppliers, and vendors; and

(2) Upon accrual of any payment or other benefit under such a multi-year contract to any subcontractor, supplier, or vendor company participating in such contract, such payment or benefit *shall* be delivered to such company in the most expeditious manner practicable.

(b) *Protection of existing authority*. To the extent practicable, multi-year *contracting shall* not be carried out in a manner to preclude or curtail the existing ability of the Department or agency to provide for termination of a prime contract, the performance of which is deficient with respect to cost, quality, or schedule.

(c) *Cancellation or termination for insufficient funding*. In the event funds are not made available for the continuation of a multi-year contract awarded using the procedures in this section, the contract *shall* be canceled or terminated.

(d) Contracts awarded under the multi-year procedure *shall* be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

(e) *Recurring costs in cancellation ceiling*. The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the *agency head*.

(f) *Annual and multi-year proposals.* Obtaining both annual and multi-year *offers* provides reduced lead time for making an annual award in the event that the multi-year award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual *offers may* increase administrative costs and workload for both *offerors* and the Government, especially for large or complex *acquisitions*. The head of a *contracting activity may* authorize the use of a *solicitation* requesting only multi-year prices, provided it is found that such a *solicitation* is in the Government's interest, and that dual proposals are not necessary to meet the objectives in 17.105-2.

(g) *Level unit prices*. Multi-year contract procedures provide for the amortization of certain costs

over the entire contract quantity resulting in identical (level) unit prices (except when the economic price adjustment terms apply) for all items or services under the multi-year contract. If level unit *pricing* is not in the Government's interest, the head of a *contracting activity may* approve the use of variable unit prices, provided that for competitive proposals there is a valid method of evaluation.

17.107 Options.

Benefits *may* accrue by including *options* in a multi-year contract. In that event, *contracting officers must* follow the requirements of subpart 17.2. *Options should* not include charges for plant and equipment already amortized, or other nonrecurring charges which were included in the basic contract.

17.108 Congressional notification.

(a) Except for DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of $20 million *may* not be awarded until the *head of the agency* gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on appropriations of the House of Representatives and Senate and the appropriate oversight committees of the House and Senate for the agency in question. Information on such committees *may* not be readily available to *contracting officers*. Accordingly, agencies *should* provide such information through its internal regulations. The contract *may* not be awarded until the thirty-firstday after the date of notification.

(b) For DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of $200 million *may* not be awarded until the *head of the agency* gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and appropriations of the House of Representatives and Senate. The contract *may* not be awarded until the thirty-firstday after the date of notification.

17.109 Contract clauses.

(a) The *contracting officer shall* insert the clause at 52.217-2, Cancellation Under Multi-year Contracts, in *solicitations* and contracts when a multi-year contract is contemplated.

(b) *Economic price adjustment clauses*. Economic price adjustment clauses are adaptable to multi-year *contracting* needs. When the period of production is likely to warrant a labor and material costs contingency in the contract price, the *contracting officer should* normally use an economic price adjustment clause (see 16.203). When *contracting* for services, the *contracting officer*-

(1) *Shall* add the clause at 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards- Price Adjustment (Multiple Year and *Option* Contracts), when the contract includes the clause at 52.222-41, Service Contract Labor Standards;

(2) *May* modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) *May* use an economic price adjustment clause authorized by 16.203, when potential fluctuations require coverage and are not included in cost contingencies provided for by the clause at 52.222-43.

Subpart 17.2 - Options

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of *option solicitation* provisions and *contract clauses*. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the *construction*, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) *architect-engineer services*; and (c) research and development services. However, it does not preclude the use of *options* in those contracts.

17.201 [Reserved]

17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and *contracting* by negotiation, the *contracting officer may* include *options* in contracts when it is in the Government's interest. When using sealed bidding, the *contracting officer shall* make a written determination that there is a reasonable likelihood that the *options* will be exercised before including the provision at 52.217-5, Evaluation of *Options*, in the *solicitation*. (See 17.207(f) with regard to the exercise of *options*.)

(b) Inclusion of an *option* is normally not in the Government's interest when, in the judgment of the *contracting officer*-

(1) The foreseeable requirements involve-

(i) Minimum economic quantities (*i.e.,* quantities large enough to permit the recovery of startup costs and the production of the required *supplies* at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive *acquisition*, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with *options*. However, this does not preclude the use of an indefinite quantity contract or requirements contract with *options*.

(c) The *contracting officer shall* not employ *options* if-

(1) The contractor will incur undue risks; *e.g.,* the price or availability of necessary materials or labor is not reasonably foreseeable;

(2) Market prices for the *supplies* or services involved are likely to change substantially; or

(3) The *option* represents known firm requirements for which funds are available unless-

(i) The basic quantity is a learning or testing quantity; and

(ii) Competition for the *option* is impracticable once the initial contract is awarded.

