PART 16 – TYPES OF CONTRACTS

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SUBPART 16.1 – SELECTING CONTRACT TYPES

(Revised October 13, 2020 through PROCLTR 20 21-01)

16.190 Long-term contracting.

Contracting officers shall establish and process LTCs in accordance with the following:

Use LTCs for stock replenishment consumable items that have frequent, consistent, and predictable demands, as well as non-replenishment items having at least 12 demands per year. Renew items currently on LTC, provided they have had at least 4 demands in the previous year. Exclude items if

they have 2 years DLA stock on hand, unless the PLT is 18 months or greater or there is no planned buy within 2 years. The DLR sites will follow the Military Service procedures for managing items on LTCs.

16.191 Bridge contracts.

(a) For purposes of this section, the terms “contract” and “contracts” include contract actions with a total estimated value above the SAT, including task or delivery orders, and orders against GSA Schedule contracts. When determining if the acquisition meets the bridge contract definition in 2.101, contracting officers shall ensure compliance with FAR 13.003(c)(2) regarding splitting requirements.

(b) Bridge contracts impede competitive awards, and contracting officers shall limit their use in accordance with this paragraph. Contracting officers shall only use a bridge contract when it is not possible to award the planned follow-on contract in sufficient time to meet the Government’s requirements. A bridge contract may be appropriate when—

(1) The competitive follow-on contract or solicitation has been protested;

(2) The approved acquisition strategy requires a necessary change that the HCA endorses;

(3) A statutory or regulatory change necessitates a change prior to award; or

(4) Other circumstances that the contracting officer can demonstrate are not due to lack of advance planning or inadequate procurement execution result in delay of a solicitation or award.

(c) The contracting officer shall—

(1) Coordinate with the requiring activity to prepare the appropriate justifications for a non-competitive action to support solicitation and award of a bridge contract. Justifications include a formal justification and approval (FAR Part 6 or Subpart 13.5), limited sources justification (FAR Subpart 8.4), and exception to fair opportunity (FAR Subpart 16.5). The clearance levels are based on the type of justification and the total estimated value of the bridge contract action. Include the following in the justification:

(i) A clear statement that the action is a bridge contract in accordance with the definition at 2.101:

(ii) A detailed rationale for use of a bridge contract, including documentation that demonstrates the need for a bridge contract is not due to lack of advance planning or inadequate procurement execution;

(iii) A justification for the length of the bridge contract; and

(iv) A discussion of actions to be taken to avoid this bridge request and additional bridge contracts.

(2) Prepare a Decision Memorandum requesting approval to proceed with awarding a bridge contract. The approval authorities listed in 16.191(c)(3) must sign and approve the request before the contracting officer issues a solicitation or otherwise commences negotiations for award of the bridge. Contracting officers shall include the following in all bridge contract approvals:

(i) Supporting documentation in accordance with FAR 4.801(b);

(ii) Signatures meeting the FAR 2.101 definition; and

(iii) The justification in accordance with 16.191(c)(1), unless FAR 6.302-2 or other provision of FAR Subpart 6.3 not requiring preparation of a J&A prior to commencing negotiations applies.

(3) Subparagraphs (i)-(iii) identify the authorities for recommendation and approval of bridge contracts. The recommending and approval authorities shall not be the same person.

(i) The contracting officer recommends and the HCA approves initial bridge contracts. The HCA may delegate approval authority to the CCO for actions up to $1M.

(ii) The HCA recommends, and the DLA Competition Advocate approves the second bridge contract, except for actions where the DLA Acquisition Deputy Director is also the HCA. For actions where the DLA Acquisition Deputy Director is also the HCA, the DLA Acquisition Operations Division Chief makes the recommendation for a second bridge contract to the DLA Competition Advocate who remains the approval authority. The recommendation and approval authorities in this subparagraph are nondelegable.

(iii) The HCA and the DLA Competition Advocate recommend for SPE approval any additional bridge contracts beyond the second bridge, except for actions where the DLA Acquisition Deputy Director is also the HCA. For actions where the DLA Acquisition Deputy Director is the HCA, the DLA Acquisition Operations Division Chief makes the recommendation for any additional bridge contract through the DLA Competition Advocate. After receiving an authorized recommendation from the DLA Acquisition Operations Division Chief, the DLA Competition Advocate will include their recommendation for SPE approval. The recommendation authority in this subparagraph is nondelegable.

(d) Approval to award a bridge contract does not relieve the contracting officer from any other regulatory requirements that the contracting officer must fulfill before making an award. For example, contracting officers must comply with requirements for acquisition plans in accordance with 7.102, synopsizing in accordance with FAR Subpart 5.2, and solicitation. The contracting officer must determine the contractor is responsible and ensure the contractor agrees to all terms and conditions currently required by the FAR and subordinate guidance. If required, the contracting officer shall document the Price Negotiation Objective Memorandum and Price Negotiation Memorandum or provide the Simplified Acquisition Award Documentation. These examples are not a comprehensive list of contract documentation requirements. Contracting officers shall not use documents from an existing contract as substitutes for documents required in the bridge contract or

incorporate terms and conditions from an existing contract into the new bridge contract by reference.

