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7.000 Scope of part.

This part prescribes policies and procedures for-

(a) Developing *acquisition* plans;

(b) Determining whether to use commercial or Government resources for *acquisition* of *supplies* or services;

(c) Deciding whether it is more economical to lease equipment rather than purchase it; and

(d) Determining whether functions are inherently governmental.

Subpart 7.1 - Acquisition Plans

7.101 Definitions.

As used in this subpart-

Acquisition streamlining means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the *acquisition* cycle, in *solicitations* and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

Life-cycle cost means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

Order means an *order* placed under a-

(1) Federal Supply Schedule contract; or

(2) Task-*order* contract or delivery-*order* contract awarded by another agency, (*i.e., Governmentwide acquisition contract* or *multi-agency contract*).

Planner means the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those *acquisitions* not requiring a written plan.

7.102 Policy.

(a) Agencies *shall* perform *acquisition planning* and conduct *market research* (see part 10) for all *acquisitions* in *order* to promote and provide for—

(1) *Acquisition* of *commercial products* or *commercial services*, or to the extent that *commercial products* suitable to meet the agency's needs are not available, *nondevelopmental items*, to the maximum extent practicable (10 U.S.C. 3453 and 41 U.S.C. 3307); and

(2) *Full and open competition* (see part 6) or, when *full and open competition* is not required in accordance with part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the *supplies* or services to be acquired (10 U.S.C. 3206(a)(1) and 41 U.S.C. 3306a)(1)).

(3) Selection of appropriate contract type in accordance with part 16; and

(4) Appropriate consideration of the use of pre-existing contracts, including interagency and intra-agency contracts, to fulfill the requirement, before awarding new contracts. (See 8.002 through 8.004 and subpart 17.5).

(b) This planning *shall* integrate the efforts of all personnel responsible for significant aspects of the *acquisition*. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed *acquisition planning* system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

7.103 Agency-head responsibilities.

The *agency head* or a designee *shall* prescribe procedures f or the following:

(a) Promoting and providing for *full and open competition* (see part 6) or, when *full and open competition* is not required in accordance with part 6, for obtaining competition to the maximum extent practicable, with due regard to the nature of the *supplies* and services to be acquired (10 U.S.C. 3206(a)(1) and 41 U.S.C. 3306(a)(1)).

(b) Encouraging *offerors* to supply *commercial products* or *commercial services*, or to the extent that *commercial products* suitable, to meet the agency needs are not available, *nondevelopmental items* in response to agency *solicitations* (10 U.S.C. 3453 and 41 U.S.C. 3307).

(c) Ensuring that *acquisition planners* address the requirement to specify needs, develop specifications, and to solicit *offers* in such a manner to promote and provide for *full and open competition* with due regard to the nature of the *supplies* and services to be acquired (10 U.S.C. 3206(a)(1) and 41 U.S.C. 3306(a)(1)). (See part 6 and 10.002.)

(d) Ensuring that *acquisition planners* document the file to support the selection of the contract type in accordance with subpart 16.1.

(e) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the *acquisition* becomes more complex and costly, including for cost-reimbursement and other high-risk contracts (*e.g.*, other than firm-fixed-price contracts) requiring a written *acquisition* plan. A written plan *shall* be prepared for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts, although written plans *may* be required for firm-fixed-price contracts as appropriate.

(f) Ensuring that the statement of work is closely aligned with performance outcomes and cost estimates.

(g) Writing plans either on a systems basis, on an individual contract basis, or on an individual *order* basis, depending upon the *acquisition*.

(h) Ensuring that the principles of this subpart are used, as appropriate, for those *acquisitions* that do not require a written plan as well as for those that do.

(i) Designating *planners* for *acquisitions*.

(j) Reviewing and approving *acquisition* plans and revisions to these plans to ensure compliance with FAR requirements including 7.104 and part 16. For other than firm-fixed-price contracts, ensuring that the plan is approved and signed at least one level above the *contracting officer*.