(d) In recognition of-

(1) The Government’s need in certain service contracts for continuity of operations; and

(2) The potential cost of disrupted support, *options may* be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

17.203 Solicitations.

(a) *Solicitations shall* include appropriate *option* provisions and clauses when resulting contracts will provide for the exercise of *options* (see 17.208).

(b) *Solicitations* containing *option* provisions *shall* state the basis of evaluation, either exclusive or inclusive of the *option* and, when appropriate, *shall* inform *offerors* that it is anticipated that the Government *may* exercise the *option* at time of award.

(c) *Solicitations* normally *should* allow *option* quantities to be offered without limitation as to price, and there *shall* be no limitation as to price if the *option* quantity is to be considered in the evaluation for award (see 17.206).

(d) *Solicitations* that allow the *offer* of *options* at unit prices which differ from the unit prices for the basic requirement *shall* state that *offerors may offer* varying prices for *options*, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government *may* exercise an *option* at the time of award and if the condition specified in paragraph (d) of this section applies, *solicitations shall* specify the price at which the Government will evaluate the *option* (highest *option* price offered or *option* price for specified requirements).

(f) *Solicitations may*, in unusual circumstances, require that *options* be offered at prices no higher than those for the initial requirement; *e.g.,* when-

(1) The *option* cannot be evaluated under 17.206; or;

(2) Future competition for the *option* is impracticable.

(g) *Solicitations* that require the offering of an *option* at prices no higher than those for the initial requirement *shall*-

(1) Specify that the Government will accept an *offer* containing an *option* price higher than the base price only if the acceptance does not prejudice any other *offeror*; and

(2) Limit *option* quantities for additional *supplies* to not more than 50 percent of the initial quantity of the same *line item*. In unusual circumstances, an authorized person at a level above the *contracting officer may* approve a greater percentage of quantity.

(h) Include the value of *options* in determining if the *acquisition* will exceed the World Trade Organization Government *Procurement* Agreement or Free Trade Agreement thresholds.

17.204 Contracts.

(a) The contract *shall* specify limits on the purchase of additional *supplies* or services, or the overall duration of the term of the contract, including any extension.

(b) The contract *shall* state the period within which the *option may* be exercised.

(c) The period *shall* be set so as to provide the contractor adequate lead time to ensure continuous production.

(d) The period *may* extend beyond the contract completion date for service contracts. This is necessary for situations when exercise of the *option* would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and *option* periods *shall* not exceed 5 years in the case of services, and the total of the basic and *option* quantities *shall* not exceed the requirement for 5 years in the case of *supplies*. These limitations do not apply to *information technology* contracts. However, statutes applicable to various classes of contracts, for example, the Service Contract Labor Standards statute (see 22.1002-1), *may* place additional restrictions on the length of contracts.

(f) Contracts *may* express *options* for increased quantities of *supplies* or services in terms of-

(1) Percentage of specific *line items*,

(2) Increase in specific *line items*; or

(3) Additional numbered *line items* identified as the *option*.

(g) Contracts *may* express extensions of the term of the contract as an amended completion date or as additional time for performance; *e.g.,* days, weeks, or months.

17.205 Documentation.

(a) The *contracting officer shall* justify *in writing* the quantities or the term under *option*, the notification period for exercising the *option*, and any limitation on *option* price under 17.203(g); and *shall* include the justification document in the contract file.

(b) Any justifications and approvals and any determination and findings required by part 6 *shall* specify both the basic requirement and the increase permitted by the *option*.

17.206 Evaluation.

(a) In awarding the basic contract, the *contracting officer shall*, except as provided in paragraph (b) of this section, evaluate *offers* for any *option* quantities or periods contained in a *solicitation* when it has been determined prior to soliciting *offers* that the Government is likely to exercise the *options*. (See 17.208.)

(b) The *contracting officer* need not evaluate *offers* for any *option* quantities when it is determined

that evaluation would not be in the best interests of the Government and this determination is approved at a level above the *contracting officer*. An example of a circumstance that *may* support a determination not to evaluate *offers* for *option* quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the *option*.

17.207 Exercise of options.

(a) When exercising an *option*, the *contracting officer shall* provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the *contracting officer shall* determine the effect of the adjustment on prices under the *option* before the *option* is exercised.