(e) Bridge contracts are independent acquisitions; therefore, contracting officers shall issue a separate contract when awarding a bridge. Contracting officers shall not award bridge contracts by modifying an existing contract.

(f) The contracting officer shall complete recording requirements in accordance with DFARS PGI 204.606, Reporting Data, and ensure appropriate coding of sole source awards.

(g) The contracting officer shall include the request, the approval, and all supporting documentation in the contract file.

(h) Reporting. Procuring organizations shall provide—

(1) A copy of the approval and relevant supporting documentation (e.g., J&A, and acquisition plan) to the DLA Acquisition Operations Division within thirty (30) days after awarding a bridge contract; and

(2) The DLA Acquisition Bridge Contracts Report to the DLA Acquisition Operations Division by the 10th of each month and include the status of all bridge contracts with a period of performance that has not expired.

SUBPART 16.2 – FIXED–PRICE CONTRACTS

(Revised June 1 2 , 20 20 through PROCLTR 20 20-13)

16.203 Fixed–price contracts with economic price adjustment.

16.203-1 Description.

(a)(S-90) *Adjustment based on established prices.* Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items. (See DoD Class Deviation 1995-D0003, Economic Price Adjustment Clauses, issued October 5, 1995 .)

(c)(S-90) *Adjustments based on cost indexes of labor or material*. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items. (See DoD Class Deviation 1995-D0003, Economic Price Adjustment Clauses, issued October 5, 1995 .)

(S-90) Although a specific item or element of cost may require EPA coverage, the contracting officer shall also determine whether an EPA clause should cover the entire end item in order to take advantage of competitive market forces or moderate price fluctuations. Base this decision, which may be an appropriate element of tradeoff in negotiations, on risk and price analyses of the alternatives.

(S-91) All FAR and DFARS EPA clauses and DLAD and procuring organization EPA procurement notes shall contain the contractor’s warranty that the contract prices do not include allowance for any contingency to cover increased costs also considered by the EPA clause or procurement note. The contracting officer shall ensure that contractors comply with this warranty.

16.203-2 Application.

(S-92) If it becomes apparent that an EPA clause is clearly justified in a solicitation or contract but was not included, the contracting officer may include a FAR or DFARS EPA clause or DLAD or procuring organization EPA procurement note by solicitation amendment or bilateral contract modification.

(S-93) Send proposed DLAD and procuring organization EPA procurement notes to the DLA

Acquisition Compliance, Policy and Pricing Division for approval. General Counsel shall review proposed DLAD and procuring organization EPA procurement notes.

16.203-3 Limitations.

(S-90) A fixed-price contract with economic price adjustment may also be used to provide for price adjustments as authorized in this section. (See DoD Class Deviation 1995-D0003, Economic Price Adjustment Clauses, issued October 5, 1995 .)

16.203-4 Contract clauses.

(S-90) When the contracting officer determines an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 16.203-1(a)(S-90) or (c)(S-90). Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index. (See DoD Class Deviation 1995-D0003, Economic Price Adjustment Clauses, issued October 5, 1995 .)

16.290 Procurement notes.

(a) *Adjustments based on established prices – standard supplies.* If the contracting officer determines that no existing FAR or DFARS EPA clause, or DLAD or procuring organization EPA procurement note, is appropriate, the contracting officer may develop a procurement note for one-time use, subject to CCO approval in accordance with 1.301(a)(1)(S-92)(A).

(1) Contracting officers may use procurement note C13 in solicitations and contracts, when the contracting officer determines that the use of the clause at FAR 52.216-2 is inappropriate (reference FAR Deviation #2008-02).)

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C13 Economic Price Adjustment – Standard Supplies (AUG 2017)

(a) The contractor warrants that the unit price stated in the schedule for [*offeror insert schedule line item number*] is not in excess of the contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that –

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

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

(b) The contractor shall promptly notify the contracting officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items ordered on and after the effective date of the decrease in the contractor's established price, and this contract shall be modified accordingly.

(c) If the contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the contractor's written request to the contracting officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this procurement note shall not exceed 10 percent of the contract unit price at the outset of each performance/ordering period.

(2) The increased contract unit price shall be effective –

(i) On the effective date of the increase in the applicable established price if the contracting officer receives the contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the contracting officer receives the request.

(3) The increased contract unit price shall not apply to quantities ordered under the contract before the effective date of the increased contract unit price.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the contracting officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the contractor's written request, the contracting officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this procurement note, and thereafter if there is no cancellation, the contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

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(2) Contracting officers may use procurement note M09 for fresh fruits and vegetables under the DLA Troop Support subsistence supply chain for long term contracts (reference FAR Deviation #2008-02).

(3) Contracting officers may use a procuring organization EPA procurement note in any DLA Multiple Award Schedule solicitation or contract instead of FAR 52.216-2.