(k) Establishing criteria and thresholds at which *design-to-cost* and life-cycle-cost techniques will be used.

(l) Establishing standard *acquisition* plan formats, if desired, suitable to agency needs.

(m) Waiving requirements of detail and formality, as necessary, in planning for *acquisitions* having compressed delivery or performance schedules because of the urgency of the need.

(n) Assuring that the *contracting officer*, prior to *contracting*, reviews:

(1) The *acquisition* history of the *supplies* and services; and

(2) A description of the *supplies*, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

(o) Ensuring that agency *planners* include use of the metric system of measurement in proposed *acquisitions* in accordance with 15 U.S.C. 205b (see 11.002(b)) and agency metric plans and guidelines.

(p) Ensuring that agency *planners*-

(1) Comply with the policy in 11.002(d) regarding *procurement* of *sustainable products and services* (as defined in 2.101) in accordance with subpart 23.1;

(2) Comply with the Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles), for the design, *construction*, renovation, repair, or deconstruction of Federal buildings (see 36.104). The Guiding Principles can be accessed at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf;* and

(3) Require contractor compliance with Federal environmental requirements, when the contractor is operating Government-owned facilities or vehicles, to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.

(q) Ensuring that *acquisition planners* specify needs and develop plans, drawings, work statements, specifications, or other product or service requirements (*e.g.*, help desks, call centers, training services, and automated self-service technical support) descriptions that address *information and communication technology (ICT*) accessibility standards (see 36 CFR 1194.1) in proposed *acquisitions* and that these standards are included in requirements planning (see subpart 39.2).

(r) Making a determination, prior to issuance of a *solicitation* for *advisory and assistance services* involving the analysis and evaluation of proposals submitted in response to a *solicitation*, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a *solicitation* are not readily available within the agency or from another *Federal agency* in accordance with the guidelines at 37.204.

(s) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an *inherently governmental function* by a contractor and that all contracts or *orders* are adequately managed so as to ensure effective official control over contract or *order* performance.

(t) Ensuring that knowledge gained from prior *acquisitions* is used to further refine requirements and *acquisition* strategies. For services, greater use of *performance-based acquisition* methods *should* occur for follow-on *acquisitions*.

(u) Ensuring that *acquisition planners*, to the maximum extent practicable-

(1) Structure contract requirements to facilitate competition by and among small business concerns; and

(2) Avoid unnecessary and unjustified *bundling* that precludes small business participation as contractors (see 7.107) (15 U.S.C. 631(j)).

(v) Ensuring that agency *planners* on *information technology acquisitions* comply with the capital planning and investment control requirements in 40 U.S.C. 11312 and OMB Circular A-130.

(w) Ensuring that agency *planners* on *information technology acquisitions* comply with the *information technology* security requirements in the Federal *Information Security* Management Act (44 U.S.C. 3544), OMB's implementing policies including Appendix III of OMB Circular A-130, and

guidance and standards from the Department of Commerce's National Institute of Standards and Technology.

(x) Ensuring that agency *planners* use project labor agreements when required (see subpart 22.5 and 36.104 Policy.).

(y) Ensuring that *contracting officers* consult the *Disaster Response Registry* via https://www.sam.gov, Search Records, Advanced Search, *Disaster Response Registry* Search as a part of *acquisition planning* for debris removal, distribution of *supplies*, reconstruction, and other disaster or *emergency* relief activities inside the *United States* and *outlying areas*. (See 26.205).

7.104 General procedures.

(a) *Acquisition planning should* begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or *order* placement is necessary. In developing the plan, the *planner shall* form a team consisting of all those who will be responsible for significant aspects of the *acquisition*, such as *contracting*, small business, fiscal, legal, and technical personnel. If contract performance is to be in a *designated operational area* or supporting a diplomatic or consular mission, the *planner shall* also consider inclusion of the combatant commander or *chief of mission*, as appropriate. The *planner should* review previous plans for similar *acquisitions* and discuss them with the key personnel involved in those *acquisitions*. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the *planner shall* review the plan and, if appropriate, revise it.