(c) The *contracting officer may* exercise *options* only after determining that-

(1) Funds are available;

(2) The requirement covered by the *option* fulfills an existing Government need;

(3) The exercise of the *option* is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) of this section) considered;

(4) The *option* was synopsized in accordance with part 5 unless exempted by 5.202(a)(11) or other appropriate exemptions in 5.202;

(5) The contractor does not have an active exclusion record in the *System for Award Management* (see FAR 9.405-1);

(6) The contractor's *past performance* evaluations on other contract actions have been considered; and

(7) The contractor's performance on this contract has been acceptable, e.g., received satisfactory ratings.

(d) The *contracting officer*, after considering price and other factors, *shall* make the determination on the basis of one of the following:

(1) A new *solicitation* fails to produce a better price or a more advantageous *offer* than that offered by the *option*. If it is anticipated that the best price available is the *option* price or that this is the more advantageous *offer*, the *contracting officer should* not use this method of testing the market.

(2) An informal analysis of prices or an examination of the market indicates that the *option* price is better than prices available in the market or that the *option* is the more advantageous *offer*.

(3) The time between the award of the contract containing the *option* and the exercise of the *option* is so short that it indicates the *option* price is the lowest price obtainable or the more advantageous *offer*. The *contracting officer shall* take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such *supplies* or services.

(e) The determination of other factors under paragraph (c)(3) of this section-

(1) *Should* take into account the Government's need for continuity of operations and potential costs of disrupting operations; and

(2) *May* consider the effect on small business.

(f) Before exercising an *option*, the *contracting officer shall* make a written determination for the contract file that exercise is in accordance with the terms of the *option*, the requirements of this section, and part 6. To satisfy requirements of part 6 regarding *full and open competition*, the *option must* have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, *e.g.*-

(1) A specific dollar amount;

(2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

(3) In the case of a cost-type contract, if-

(i) The *option* contains a fixed or maximum fee; or

(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));

(4) A specific price that is subject to an economic price adjustment provision; or

(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

(g) The *contract modification* or other written document which notifies the contractor of the exercise of the *option shall* cite the *option* clause as authority.

17.208 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of *Options*, in *solicitations* when the *solicitation* includes an *option* clause and does not include one of the provisions prescribed in paragraph (b) or (c) of this section.

(b) Insert a provision substantially the same as the provision at 52.217-4, Evaluation of *Options* Exercised at Time of Contract Award, in *solicitations* when the *solicitation* includes an *option* clause, the *contracting officer* has determined that there is a reasonable likelihood that the *option* will be exercised, and the *option may* be exercised at the time of contract award.

(c) Insert a provision substantially the same as the provision at 52.217-5, Evaluation of *Options*, in *solicitations* when-

(1) The *solicitation* contains an *option* clause;

(2) An *option* is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) The *contracting officer* has determined that there is a reasonable likelihood that the *option* will be exercised. For sealed bids, the determination *shall* be *in writing*.

(d) Insert a clause substantially the same as the clause at 52.217-6, *Option* for Increased Quantity, in *solicitations* and contracts, other than those for services, when the inclusion of an *option* is appropriate (see 17.200 and 17.202) and the *option* quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific *line item*.

(e) Insert a clause substantially the same as the clause at 52.217-7, *Option* for Increased Quantity-Separately Priced *Line Item*, in *solicitations* and contracts, other than those for services, when the inclusion of an *option* is appropriate (see 17.200 and 17.202) and the *option* quantity is identified as a separately priced *line item* having the same nomenclature as a corresponding *line item*.

(f) Insert a clause substantially the same as the clause at 52.217-8, *Option* to Extend Services, in *solicitations* and contracts for services when the inclusion of an *option* is appropriate. (See 17.200, 17.202, and 37.111.)

(g) Insert a clause substantially the same as the clause at 52.217-9, *Option* to Extend the Term of the Contract, in *solicitations* and contracts when the inclusion of an *option* is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

(1) A requirement that the Government *must* give the contractor a preliminary written notice of its intent to extend the contract.

(2) A statement that an extension of the contract includes an extension of the *option*.

(3) A specified limitation on the total duration of the contract.

Subpart 17.3 - [Reserved]

Subpart 17.4 - Leader Company Contracting

17.401 General.

Leader company *contracting* is an extraordinary *acquisition* technique that is limited to special circumstances and utilized only when its use is in accordance with agency procedures. A developer or sole producer of a product or system is designated under this *acquisition* technique to be the leader company, and to furnish assistance and know-how under an approved contract to one or more designated follower companies, so they can become a source of supply. The objectives of this technique are one or more of the following:

(a) Reduce delivery time.

(b) Achieve geographic dispersion of suppliers.

(c) Maximize the use of scarce tooling or special equipment.

(d) Achieve economies in production.