(b) *Adjustments based on established prices – semi-standard supplies.* The contracting officer may use a procuring organization EPA procurement note with FAR clause 52.216-3.

(c) *Adjustments based on cost indexes of labor or material.*

(1) The contracting officer may include an index clause in solicitations and resulting contracts only if the contracting officer documents in the acquisition plan that the acquisition satisfies the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d). The contracting officer shall select the

most appropriate index published by the Bureau of Labor Statistics (BLS). The contracting officer may use another index if the contracting officer determines that no BLS index is suitable and documents in the acquisition plan the specific BLS indexes considered, why they were unsuitable, and rationale demonstrating the suitability of the index selected.

(2) If any applicable index is discontinued or its method of derivation is altered substantially, or the contracting officer determines that the index consistently and substantially fails to reflect market conditions, the parties shall agree upon an appropriate substitute index for determining price adjustments. The contracting officer shall modify the contract to reflect such substitute index, effective on the date the index specified in the contract is no longer published or began to consistently and substantially fail to reflect market conditions.

(d) *Price adjustment for Department of Labor Index.*

(1) The contracting officer may use procurement note C09 in solicitations and contract awards when—

(i) Unpredictable increases or decreases in the cost of producing the items are expected or pricing uncertainties exist for a component or components of the end item, and the change in cost of production or component prices can be tracked via the Producers Price Index (PPI) published by the BLS; or unpredictable increases or decreases in the cost of producing the items are expected or pricing uncertainties exist for labor, and the change in cost of production can be tracked via the Employment Cost Index (ECI) published by the BLS.

(ii) The circumstances in FAR 16.203-4(d)(1) exist;

(iii) The contracting officer considers the use of this procurement note appropriate; and

(iv) The requirements of FAR 16.203-3 and DLAD Subpart 16.2 are met.

(2) The contracting officer shall coordinate with the procuring organization pricing office before selecting the index. For procuring organizations with no pricing office, the contracting officer shall coordinate the fill-in sections with the DLA Acquisition Contract & Pricing Compliance Division.

(3) Notes for fill-in text:

(i) Paragraph (b)(1): Enter the appropriate Price Index (ECI, PPI, etc.) code number identification and title in the fill-in. Normally, unadjusted indexes should be used (as opposed to seasonally adjusted indexes). Note: If it is determined that the index to be used will only measure part of the cost of production or material, then that percentage which is measured can be specified. For example, if the component is cotton and the Bureau of Labor Statistics (BLS) index is only judged to measure 50% of the contract price, then this should be specified such as 50% times the base price.

(ii) Paragraph (b)(2): Enter the number of months, or quarters for ECI, for the adjusting price index.

(iii) Paragraph (b)(3): One box must be selected. Enter the number of months, or quarters for ECI, in each fill-in. Note: If final indexes are used, adjust the number of months, or quarters, in the second fill-in to account for first published indexes.

(iv) Paragraph (c)(1): Enter the number of price adjustments per contract year.

(v) Paragraph (d): Enter the appropriate percentage price increase ceiling, considering the length of contract performance, index volatility, and ratio of the cost covered by this clause to the total

contract price. Any percentage over 10 percent requires approval by the chief of the contracting office.

(vi) Paragraph (f)(2): Enter the minimal dollar amount for an adjustment to be made for retroactive price changes. The default is $500.

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C09 Economic Price Adjustment – Department of Labor Index (JUN2020)

(a) Warranties. The contractor warrants that—

(1) The base unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this procurement note; and

(2) Prices invoiced shall be computed in accordance with the terms of this procurement note.

(b) Definitions. As used throughout this procurement note—

(1) "*Index*", for the purpose of price adjustment under this procurement note, means the Producer Price Index(es) reported in the monthly publication entitled, "Producer Price Indexes", published by the United States (U.S.) Department of Labor (DOL), Bureau of Labor Statistics (BLS) for the following code number(s) and title(s):_____(*contracting officer fill-in*)_____; or the Employment Cost Index(es) reported in the quarterly publication entitled, "Employment Cost Indexes," published by the United States (U.S.) Department of Labor (DOL), Bureau of Labor Statistics (BLS) for the following code number(s) and title(s): _____(*contracting officer fill-in*)_____.

(2) "*Base index*" means the arithmetic average of the final version of the indexes published for the ____ months, or ____ quarters for ECI, preceding the closing date for receipt of proposals or the date required for receipt of final proposal revisions, if discussions were held.

(3) "*Adjusting index*" means the ____ arithmetic average of the [ ] first published or [ ] final version of the index for the ____ months, or ____ quarters for ECI, prior to the month in which the adjusting contract modification is effective.

(4) "*Base unit price*" means the unit price applicable to a quantity of a contract line item established at contract award, exclusive of any price adjustment pursuant to this procurement note.

(5) *"Adjustment period"* means the period during which a particular adjustment to the unit price under this procurement note (calculated at the beginning of the adjustment period) will apply. The length of each adjustment period in months is the number of adjustments allowed per year in (c)(1) below divided by 12.