(b) Requirements and logistics personnel *should* avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices. Early in the planning process, the *planner should* consult with requirements and logistics personnel who determine type, quality, quantity, and delivery requirements.

(c) The *planner shall* coordinate with and secure the concurrence of the *contracting* officer in all *acquisition planning*. If the plan proposes using other than *full and open competition* when awarding a contract, the plan *shall* also be coordinated with the cognizant advocate for competition.

(d) The *planner shall* coordinate the *acquisition* plan or strategy with the cognizant small business specialist when the strategy contemplates an *acquisition* meeting the thresholds in 7.107-4 for substantial *bundling* unless the contract or *task order* or *delivery order* is totally set-aside for small business under part 19. The small business specialist *shall* notify the agency Office of Small and Disadvantaged Business Utilization or the Office of Small Business Programs if the strategy involves-

(1) *Bundling* that is unnecessary or unjustified; or

(2) Bundled or consolidated requirements not identified as such by the agency (see 7.107).

(e) The *planner shall* ensure that a COR is nominated as early as practicable in the *acquisition* process by the requirements official or in accordance with agency procedures. The *contracting officer shall* designate and authorize a COR as early as practicable after the nomination. See 1.602-2(d).

7.105 Contents of written acquisition plans.

In *order* to facilitate attainment of the *acquisition* objectives, the plan *must* identify those milestones at which decisions *should* be made (see paragraph (b)(21) of this section). The plan *must* address all the technical, business, management, and other significant considerations that will control the *acquisition*. The specific content of plans will vary, depending on the nature, circumstances, and stage of the *acquisition*. In preparing the plan, the *planner must* follow the applicable instructions in paragraphs (a) and (b) of this section, together with the agency's implementing procedures. *Acquisition* plans for service contracts or *orders must* describe the strategies for implementing *performance-based acquisition* methods or *must* provide rationale for not using those methods (see subpart 37.6).

(a) *Acquisition background and objectives*-

(1) *Statement of need*. Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the *acquisition*. Discuss feasible *acquisition* alternatives, the impact of prior *acquisitions* on those alternatives, and any related in-house effort.

(2) *Applicable conditions*. State all significant conditions affecting the *acquisition*, such as-

(i) Requirements for compatibility with existing or future systems or programs; and

(ii) Any known cost, schedule, and capability or performance constraints.

(3) *Cost*. Set forth the established cost goals for the *acquisition* and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:

(i) *Life-cycle cost*. Discuss how *life-cycle cost* will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.

(ii) *Design-to-cost*. Describe the *design-to-cost* objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related *solicitation* and contractual requirements to be imposed.

(iii) *Application of should-cost*. Describe the application of *should*-cost analysis to the *acquisition* (see 15.407-4).

(4) *Capability or performance*. Specify the required capabilities or performance characteristics of the *supplies* or the performance standards of the services being acquired and state how they are related to the need.

(5) *Delivery or performance-period requirements*. Describe the basis for establishing delivery or performance-period requirements (see subpart 11.4). Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for *full and open competition*.

(6) *Trade-offs*. Discuss the expected consequences of trade-offs among the various cost, capability or performance, and schedule goals.

(7) *Risks*. Discuss technical, cost, and schedule risks and describe what efforts are planned or

underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

(8) *Acquisition streamlining*. If specifically designated by the requiring agency as a program subject to *acquisition streamlining*, discuss plans and procedures to-

(i) Encourage industry participation by using draft *solicitations*, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements;

(ii) Select and tailor only the necessary and cost-effective requirements; and

(iii) State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, *shall* become mandatory.

(b) Plan of action—

(1) *Sources*.