(e) Ensure uniformity and reliability in equipment, compatibility or standardization of *components*, and interchangeability of parts.

(f) Eliminate problems in the use of proprietary data that cannot be resolved by more satisfactory solutions.

(g) Facilitate the transition from development to production and to subsequent competitive *acquisition* of end items or major *components*.

17.402 Limitations.

(a) Leader company *contracting* is to be used only when-

(1) The leader company has the necessary production know-how and is able to furnish required assistance to the follower(s);

(2) No other source can meet the Government's requirements without the assistance of a leader company;

(3) The assistance required of the leader company is limited to that which is essential to enable the follower(s) to produce the items; and

(4) Its use is authorized in accordance with agency procedures.

(b) When leader company *contracting* is used, the Government *shall* reserve the right to approve subcontracts between the leader company and the follower(s).

17.403 Procedures.

(a) The *contracting officer may* award a prime contract to a-

(1) Leader company, obligating it to subcontract a designated portion of the required end items to a specified follower company and to assist it to produce the required end items;

(2) Leader company, for the required assistance to a follower company, and a prime contract to the follower for production of the items; or

(3) Follower company, obligating it to subcontract with a designated leader company for the required assistance.

(b) The *contracting officer shall* ensure that any contract awarded under this arrangement contains a firm agreement regarding disclosure, if any, of contractor trade secrets, technical designs or concepts, and specific data, or software, of a proprietary nature.

Subpart 17.5 - Interagency Acquisitions

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to all *interagency acquisitions* under any authority, except as provided for in paragraph (c) of this section. In addition to complying with the *interagency acquisition* policy and procedures in this subpart, nondefense agencies acquiring *supplies* and services on behalf of the Department of Defense *shall* also comply with the policy and procedures at subpart 17.7.

(b) This subpart applies to *interagency acquisitions*, see 2.101 for definition, when-

(1) An agency needing *supplies* or services obtains them using another agency's contract; or

(2) An agency uses another agency to provide *acquisition* assistance, such as awarding and administering a contract, a *task order*, or *delivery order*.

(c) This subpart does not apply to-

(1) Interagency reimbursable work performed by Federal employees (other than *acquisition* assistance), or interagency activities where *contracting* is incidental to the purpose of the transaction; or

(2) Orders of $750,000 or less issued against Federal Supply Schedules.

17.501 General.

(a) *Interagency acquisitions* are commonly conducted through indefinite-delivery contracts, such as task- and delivery-order contracts. The indefinite-delivery contracts used most frequently to support *interagency acquisitions* are Federal Supply Schedules (FSS), Governmentwide *acquisition* contracts (GWACs), and multi-agency contracts (MACs).

(b) An agency *shall* not use an *interagency acquisition* to circumvent conditions and limitations imposed on the use of funds.

(c) An *interagency acquisition* is not exempt from the requirements of subpart 7.3, Contractor Versus Government Performance.

(d) An agency *shall* not use an *interagency acquisition* to make *acquisitions* conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under title 40, United States Code, "Public Buildings, Property and Works" and 41 U.S.C. division C of subtitle I, *Procurement*.)

17.502 Procedures.

17.502-1 General.

(a) *Written agreement on responsibility for management and administration—.*

(1) *Assisted acquisitions*.

(i) Prior to the issuance of a *solicitation*, the *servicing agency* and the requesting agency *shall* both sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for *acquisition planning*, contract execution, and administration and management of the contract(s) or order(s). The *requesting agency shall* provide to the *servicing agency* any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no agency unique requirements beyond the FAR, the *requesting agency shall* so inform the *servicing agency contracting officer in writing*. For *acquisitions* on behalf of the Department of Defense, also see subpart 17.7. For patent rights, see 27.304-2. In preparing interagency agreements to support *assisted acquisitions*, agencies *should* review the Office of Federal *Procurement* Policy (OFPP) guidance, *Interagency Acquisitions*, available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/OMB/procurement/interagency_acq/iac_revised.pdf .

(ii) Each agency's file *shall* include the interagency agreement between the requesting and *servicing agency*, and *shall* include sufficient documentation to ensure an adequate audit consistent with 4.801(b).

(2) *Direct acquisitions*. The *requesting agency* administers the order; therefore, no written agreement with the *servicing agency* is required.

(b) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts*. In order to establish a multi-agency or *governmentwide acquisition contract*, a business-case analysis *must* be prepared by the *servicing agency* and approved in accordance with the OFPP business case guidance, available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf . The business-case analysis *shall*—

(1) Consider strategies for the effective participation of small businesses during *acquisition planning* (see 7.103(u));

(2) Detail the administration of such contract, including an analysis of all direct and *indirect costs* to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, *e.g.*, will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the *multi-agency contract*; and

(5) Document roles and responsibilities in the administration of the contract.