(c) Adjustments. Prior to the end of each adjustment period, the contracting officer will calculate the adjusting index and any adjusted contract unit price(s) for the new adjustment period, and modify the contract accordingly. The contracting officer will make price adjustments in accordance with this procurement note by issuing a contract modification showing the base index, the adjusting index, the base unit price, the mathematical calculations, and the changed unit price(s). The price adjustment shall apply to orders issued after the effective date of the contract modification establishing the unit price for the adjustment period. The contracting officer will base the price adjustment(s) for each adjustment period on the percentage change between the base index and the adjusting index for the adjustment period, as applied to the base unit price.

(1) The contractor shall decrease its price in any particular adjustment period if the adjusting index is less than the base index. This contract allows _____ price adjustments per contract year.

(2) Example of adjustment calculation:

Base Index=109.88*

Adjusting Index =112.72*

Less base index =109.88

Change to index =2.84

Divide change to index by base index =2.84 / 109.88 = .02585 (2.585%)**

Multiply by the base unit price =$50.00 x .02585 = $1.29***

= Unit Price Adjustment

Adjusted unit price =$51.29

*In computing the base and adjusting indexes, the contracting officer will round the resulting figure to the second decimal place.

**The contracting officer will round this number to the fifth decimal place.

***The contracting officer will round all dollar figures to the nearest cent.

(d) Upward ceiling on economic price adjustment. No upward ceiling shall apply under this economic price adjustment procurement note, unless the BLS series is based on indices below the six-digit level. (An index “below the six-digit level” in BLS usage means an index with an identifier exceeding six-digits). For any BLS series that is below the six-digit level, the following ceiling shall apply: The contractor agrees that the aggregate of the increases in any contract unit price under the terms of this procurement note shall not exceed ___% (percent) of the original base unit price, except as provided hereafter.

(1) If at any time the contractor has reason to believe that within the near future a price adjustment under the terms of this procurement note will be required that will exceed the adjustment ceiling for any item, the contractor shall promptly notify the contracting officer in writing of the expected increase. The notification shall include a revised ceiling the contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the contracting officer.

(2) If an increase in the index would raise a contract unit price for an item above the current ceiling, the contracting officer may issue a contract modification to raise the ceiling. If the contracting officer does not raise the contract ceiling, the contracting officer will promptly notify the contractor in writing.

(e) Invoices. The basis for prices payable under this contract is the latest adjusted unit price incorporated into the contract as of the date of order.

(f) Retroactive adjustment. This paragraph applies only if the contracting officer selected “first published index” in paragraph (b)(3). If the Government has already paid for orders delivered during an adjustment period, the contractor may request a retroactive adjustment. The contracting officer

will, base the retroactive adjustment on the difference between a higher final revised index applicable to an adjustment period and the index values used in calculating the unit price for that adjustment period, subject to the adjustment ceiling in paragraph (d) and under] the following conditions:

(1) The request for equitable adjustment clearly establishes that the unit price adjustment for the adjustment period would have been higher if the final revised index had been used and identifies all invoices and payments to which it applies cites the specific index differences relating to the requested adjustment, and provides a calculation of the total net price adjustment for items delivered during that adjustment period.

(2) The total dollar changes for items delivered is $_____ ($500.00 unless otherwise stated) or more for the applicable adjustment period(s).

(3) The contracting officer received the contractor's written request within 45 days following publication of the final revised index.

The contractor shall adjust its prices downward based on the difference between a lower final revised index applicable to an adjustment period and the index values used in calculating the unit price for that adjustment period, subject to the limitation in paragraph (f)(2).

(g) Revision of index. If any applicable index is discontinued or its method of derivation is altered substantially, or if the contracting officer determines that the index consistently and substantially fails to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute. The contracting officer will modify the contract to reflect such substitute effective on the date the index was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(h) Final invoice. The contractor shall include a statement on the final invoice confirming it has applied all decreases required by this procurement note to the amounts invoiced.

(i) Disputes. The "Disputes" clause of the contract applies to any dispute arising under this procurement note.

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(e) *Adjustments based on established market prices or indexes.*

(1) Contracting officers shall determine the most appropriate international, national, regional, or local area market. Contracting officers shall include in the solicitation or contract an EPA clause or procurement note that identifies the index or established market price, the document containing such index or price, and its effective date or period.

(2) If the contracting officer is unable to identify an established market price or index that satisfactorily reflects economic fluctuations, the contracting officer may include fill-ins in the EPA clause or procurement note in the solicitation for offerors to recommend the most appropriate established market price or index. If the offeror does not propose an established market price or index, the contracting officer will select the most appropriate established catalog price and amend the solicitation to include the selected catalog price.

(3) Contracting officers shall consider the length of contract performance when entering the appropriate percentage price increase ceiling in paragraph (c)(1) of procurement note C09. Any percentage over 10 percent requires approval by the CCO or designee, or not lower than one level

above the contracting officer. Such approval may cover more than one contract and extend over a stated definite time period not to exceed two years, at which time the contracting officer shall review the adjustment ceiling again.