(i) Indicate the prospective sources of *supplies* or services that can meet the need.

(ii) Consider required sources of *supplies* or services (see part 8) and sources identifiable through databases including the Governmentwide database of contracts and other *procurement* instruments intended for use by multiple agencies available at https://www.contractdirectory.gov/contractdirectory/.

(iii) Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, *HUBZone* small business, small disadvantaged business, and *women-owned small business concerns* (see part 19).

(iv) Consider the impact of any consolidation or *bundling* that might affect participation of small businesses in the *acquisition* (see 7.107) (15 U.S.C. 644(e) and 15 U.S.C. 657q). When the proposed *acquisition* strategy involves *bundling*, identify the incumbent contractors and contracts affected by the *bundling*.

(v) Address the extent and results of the *market research* and indicate their impact on the various elements of the plan (see part 10).

(2) Competition.

(i) Describe how competition will be sought, promoted, and sustained throughout the course of the *acquisition*. If *full and open competition* is not contemplated, cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why *full and open competition* cannot be obtained.

(ii) Identify the major *components* or subsystems. Discuss *component* breakout plans relative to these major *components* or subsystems. Describe how competition will be sought, promoted, and sustained for these *components* or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as *technical data* delivery schedules and *acquisition* method coding conferences, that affect competition.

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the *acquisition*. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Contract type selection*. Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, see 16.103(d) for additional documentation guidance. *Acquisition* personnel *shall* document the *acquisition* plan with findings that detail the particular facts and circumstances, (*e.g.*, complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The *contracting officer shall* ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.

(4) *Source-selection procedures*. Discuss the source selection procedures for the *acquisition*, including the basis for using a *reverse auction* (when applicable), the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the *acquisition* objectives (see subpart 15.3). When an EVMS is required (see FAR 34.202(a)) and a preaward IBR is contemplated, the *acquisition* plan *must* discuss-

(i) How the pre-award IBR will be considered in the source selection decision;

(ii) How it will be conducted in the source selection process (see FAR 15.306); and

(iii) Whether *offerors* will be directly compensated for the costs of participating in a pre-award IBR.

(5) *Acquisition* considerations.

(i) For each contract contemplated, discuss use of multiyear *contracting*, *options*, or other special *contracting* methods (see part 17); any special clauses, special *solicitation* provisions, or FAR deviations required (see subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see subpart 7.4) and why; and any other *contracting* considerations. Provide rationale if a *performance-based acquisition* will not be used or if a *performance-based acquisition* for services is contemplated on other than a firm-fixed-price basis (see 37.102(a), 16.103(d), and 16.505(a)(3)).

(ii) For each *order* contemplated, discuss-

(A) For *information technology acquisitions*, how the capital planning and investment control requirements of 40 U.S.C. 11312 and OMB Circular A-130 will be met (see 7.103(v) and part 39); and

(B) Why this action benefits the Government, such as when-

(1) The agency can accomplish its mission more efficiently and effectively (*e.g.*, take advantage of the *servicing agency*'s specialized expertise; or gain access to contractors with needed expertise); or

(2) Ordering through an indefinite delivery contract facilitates access to small business concerns, including *small disadvantaged business concerns*, 8(a) contractors, *women-owned small business concerns*, *HUBZone* small business concerns, veteran-owned small business concerns, or service-disabled veteran-owned small business concerns.

(iii) For *information technology acquisitions* using Internet Protocol, discuss whether the requirements documents include the Internet Protocol compliance requirements specified in 11.002(g) or a waiver of these requirements has been granted by the agency's Chief Information Officer.

(iv) For *information technology acquisitions*, identify the applicable ICT accessibility standard(s). When an exception or an exemption to the standard(s) applies, the plan *must* list the exception and/or exemption, and the item(s) to which it applies. For those items listing 39.204 or 39.205(a)(1) or (2), the corresponding accessibility standard does not need to be identified. See subpart 39.2 and 36 CFR 1194.1.