17.502-2 The Economy Act.

(a) The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain *supplies* or services from another agency. The FAR applies when one agency uses another agency's contract to obtain *supplies* or services. If the interagency business transaction does not result in a

contract or an order, then the FAR does not apply. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority are 40 U.S.C. 501 for the Federal Supply Schedules (subpart 8.4), and 40 U.S.C. 11302(e) for Governmentwide *acquisition* contracts (GWACs).

(c) Requirements for determinations and findings.

(1) Each Economy Act order to obtain *supplies* or services by *interagency acquisition shall* be supported by a determination and findings (D&F). The D&F *shall*-

(i) State that use of an *interagency acquisition* is in the best interest of the Government;

(ii) State that the *supplies* or services cannot be obtained as conveniently or economically by *contracting* directly with a private source; and

(iii) Include a statement that at least one of the following circumstances applies:

(A) The *acquisition* will appropriately be made under an existing contract of the *servicing agency*, entered into before placement of the order, to meet the requirements of the *servicing agency* for the same or similar *supplies* or services.

(B) The *servicing agency* has the capability or expertise to enter into a contract for such *supplies* or services that is not available within the *requesting agency*.

(C) The *servicing agency* is specifically authorized by law or regulation to purchase such *supplies* or services on behalf of other agencies.

(2) The D&F *shall* be approved by a *contracting officer* of the *requesting agency* with authority to contract for the *supplies* or services to be ordered, or by another official designated by the *agency head*, except that, if the *servicing agency* is not covered by the FAR, approval of the D&F *may* not be delegated below the *senior procurement executive* of the *requesting agency*.

(3) The *requesting agency shall* furnish a copy of the D&F to the *servicing agency* with the request for order.

(d) Payment.

(1) The *servicing agency may* ask the *requesting agency*, *in writing*, for advance payment for all or part of the estimated cost of furnishing the *supplies* or services. Adjustment on the basis of actual costs *shall* be made as agreed to by the agencies.

(2) If approved by the *servicing agency*, payment for actual costs *may* be made by the *requesting agency* after the *supplies* or services have been furnished.

(3) Bills rendered or requests for advance payment *shall* not be subject to audit or certification in advance of payment.

(4) In no event *shall* the *servicing agency* require, or the *requesting agency* pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and

administering the contract or other agreement under which the order is filled.

17.503 Ordering procedures.

(a) Before placing an order for *supplies* or services with another Government agency, the *requesting agency shall* follow the procedures in 17.502-1 and, if under the Economy Act, also 17.502-2.

(b) The order *may* be placed on any form or document that is acceptable to both agencies. The order *should* include-

(1) A description of the *supplies* or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.502-2(d) for Economy Act orders); and

(5) *Acquisition* authority as *may* be appropriate (see 17.503(d)).

(c) The requesting and *servicing agencies should* agree to procedures for the resolution of disagreements that *may* arise under *interagency acquisitions*, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party *should* be obtained *in writing*.

(d) When an *interagency acquisition* requires the *servicing agency* to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the *requesting agency*'s D&F required in 17.502-2(c)) is required by law or regulation, the *servicing agency shall* execute and issue the justification and approval or D&F. The *requesting agency shall* furnish the *servicing agency* any information needed to make the justification and approval or D&F.

(2) The *requesting agency shall* also be responsible for furnishing other assistance that *may* be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the *requesting agency*.

(3) The *servicing agency* is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including-

(i) Having adequate statutory authority for the contractual action; and

(ii) Complying fully with the competition requirements of part 6 (see 6.002). However, if the *servicing agency* is not subject to the Federal *Acquisition* Regulation, the *requesting agency shall* verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring *Federal agencies may* use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and *must* fall within the purpose, mission, general scope of effort, or *special competency* of the FFRDC.

(See 35.017; see also 6.302 for procedures to follow where using other than *full and open competition*.) The nonsponsoring agency *shall* provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.504 Reporting requirements.

(a) The *senior procurement executive* for each *executive agency shall* submit to the Director of OMB an annual report on *interagency acquisitions*, as directed by OMB.

(b) The *contracting officer* for the *servicing agency shall* ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

Subpart 17.6 - Management and Operating Contracts

17.600 Scope of subpart.

This subpart prescribes policies and procedures for *management and operating contracts* for the Department of Energy and any other agency having requisite statutory authority.

17.601 Definition.

Management and operating contract means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the *contracting Federal agency*.