(4) Contracting officers may use procurement note L24 in solicitations and contracts if acquiring commercial items for which manufacturers or suppliers have established published prices meeting the definition of market price or catalog price.

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L24 Economic Price Adjustment (EPA) – Established Prices (AUG 2017)

(a) The contractor warrants that the unit price stated in the Schedule for _____ [offeror insert Schedule line item number] is not in excess of the contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that –

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

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

(b) The contractor shall promptly notify the contracting officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the contractor's established price, and this contract shall be modified accordingly.

(c) If the contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the contractor's written request to the contracting officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed ___ percent of the original contract unit price.

(2) The increased contract unit price shall be effective –

(i) On the effective date of the increase in the applicable established price if the contracting officer receives the contractor's written request within 10 days thereafter: or

(ii) If the written request is received later, on the date the contracting officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the contractor, within the meaning of the default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the contracting officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the contractor's written request, the contracting officer may

cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase, except as follows.

(i) The contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the contractor certifies and notifies the contracting officer of such items within 10 days after the contractor receives the cancellation notice.

(ii) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(iii) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this clause, and thereafter if there is no cancellation, the contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(e) The contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause and shall certify on the final invoice that all price decreases required by this clause have been applied in the manner required herein.

(f) Disputes. Any dispute arising under this clause shall be determined in accordance with the Disputes clause of the contract.

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(f) *Adjustments based on established catalog prices.* The contracting officer may include an established catalog price-type EPA clause (FAR 52.216-2 or 52.216-3, DFARS 252.216-7000 or 252.216-7001) in solicitations and resulting contracts for an item previously bought without such EPA clause only after the contracting officer determines that an index-type or an established market-priced EPA is unsuitable (i.e., does not meet the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d), or does not describe the supplies with specificity) and documents in the acquisition plan the results of actions taken in reaching this determination.

(g) The contracting officer may only use these procurement notes when the requirements of FAR 16.203-2 are met, the contracting officer makes the determination required by FAR 16.203-3, and the contracting officer determines that none of the standard FAR EPA clauses are appropriate for use in the acquisition.

(h) The contracting officer shall include procurement note L25 in solicitations when using negotiation procedures that include economic price adjustments.

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L25 Evaluation of Offers – Economic Price Adjustment (AUG 2017)

(a) Offers in response to solicitations will be evaluated without adding any amount for economic price adjustment unless the economic price adjustment (EPA) clause included in the solicitation provides for offerors to specify the portion of the contract price subject to EPA. In this case, the offered price(s) subject to the EPA clause will be adjusted to the maximum possible extent under the EPA using the price ceiling limitation provision of such clause for the basic contract plus all options

covered by the evaluation. The resulting price(s) will be used for evaluation of offers.

(b) If a successful offeror stipulates a lower maximum increase limitation then that included in the solicitation, it will be incorporated into the resulting contract.

(c) Offers which (1) increase the maximum ceiling percentage specified in the solicitation, (2) stipulate a maximum decrease limit, or (3) delete or otherwise alter the economic price adjustment clause, will not be considered for award, unless the contracting officer determines that award on such basis is in the best interests of the Government and all offerors are afforded an opportunity to offer on the same basis.

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(i) Contracting officers may insert procurement note H12 in solicitations and awards, including those subject to FAR Part 12, that meet the criteria in FAR 16.205 for fixed price prospective price redetermination, if the contracting officer determines economic price adjustment is unsuitable and requires contract pricing to be based on the date supplies are ordered rather than on date of delivery (reference FARS DEV 13-07).

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H12 Price Redetermination – Prospective (JUN 2020) (DEVIATION - PERMANENT)

(a) The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this procurement note, except that --

(1) The prices for supplies ordered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed; and

(2) In no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) Definition. “Costs,” as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Price redetermination periods. For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to _____, (see note (1)) and the second and each succeeding period shall extend for _____ [insert appropriate number] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) Data submission.

(1) Not more than _____ nor less than _____ (see note (2)) days before the end of each redetermination period, except the last, the contractor shall submit --

(i) Proposed prices for supplies that may be ordered or services that may be performed in the next succeeding period, and –

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15-2, FAR 15.408, or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the ___ month (see Note (3)) before the submission of proposed prices with sufficient supporting data to disclose unit costs and cost trends for --

(A) Supplies ordered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded –

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for --

(A) Supplies ordered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(C) Any other relevant data that the contracting officer may reasonably require.

(3) If the contractor fails to submit the data required by subparagraphs (d)(1) and (2) of this section, within the time specified, the contracting officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the contractor, the contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the interest clause.

(e) Price redetermination. Upon the contracting officer’s receipt of the data required by paragraph (d) of this section, the contracting officer and the contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be ordered or services that may be performed in the period following the effective date of price redetermination.