(v) For each contract (and *order*) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract requirements, *i.e.*, *line items*, in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future *option* years, or follow-on contracts. This will facilitate an easier transition to a firm-fixed-price contract, because a cost history will be developed for a recurring definitive requirement.

(6) *Budgeting and funding.* Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see subpart 32.7).

(7) *Product or service descriptions.* Explain the choice of product or service description types (including *performance-based acquisition* descriptions) to be used in the *acquisition*.

(8) *Priorities, allocations, and allotments*. When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities *may* apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see subpart 11.6).

(9) *Contractor versus Government performance*. Address the consideration given to OMB CircularNo.A-76 (see subpart 7.3).

(10) *Inherently governmental functions*. Address the consideration given to subpart 7.5.

(11) *Management information requirements*. Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort. If an *Earned Value Management System* is to be used, discuss the methodology the Government will employ to analyze and use the earned value data to assess and monitor contract performance. In addition, discuss how the *offeror*'s/contractor's EVMS will be verified for compliance with the Electronic Industries Alliance Standard 748 (EIA-748), *Earned Value Management Systems*, and the timing and conduct of integrated baseline reviews (whether prior to or post award). (See 34.202.)

(12) *Make or buy.* Discuss any consideration given to *make-or-buy programs* (see 15.407-2).

(13) *Test and evaluation.* To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a *major system acquisition*. If concurrency is planned, discuss the extent of testing to be accomplished before production release.

(14) *Logistics considerations*. Describe-

(i) The assumptions determining contractor or agency support, both initially and over the life of the *acquisition*, including consideration of contractor or agency maintenance and servicing (see subpart 7.3), support for contracts to be performed in a *designated operational area* or *supporting a*

diplomatic or consular mission (see 25.301-3); and distribution of *commercial products* or *commercial services*;

(ii) The reliability, maintainability, and quality assurance requirements, including any planned use of *warranties* (see part 46);

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see part 27); and

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

(15) *Government-furnished property*. Indicate any Government property to be furnished to contractors, and discuss any associated considerations, such as its availability or the schedule for its *acquisition* (see 45.102).

(16) *Government-furnished information*. Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective *offerors* and contractors. Indicate which information that requires additional controls to monitor access and distribution (*e.g.*, technical specifications, maps, building designs, schedules, etc.), as determined by the agency, is to be posted via the enhanced controls of the *Governmentwide point of entry (GPE*) at https://www.sam.gov (see 5.102(a)).

(17) *Environmental and energy conservation objectives*. Discuss—

(i) All applicable environmental and energy conservation objectives associated with the *acquisition* (see part 23);

(ii) The applicability of an environmental assessment or environmental impact statement (see 40 CFR part 1502);

(iii) The proposed resolution of environmental issues; and

(iv) Any *sustainable acquisition* requirements to be included in the *solicitation* and contract (see 11.002 and 23).

(18) *Security considerations*.

(i) For *acquisitions* dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see subpart 4.4).

(ii) For *information technology acquisitions*, discuss how agency *information security* requirements will be met.

(iii) For *acquisitions* requiring routine contractor physical access to a Federally-controlled facility and/or routine access to a *Federally-controlled information system*, discuss how agency requirements for personal identity verification of contractors will be met (see subpart 4.13).

(iv) For *acquisitions* that *may* require Federal contract information to reside in or transit through contractor information systems, discuss compliance with subpart 4.19.

(19) *Contract administration*. Describe how the contract will be administered. In contracts for

services, include how *inspection* and acceptance corresponding to the work statement's performance criteria will be enforced. In contracts for *supplies* or service contracts that include *supplies*, address whether higher-level quality standards are necessary (46.202) and whether the *supplies* to be acquired are critical items (46.101).