17.602 Policy.

(a) Heads of agencies, with requisite statutory authority, *may* determine *in writing* to authorize *contracting officers* to enter into or renew any *management and operating contract* in accordance with the agency's statutory authority, or 41 U.S.C. chapter 33, and the agency's regulations governing such contracts. This authority *shall* not be delegated. Every contract so authorized *shall* show its authorization upon its face.

(b) Agencies *may* authorize *management and operating contracts* only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in 17.604.

(c) Within 2 years of the effective date of this regulation, agencies *shall* review their current contractual arrangements in the light of the guidance of this subpart, in order to-

(1) Identify, modify as necessary, and authorize *management and operating contracts*; and

(2) Modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be

terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

17.603 Limitations.

(a) *Management and operating contracts shall* not be authorized for-

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) *Day*-to-*day* staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with subpart 45.3, Authorizing the Use and Rental of Government Property.

(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above *shall* affect the validity or legality of such an authorization.

(c) For use of project labor agreements, see subpart 22.5.

17.604 Identifying management and operating contracts.

A *management and operating contract* is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying *management and operating contracts*:

(a) Government-owned or -controlled facilities *must* be utilized; for instance-

(1) In the interest of *national defense* or mobilization readiness;

(2) To perform the agency's mission adequately; or

(3) Because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government *must* maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (*e.g.,* safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need-

(1) To ensure its continuity; and

(2) For special protection covering the orderly transition of personnel and work in the event of a change in contractors.

17.605 Award, renewal, and extension.

(a) Effective work performance under *management and operating contracts* usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under *management and operating contracts*, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore *contracting officers should* take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The *contracting officer shall* review each *management and operating contract*, following agency procedures, at appropriate intervals and at least once every 5 years. The review *should* determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract *must* be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, *contracting officers should* consider-

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, *national defense*, and mobilization considerations; and

(3) Whether it is likely that qualified *offerors* will compete for the contract.

Subpart 17.7 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

17.700 Scope of subpart.

(a) Compliance with this subpart is in addition to the policies and procedures for *interagency acquisitions* set forth in subpart 17.5. This subpart prescribes policies and procedures specific to *acquisitions* of *supplies* and services by *nondefense agencies* on behalf of the Department of Defense (*DoD*).

(b) This subpart implements Pub. L. 110-181, section 801, as amended (10 U.S.C. 3201 note prec.).

17.701 Definitions.

As used in this subpart-

Department of Defense (DoD) acquisition official means-

(1) A *DoD contracting officer*; or

(2) Any other *DoD* official authorized to approve a *direct acquisition* or an *assisted acquisition* on behalf of *DoD*.

Nondefense agency means any department or agency of the Federal Government other than the Department of Defense.

Nondefense agency that is an element of the intelligence community means the agencies identified in 50 U.S.C. 3003(4) which include the-

Office of the Director of National Intelligence;

Central Intelligence Agency;

Intelligence elements of the Federal Bureau of Investigation, Department of Energy, and Drug Enforcement Agency;

Bureau of Intelligence and Research of the Department of State;

Office of Intelligence and Analysis of the Department of the Treasury;

The Office of Intelligence and Analysis of the Department of Homeland Security and the Office of Intelligence of the Coast Guard; and

Such other elements of any department or agency as have been 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.

17.702 Applicability.

This subpart applies to all *acquisitions* made by *nondefense agencies* on behalf of *DoD*. It does not apply to contracts entered into by a *nondefense agency that is an element of the intelligence community* for the performance of a joint program conducted to meet the needs of *DoD* and the *nondefense agency*.

17.703 Policy.

(a) A *DoD acquisition* official *may* request a *nondefense agency* to conduct an *acquisition* on behalf of *DoD* in excess of the *simplified acquisition threshold* only if the head of the *nondefense agency* conducting the *acquisition* on *DoD*'s behalf has certified that the agency will comply with applicable *procurement* requirements for that fiscal year except when waived in accordance with paragraph (e) of this section.

(b) A *nondefense agency* is compliant with applicable *procurement* requirements if the *procurement* policies, procedures, and internal controls of the *nondefense agency* applicable to the *procurement* of *supplies* and services on behalf of *DoD*, and the manner in which they are administered, are adequate to ensure the compliance of the nondefense department or agency with-

(1) The Federal *Acquisition* Regulation and other laws and regulations that apply to *procurements* of *supplies* and services by *Federal agencies*; and

(2) Laws and regulations that apply to *procurements* of *supplies* and services made by *DoD* through other *Federal agencies*, including *DoD* financial management regulations, the Defense Federal *Acquisition* Regulation Supplement (DFARS), *DoD* class deviations, and the DFARS Procedures, Guidance, and Information (PGI). (The DFARS, *DoD* class deviations, and PGI are accessible at: http://www.acq.osd.mil/dpap/dars).