(f) Contract modifications. Each negotiated redetermination of prices shall be evidenced by a bilateral modification to this contract, stating the redetermined prices that apply during the redetermination period.

(g) Adjusting billing prices. Pending execution of the contract modification (see paragraph (f) of this section), the contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any

requested additional payments, refunds, or credits shall be made promptly.

(h) Quarterly limitation on payments statement. This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing --

(i) The total contract price of all supplies or services ordered and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies or services ordered and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies or services ordered and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies or services ordered and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (h)(1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (h)(1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, and do not exceed the existing contract price, the contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (h)(1)(iv) of this section exceeds the sum due the contractor, as computed in accordance with subdivisions (h)(1)(i), (ii), and (iii) of this section, the contractor shall immediately refund or credit to the Government the amount of this excess. The contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the contractor and by the amount of previous refunds or credits affected under this procurement note. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the progress payments clause. The contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the contractor, the contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) Disagreements. If the contractor and the contracting officer fail to agree upon redetermined

prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the contracting officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this procurement note.

(k) Termination. If this contract is terminated, prices shall continue to be established in accordance with this procurement note for:

(1) completed supplies and services accepted by the Government and;

(2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses or procurement notes of this contract.

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SUBPART 16.5 – INDEFINITE DELIVERY CONTRACTS

(Revised August 3, 2017 through PROCLTR 2017-17)

16.501-2 General.

(c) Indefinite-delivery contracts providing for issuance of undefinitized delivery orders (UDOs) shall meet the requirements of DFARS Subpart 217.74 and DLAD SUBPART 17.74 – UNDEFINITIZED CONTRACT ACTIONS .

16.503 Requirements contracts.

(a)(S-90) Guaranteed minimum (GM) purchase requirements and obligations. Contracting officers are not required to establish a GM for requirements contracts; however, if the contracting officer elects to include a GM in the solicitation and the award, the policies at 16.504(a)(1)(S-90 and 17.207(S-90) apply.

16.504 Indefinite–quantity contracts.

(a)(1)(S-90) Guaranteed minimum (GM) purchase requirements and obligations.

(A) Contracting officers shall establish a GM quantity or GM dollar value of supplies or services for the base period of performance of indefinite-quantity contracts (IQCs) and record an obligation in the amount of the GM at time of award. Recording the obligation is an internal financial action and is separate from issuing a task or delivery order against an IQC. Contracting officers shall follow the Guaranteed Minimum (GM) Job Aids https://dlamil.dps.mil/sites/InfoOps/Shared%20Documents/Forms/AllItems.aspx?FolderCTID=0x0120

00D3D259D71343A94E992AA17310CB0231&viewid=bb1b25a6%2D56d8%2D4398%2Dac48%2D5f987c946cca&id=%2Fsites%2FinfoOps%2Fshared%20Documents%2FEBS%20ONLINE%20HELP%2FePROCUREMENT%2Fguaranteed%20Minimum%20%28GM%29(. (From the EBS Home Page, see the EBS Online Help link, navigate to the eProcurement section, and select the Guaranteed Minimum (GM) folder.)

(*1*) For actions executed in ECC, see the job aid entitled "Creating and Maintaining a Guaranteed Minimum Purchase Order".

(*2*) For actions executed in SRM, see the job aid entitled "Creating and Updating a Guaranteed Minimum (GM) on a Long Term Contract (LTC)".

(B) Failures to establish a GM quantity or GM dollar value and/or record an obligation in the amount of the GM purchase requirement when awarding an IQC are reflected in warrant proficiency scores and require creation of a contracting officer corrective action plan in accordance with DLAM 5025.04, Contracting Officer (KO) Warrant Program (https://issue-p.dla.mil/Published_Issuances/Contracting%20Officer%20(KO)%20Warrant%20Program%20with%20CAP%20changes.pdf). See Monthly Review and Reporting Requirements at mandatory PGI 16.504(a)(1)(S-90)(B).

(C) If during contract performance, the contracting officer does not expect demand during the remaining performance period to fulfill the GM, the contracting officer should consider whether a termination for convenience to reduce the GM is appropriate. Before executing any modification to effect a reduction in the GM, the contracting officer should consult with Office of Counsel to consider any legal impacts to the Agency stemming from the modification.

(a)(4)(viii) Use procurement note L26 in solicitations which will result in IDCs when it is anticipated that the contractor will offer a price break for high quantity delivery orders. Coordinate with the demand planner manager for establishment of the quantity most likely to be procured for each delivery order. The highest weight should then be assigned to this quantity. State the range of order quantities and the evaluation weight which will be placed on each quantity range in the buying section of Optional Form 336, Continuation Sheet. The contracting officer shall also provide the contractor with an estimate of the annual requirements.

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L26 Evaluation of Quantity Sensitive and Indefinite Delivery Contracts (AUG 2017)

(1) To be eligible for award for an item, the contractor shall offer prices for each quantity increment stated in the solicitation.