(20) *Other considerations.* Discuss, as applicable:

(i) Standardization concepts;

(ii) The industrial readiness program;

(iii) The Defense Production Act;

(iv) The Occupational Safety and Health Act;

(v) Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act) (see subpart 50.2);

(vi) Foreign sales implications;

(vii) Special requirements for contracts to be performed in a *designated operational area* or *supporting a diplomatic or consular mission*; and

(viii) Any other matters germane to the plan not covered elsewhere.

(21) *Milestones for the acquisition cycle*. Address the following steps and any others appropriate:

Acquisition plan approval.

Statement of work.

Specifications.

Data requirements.

Completion of *acquisition*-package preparation.

Purchase request.

Justification and approval for other than *full and open competition* where applicable and/or any required D&F approval.

Issuance of synopsis.

Issuance of *solicitation*.

Evaluation of proposals, audits, and field reports.

Beginning and completion of negotiations.

Contract preparation, review, and clearance.

Contract award.

(22) *Identification of participants in acquisition plan preparation.* List the individuals who

participated in preparing the *acquisition* plan, giving contact information for each.

7.106 Additional requirements for major systems.

(a) In planning for the *solicitation* of a *major system* (see part 34) development contract, *planners shall* consider requiring *offerors* to include, in their *offers*, proposals to incorporate in the design of a *major system*-

(1) Items which are currently available within the supply system of the agency responsible for the *major system*, available elsewhere in the national supply system, or commercially available from more than one source; and

(2) Items which the Government will be able to acquire competitively in the future if they are likely to be needed in substantial quantities during the system's service life.

(b) In planning for the *solicitation* of a *major system* (see part 34) production contract, *planners shall* consider requiring *offerors* to include, in their *offers*, proposals identifying opportunities to assure that the Government will be able to obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements *may* include the following:

(1) Proposals to provide the Government the right to use *technical data* to be provided under the contract for competitive future *acquisitions*, together with the cost to the Government, if any, of acquiring such *technical data* and the right to use such data.

(2) Proposals for the qualification or development of multiple sources of supply for competitive future *acquisitions*.

(c) In determining whether to apply paragraphs (a) and (b) of this section, *planners shall* consider the purposes for which the system is being acquired and the technology necessary to meet the system's required capabilities. If such proposals are required, the *contracting officer shall* consider them in evaluating competing *offers*. In noncompetitive awards, the factors in paragraphs (a) and (b) of this section, *may* be considered by the *contracting officer* as objectives in negotiating the contract.

7.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

7.107-1 General.

(a) If the requirement is considered both consolidated and bundled, the agency *shall* follow the guidance regarding *bundling* in 7.107-3, 7.107-4, and 7.107-5.

(b) The requirements of this section 7.107 do not apply-

(1) If a cost comparison analysis will be performed in accordance with OMB Circular A-76 (except 7.107-4 still applies);

(2) To *orders* placed under single-agency task-*order* contracts or delivery-*order* contracts, when the

requirement was considered in determining that the consolidation or *bundling* of the underlying contract was necessary and justified; or

(3) To requirements for which there is a mandatory source (see 8.002 or 8.003), including *supplies* and services that are on the *Procurement* List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled or the Schedule of *Products* issued by Federal Prison Industries, Inc. This exception does not apply–

(i) When the requiring agency obtains a waiver in accordance with 8.604 or an exception in accordance with 8.605 or 8.706; or

(ii) When optional *acquisitions* of *supplies* and services permitted under 8.713 are included.

7.107-2 Consolidation.

(a) Consolidation *may* provide substantial benefits to the Government. However, because of the potential impact on small business participation, before conducting an *acquisition* that is a consolidation of requirements with an estimated total dollar value exceeding $2 million, the *senior procurement executive* (SPE) or *chief acquisition officer* (CAO) *shall* make a written determination that the consolidation is necessary and justified in accordance with 15 U.S.C. 657q, after ensuring that-

(1) *Market research* has been conducted;

(2) Any alternative *contracting* approaches that would involve a lesser degree of consolidation have been identified;

(3) The determination is coordinated with the agency's Office of Small Disadvantaged Business Utilization or the Office of Small Business Programs;

(4) Any negative impact by the *acquisition* strategy on *contracting* with small business concerns has been identified; and

(5) Steps are taken to include small business concerns in the *acquisition* strategy.