(c) Within 30 days of the beginning of each fiscal year, submit *nondefense agency* certifications of compliance to Principal Director, Defense *Pricing* and *Contracting* at:

Department of Defense

Office of the Under Secretary of Defense (*Acquisition* and Sustainment)

Defense *Pricing* and *Contracting*

Contract Policy

Room 3B938

3060 Defense Pentagon,

Washington D.C. 20301-3060.

(d) The *DoD acquisition* official, as defined at 17.701, *shall* provide to the servicing *nondefense agency contracting officer* any *DoD*-unique terms, conditions, other related statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no *DoD*-unique requirements beyond the FAR, the *DoD acquisition* official *shall* so inform the servicing *nondefense agency contracting officer in writing*. *Nondefense agency contracting officers* are responsible for ensuring support provided in response to *DoD*'s request complies with paragraph (b) of this section.

(e) *Waiver*. The limitation in paragraph (a) of this section *shall* not apply to the *acquisition* of *supplies* and services on behalf of *DoD* by a *nondefense agency* during any fiscal year for which the Under Secretary of Defense for *Acquisition* and Sustainment has determined *in writing* that it is necessary in the interest of *DoD* to acquire *supplies* and services through the *nondefense agency* during the fiscal year. The written determination *shall* identify the *acquisition* categories to which the waiver applies.

(f) *Nondefense agency* certifications, waivers, and additional information are available at https://www.acq.osd.mil/asda/dpc/cp/policy/interagency-acquisition.html.

Subpart 17.8 - Reverse Auctions

17.800 Scope of subpart.

This subpart prescribes policies and procedures for conducting *reverse auctions* and utilizing *reverse auction service providers*.

17.801 Definitions.

As used in this subpart—

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government, in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (*e.g.,* financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting *reverse auctions* when acquiring *supplies* or services to be used by the Government.

17.802 Policy.

(a) The use of *reverse auctions may* be appropriate when *market research* indicates that—

(1) A competitive marketplace exists for the *supplies* and/or services being acquired;

(2) Multiple *offerors* can satisfy the agency's requirement; and

(3) The nature of the *supplies* and/or services being acquired (*e.g.,* clearly defined specifications, less complex requirements) encourages an iterative bidding process (*i.e.,* multiple *offerors* participate and at least one *offeror* submits more than one *offer* during the *reverse auction*).

(b) The *reverse auction* process is used to obtain *pricing* for an *acquisition*. When using the *reverse auction* process, *contracting officers* are still required to follow the *acquisition* policies and procedures (*e.g.,* those prescribed in subpart 8.4 or 16.5, or part 13 or 15), as appropriate for the particular *acquisition*.

(c)

(1) A service platform for conducting *reverse auctions may* be provided by a commercial or Government entity.

(2) While some *reverse auction service providers* are paid directly by the Government for *reverse*

auction services, other providers *may* incorporate a fee structure that uses an indirect payment method. When using an indirect payment method, the *reverse auction service provider* adds a fee(s) to the price of the successful *offer* that is provided to the Government at the close of an auction. The Government then pays the successful *offeror* the total price of the *offer*, which includes the fee(s) added by the *reverse auction service provider*. The *reverse auction service provider* then collects its fee(s) from the successful *offeror*.

(3) When acquiring *reverse auction* services from a commercial *reverse auction service provider*, agencies *shall*—

(i) Use competitive procedures, unless an exception applies;

(ii) Detail the provider's fee structure in the resultant contract or agreement for *reverse auction* services; and

(iii) Make the details of the contract or agreement for *reverse auction* services, including the provider's fee structure, available to *contracting officers* for consideration when determining whether to use a *reverse auction service provider*, in accordance with 17.804(a).

(4) When acquiring *reverse auction* services, the *contracting officer shall* ensure the following information is provided in the *solicitation* and contract:

(i) Descriptions of Government data and Government-related data.

(ii) Data ownership, licensing, delivery, and disposition instructions specific to the relevant types of Government data and Government-related data (*e.g.,* DD Form 1423, Contract Data Requirements List; work statement task; *line item*). Disposition instructions *shall* provide for the transition of data in commercially available, or open and non-proprietary format and for permanent records, in accordance with disposition guidance issued by the National Archives and Records Administration.