(2) The Government will—

(i) Evaluate prices on a weighted basis, as identified in the solicitation.

(ii) Assign the highest weights to incremental quantities, as identified in the solicitation, within which it anticipates orders are most likely to be issued.

(iii) Evaluate offers by multiplying the designated weight by the unit price for each order increment and adding the results.

(iv) Make only one award for each line item.

(v) Issue each delivery order at the price offered for that increment.

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(c) Multiple award preference. The contracting officer shall include the determination not to make multiple awards in the acquisition plan or otherwise document the determination in writing in the contract file.

(1) Planning the acquisition.

(i) “Awarded to a single source” means the task or delivery orders will not be competed between contract holders. “Task or delivery order contract” does not include orders against task or delivery order contracts.

(ii) For task or delivery order contracts awarded to a single source that are greater than $10 million and less than the threshold at FAR 16.504(c)(1)(ii)(D)(1), the HCA shall approve the D&F. The HCA approval authority may be delegated to the CCO and is not further delegable.

(iii) The determination at DLAD 16.504(c)(1)(ii)(D)(1)(i) is not required —

(A) If a justification has been executed in accordance with FAR 6.3 and DFARS 206.3;

(B) For AbilityOne contracts when a mandatory source in accordance with FAR 8.704; or

(C) For FPI contracts when a mandatory source in accordance with FAR 8.602(a)(3).

(2) For task or delivery order contracts awarded to a single source that are above the threshold at FAR 16.504(c)(1)(ii)(D)(1), excluding the exception at DFARS 216.504(c)(1)(ii)(D)(3), the procuring organization shall submit the supporting D&F to the DLA Acquisition Operations Division prior to issuance of the solicitation. If the contracting officer determines multiple awards are not possible after negotiation with multiple offerors, the contracting officer shall submit the D&F a minimum of 30 days prior to contract award. If the D&F specifies the solicitation number resulting in multiple awards, any resulting single award contract over the threshold at FAR 16.504(c)(1)(ii)(D)(1) will be covered (e.g., sequential awards, different lots). The D&F shall include sufficient detail to support the application of an exception at FAR 16.504(c)(1)(ii)(D)(1).

(3) Fixed-price contracts utilizing an economic price adjustment, or a price redetermination clauses qualify for the FAR 16.504(c)(1)(ii)(D)(1)(ii) exception if the individual delivery or task orders under the contracts are firm-fixed priced using prices established in the contracts.

16.505 Ordering.

(a)(S-90) The contracting officer shall issue a delivery order for any quantity ordered, including a quantity ordered concurrently with award of a basic contract.

(b) *Orders under multiple-award contracts—*

(8) *Task-order and delivery-order ombudsman*. The competition advocate at each procuring organization shall act as the task and delivery order contract ombudsman. The ombudsman shall attempt to resolve contractor complaints relative to placement of individual task and delivery orders. When the ombudsman cannot resolve complaints at the procuring organization level, the ombudsman shall forward the complaint to the Program Manager for Competition, DLA Acquisition

Operations Division. The DLA competition advocate shall resolve the complaint. Each procuring organization shall develop procedures for execution of ombudsman duties and responsibilities.

(c) Contracting officers may use procurement note C10 to indicate delivery order procedures in multiple award indefinite delivery contracts pursuant to FAR 16.504. Indicate in the procurement note whether price evaluation for the task or delivery order is significantly more, less, or approximately equal in importance to all other evaluation factors combined.

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C10 Placement of Task or Delivery Orders Against Multiple Indefinite Delivery Contracts (AUG 2017)

(1) In accordance with FAR 52.216-27, Single or Multiple Awards, the Government may elect to award multiple contracts under this solicitation. The Government will evaluate proposals in accordance with evaluation provisions in Section M of this solicitation. In the event of multiple awards, the Government will use the same evaluation criteria to determine which proposals represent the best value to the Government. The contracting officer has the discretion to determine the exact number of awards, considering the cost to the Government to administer multiple awards, the recurring nature of the requirement, the need to increase the active production base, and the benefits that may be achieved through continued competition.

(2) Task or delivery order placement procedure.

(a) In the event of multiple awards, the contracting officer will consider each awardee for placement of individual task or delivery orders unless an exception at FAR 16.505(b)(2) applies. However, awardees subject to testing and approval requirements (e.g., first article testing) are not eligible to receive orders until testing requirements are satisfactorily completed. Failure to successfully complete required testing will constitute grounds for contract termination for default by the Government.

(b) Unless stated otherwise in the contract or in the request for quotes for task or delivery orders under this contract, the following evaluation process will be used in awarding task or delivery orders. The criteria used for evaluating offers for task or delivery orders under this contract are price, past performance, and delivery. Price is of _____ importance than or to the other factors combined. Past performance will include performance on orders previously placed under the contract and may include performance under other contracts. In evaluating performance under previous orders, the contracting officer will consider delivery, quality of supplies or services furnished, and success in implementing any socioeconomic support programs that may be applicable to the contract.