(b) The SPE or CAO *may* determine that the consolidation is necessary and justified if the benefits of the *acquisition* would substantially exceed the benefits that would be derived from each of the alternative *contracting* approaches identified under paragraph (a)(2) of this section, including benefits that are quantifiable in dollar amounts as well as any other specifically identified benefits.

(c) Such benefits *may* include cost savings or price reduction and, regardless of whether quantifiable in dollar amounts-

(1) Quality improvements that will save time or improve or enhance performance or efficiency;

(2) Reduction in *acquisition* cycle times;

(3) Better terms and conditions; or

(4) Any other benefit.

(d) Benefits.

(1) Benefits that are quantifiable in dollar amounts are substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to-

(i) Ten percent of the estimated contract or *order* value (including *options*) if the value is $94 million or less; or

(ii) Five percent of the estimated contract or *order* value (including *options*) or $9.4 million, whichever is greater, if the value exceeds $94 million.

(2) Benefits that are not quantifiable in dollar amounts *shall* be specifically identified and otherwise quantified to the extent feasible.

(3) Reduction of administrative or personnel costs alone is not sufficient justification for consolidation unless the cost savings are expected to be at least 10 percent of the estimated contract or *order* value (including *options*) of the consolidated requirements, as determined by the SPE or CAO (15 U.S.C. 657q(c)(2)(B)).

(e)

(1) Notwithstanding paragraphs (a) through (d) of this section, the approving authority identified in paragraph (e)(2) of this section *may* determine that consolidation is necessary and justified when-

(i) The expected benefits do not meet the thresholds for a substantial benefit at paragraph (d)(1) of this section but are critical to the agency's mission success; and

(ii) The *procurement* strategy provides for maximum practicable participation by small business.

(2) The approving authority is–

(i) For the Department of Defense, the SPE: or

(ii) For the civilian agencies, the Deputy Secretary or equivalent.

(f) If a determination is made that consolidation is necessary and justified, the *contracting officer shall* include it in the *acquisition* strategy documentation and provide it to the Small Business Administration (SBA) upon request.

7.107-3 Bundling.

(a) *Bundling may* provide substantial benefits to the Government. However, because of the potential impact on small business participation, before conducting an *acquisition* strategy that involves *bundling*, the agency *shall* make a written determination that the *bundling* is necessary and justified in accordance with 15 U.S.C. 644(e). A bundled requirement is considered necessary and justified if the agency would obtain measurably substantial benefits as compared to meeting its agency's requirements through separate smaller contracts or *orders*.

(b) The agency *shall* quantify the specific benefits identified through the use of *market research* and other techniques to explain how their impact would be measurably substantial (see 10.001(a)(2)(iv) and (a)(3)(vii)).

(c) Such benefits *may* include, but are not limited to-

(1) Cost savings;

(2) Price reduction;

(3) Quality improvements that will save time or improve or enhance performance or efficiency;

(4) Reduction in *acquisition* cycle times, or

(5) Better terms and conditions.

(d) Benefits are measurably substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to-

(1) Ten percent of the estimated contract or *order* value (including *options*) if the value is $94 million or less; or

(2) Five percent of the estimated contract or *order* value (including *options*) or $9.4 million, whichever is greater, if the value exceeds $94 million.

(e) Reduction of administrative or personnel costs alone is not sufficient justification for *bundling* unless the cost savings are expected to be at least ten percent of the estimated contract or *order* value (including *options*) of the bundled requirements.