(d) *Contracting officers shall* only use the services of a *reverse auction service provider* that—

(1) Does not assert or imply that it can or will obtain a Government contract for participants of a *reverse auction*;

(2) Allows entities to register, at no cost, as potential *offerors* for *reverse auctions* conducted on behalf of the Government on the provider's *reverse auction* platform;

(3) Allows each entity, as part of the registration process, the opportunity to execute a proprietary data protection agreement with the provider; provided that the terms in the agreement do not affect the terms and conditions of a Government *solicitation* or contract;

(4) Protects from unauthorized use or disclosure and does not release outside of the Government—

(i) All contractor bid or proposal information (see 3.104-1) and *source selection information* associated with providing *reverse auction* services to the Government;

(ii) All information similarly generated to support the issuance of a *task order* or *delivery order* or order under a blanket purchase agreement; and

(iii) Information identified by an *offeror* as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the *reverse auction* participant's price or proposal;

(5) Allows *offerors* to see the successive lowest price(s) offered in the auction without revealing an *offeror*'s identity;

(6) At the close of each auction—

(i) Provides the Government with the successful *offer*, along with information that separately identifies the *offeror*'s price and the price for each provider fee or charge included in the total price; and

(ii) Provides the Government with all information and documentation received from *offerors* in response to the *reverse auction*.

(7) Does not participate as an *offeror* in any *reverse auction* which the provider is hosting on behalf of the Government. This prohibition includes participation in a *reverse auction* by any entity with which the provider has a relationship that raises an actual or potential conflict of interest; and

(8) Asserts no rights or license in the data gathered or generated during a *reverse auction*.

(e) Only a *contracting officer shall*—

(1) Exclude an *offeror* from participating in an auction;

(2) Determine the awardee(s) of any *reverse auction*; or

(3) Determine that the *offeror* is a *responsible prospective contractor* (see 9.103, 9.104-1, and 9.405(d)).

17.803 Applicability.

Reverse auction processes *shall* not be used for—

(a) Design-build *construction* contracts (see 36.104);

(b) *Procurements* for *architect-engineer services* subject to 40 U.S.C. chapter 11 (see 36.601);

(c) *Procurements* using sealed bidding procedures (see part 14); or

(d) *Acquisition* of personal protective equipment, in accordance with—

(1) Sections 813 and 814 of the *National Defense* Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328);

(2) Section 882 of the NDAA for FY 2018 (Pub. L. 115-91); and

(3) Section 880 of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232, 41 U.S.C. 3701 note).

17.804 Procedures.

(a) When considering the use of a *reverse auction service provider*, the *contracting officer shall*—

(1) Conduct *market research* for available sources of *reverse auction* services (*e.g.,* existing agency

contracts or agreements, *commercial service* providers, or Government service providers);

(2) Evaluate the fee structure for each *reverse auction service provider*; and

(3) Document the contract file that the use of a *reverse auction service provider* is cost effective.

(b) When conducting a *reverse auction*, the *contracting officer shall*—

(1) Not disclose the identity of the *offeror*(s) except for the awardee's identity subsequent to an award resulting from the auction (see 3.104-4(a) and (e)(1));

(2) Allow *offerors* the opportunity to continually revise their prices downward during the *reverse auction* until the close of the auction; and

(3) Allow an *offeror* to withdraw an *offer* from further consideration prior to the close of an auction.

(c) When using the services of a *reverse auction service provider*, *contracting officers shall*—

(1) Include contact information, including *contracting officer* name and email address, in the synopsis and *solicitation* that will allow *offerors* to contact the *contracting officer* directly with any questions;

(2) Upon receipt of a successful *offer*, verify that any provider fees or charges included in the price are in accordance with the provider's fee structure, as evaluated in accordance with paragraph (a)(2) of this section; and

(3) Include in the contract file any information and/or documentation received by the *reverse auction service provider* from *offerors* responding to the *reverse auction*.

(d) If only one *offeror* participates in an auction, the *contracting officer may*—

(1) Cancel the auction and document the contract file with evidence of the participation of only one *offeror*; or

(2) Accept the *offer*, only if the price is determined to be fair and reasonable (see 13.106-3(a)(2) and 15.404-1).

17.805 Solicitation provision and contract clauses.

(a) The *contracting officer shall* insert the provision at 52.217-10, *Reverse Auction*, in *solicitations* when using a *reverse auction* to award a contract or blanket purchase agreement.

(b) The *contracting officer shall* insert the clause at 52.217-11, *Reverse Auction*—Orders, in *solicitations* and contracts for a *multiple-award contract* or blanket purchase agreement, when a *reverse auction may* be used to place orders under the basic contract or blanket purchase agreement.

(c)The *contracting officer shall* insert the clause at 52.217-12, *Reverse Auction* Services, in all *solicitations* and contracts for the purchase of *reverse auction* services.