(3) Task and delivery order ombudsman. In accordance with FAR 16.505(b)(8), the competition advocate will address complaints or questions regarding the placement of individual task or delivery orders. Address correspondence to the appropriate supply chain listed below:

For DLA Aviation:

DLA Aviation

Competition Advocate, BPP

8000 Jefferson Davis Highway

Richmond, Virginia 23297-5124

For DLA Troop Support’s construction and equipment, clothing and textile, subsistence, and medical supply chains:

DLA Troop Support

Competition Advocate, BPA

700 Robbins Avenue

Philadelphia, Pennsylvania 19111-5096

For DLA Land and Maritime:

DLA Land and Maritime

Competition Advocate

Post Office (P.O.) Box 3990

Columbus, Ohio 43218-3990

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16.590 Procurement notes.

(a) Contracting officers may use procurement note L27 in solicitations when a method is needed for making additions or deletions to items covered by the contract (e.g., corporate contracts, LTCs incorporating a manufacturer’s price list, comprehensive weapon system spare parts support, a specific range of items).

(1) The contracting officer shall address competition requirements before new items may be added to a contract.

(2) The contracting officer shall prepare a scope of contract statement in the solicitation and resulting contract to clearly establish the Government’s intentions and rights under the contract. The scope of contract statement should communicate a comprehensive objective for the acquisition (i.e., whether it is based on a specific stock class, weapon system, product line, manufacturer, or distributor). The contracting officer shall not include information in the scope of contract statement that conflicts with Section B or other terms of the solicitation. Contracting officers have flexibility in defining contract scope but must be careful to avoid ambiguities.

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L27 Addition and Deletion of Items (AUG 2017)

(1) The Government reserves the right to unilaterally delete items that were available from only one manufacturer at the time of award if an alternate source of supply becomes available or the Government’s requirements are modified to provide for full and open competition. The Government will provide a 30-day advance notice to the contractor prior to deleting any item from the contract.

(2) The Government may add new items to the contract through bilateral modification with negotiated prices. All new requirements are subject to synopsis prior to addition to the contract.

(3) Discontinued items:

(a) The contractor agrees to provide the Government with immediate, written notification when the manufacturer will discontinue an item, including a recommendation for any potential substitute or replacement items. If the Government elects to include a substitute or replacement item in the contract, the contracting officer will modify the contract accordingly.

(b) If the manufacturer discontinues an item without replacement, the contractor shall include in the notice a recommendation concerning the availability of items that are comparable in form, fit, and function. The contractor shall not incur any costs related to alternate sources of supply without the express written approval of the contracting officer. The Government has the option to make a last time order, or series of orders, within 30 days after receiving written notification of the discontinued item, after which the item will be deleted from the contract. The contractor shall honor any last time order, unless it is returned to the ordering office within 10 days after issuance with written notice stating the full quantity is not available for shipment. The parties will negotiate the terms of such orders, including changes to the delivery schedule and maximum quantity available for shipment.

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(b) Contracting officers shall use procurement note C12 in solicitations and contract awards for LTCs that provide for shipment to more than one location and include quantity range pricing; when transportation costs will be relatively small compared to the cost of the item; and when the contract price will be f.o.b. origin.

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C12 Pricing of Delivery Orders with Quantity Increments (AUG 2017)

(a) In pricing delivery orders requiring delivery of one national stock number (NSN) to multiple destinations, the Government will determine the price for each destination as follows, depending on the box checked:

 (1) The quantity range price based on the total quantity of the NSN being procured under each delivery order regardless of destination; or

 (2) The total quantity being shipped to all destinations within each zone as defined elsewhere in this contract.

(b) If this solicitation or contract contains a provision for placement of orders through an electronic ordering system, the Government will determine unit prices for those orders as follows, depending on the box checked:

 (1) The total quantity of all requirements for each NSN issued via the electronic ordering system in a single day, regardless of the number of individual orders; or

 (2) The quantity of each individual order.

(c) The minimum quantity to be ordered, per destination, will be the minimum ordering range quantity if specified in section B of the solicitation or contract for each item.

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SUBPART 16.6 – TIME–AND–MATERIALS, LABOR–HOUR, AND LETTER CONTRACTS

16.601 Time–and–materials contracts.

(d) Limitations.

(S-90) The contracting officer shall include “not to exceed” price ceilings in each option and delivery order.

(S-91) Contracting officers shall migrate time-and-material and labor-hour (T&M/LH) vehicles to other contract types, preferably a fixed- price arrangement, when the service becomes repetitive and more predictable in nature.

(S-92) HCAs shall annually monitor their percentage of acquisition dollars being spent on T&M/LH contracts and orders. HCAs shall report to the CAE at the close of the calendar year any percentages of T&M/LH contract action dollars for the preceding fiscal year exceeding 8 percent of service dollars, including a discussion of the HCA’s strategy to decrease the use of T&M/LH contract type and the risk mitigation measures used in administering these contract types.