(f)

(1) Notwithstanding paragraphs (a) through (e) of this subsection, the approving authority identified in paragraph (f)(2) of this subsection *may* determine that *bundling* is necessary and justified when

(i) The expected benefits do not meet the thresholds for a substantial benefit but are critical to the agency's mission success; and

(ii) The *acquisition* strategy provides for maximum practicable participation by small business concerns.

(2) The approving authority, without power of delegation, is–

(i) For the Department of Defense, the *senior procurement executive*; or

(ii) For the civilian agencies is the Deputy Secretary or equivalent.

(g) In assessing whether cost savings and/or price reduction would be achieved through *bundling*, the agency and SBA *shall*-

(1) Compare the price that has been charged by small businesses for the work that they have performed; or

(2) Where previous prices are not available, compare the price, based on *market research*, that could have been or could be charged by small businesses for the work previously performed by other than a small business.

(h) If a determination is made that *bundling* is necessary and justified, the *contracting officer shall* include it in the *acquisition* strategy documentation and provide it to SBA upon request.

7.107-4 Substantial bundling.

(a)

(1) Substantial *bundling* is any *bundling* that results in a contract or task or *delivery order* with an estimated value of—

(i) $8 million or more for the Department of Defense;

(ii) $6 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; or

(iii) $2.5 million or more for all other agencies.

(2) These thresholds apply to the cumulative estimated dollar value (including *options*) of–

(i) *Multiple-award contracts*;

(ii) *Task orders* or *delivery orders* issued against a GSA Schedule contract; or

(iii) *Task orders* or *delivery orders* issued against a task-*order* or delivery-*order* contract awarded by another agency.

(b) In addition to addressing the requirements for *bundling* (see 7.107-3), when the proposed *acquisition* strategy involves substantial *bundling*, the agency *shall* document in its strategy—

(1) The specific benefits anticipated to be derived from substantial *bundling*;

(2) An assessment of the specific impediments to participation by small business concerns as contractors that result from substantial *bundling*;

(3) Actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(4) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or *order*, that *may* be awarded to meet the requirements;

(5) The determination that the anticipated benefits of the proposed bundled contract or *order* justify its use; and

(6) Alternative strategies that would reduce or minimize the scope of the *bundling*, and the rationale for not choosing those alternatives.

7.107-5 Notifications.

(a) *Notifications to current small business contractors of agency's intent to bundle*.

(1) The *contracting officer shall* notify each small business performing a contract that it intends to bundle the requirement at least 30 days prior to the issuance of the *solicitation* for the bundled requirement.

(2) The notification *shall* provide the name, phone number and address of the applicable SBA *procurement* center representative (PCR), or if an SBA PCR is not assigned to the *procuring activity*, the SBA Office of Government *Contracting* Area Office serving the area in which the buying activity is located.

(3) This notification *shall* be documented in the contract file.

(b) *Notification to public of rationale for bundled requirement*. The agency is encouraged to provide notification of the rationale for any bundled requirement to the GPE, before issuance of the *solicitation* (see 5.201).

(c) *Notification to the public of consolidation of contract requirements*. The SPE or CAO *shall* publish in the GPE—

(1)A notice that the agency has determined a consolidation of contract requirements is necessary and justified (see 7.107-2) no later than 7 days after making the determination; the *solicitation may* not be publicized prior to 7 days after publication of the notice of the agency determination; and

(2)The determination that consolidation is necessary and justified with the publication of the *solicitation*. See 7.107-2 for the required content of the determination.

(d) *Notification to the public of substantial bundling of contract requirements*. The *head of the agency shall* publish in the GPE—

(1)A notice that the agency has determined that a *procurement* involves substantial *bundling* (see 7.107-4) no later than 7 days after such determination has been made; the *solicitation may* not be publicized prior to 7 days after the publication of the notice of the determination; and

(2)The rationale for substantial *bundling* with the publication of the *solicitation*. The rationale is the information required for inclusion in the *acquisition* strategy at 7.107-4(b).

(e) *Notification to SBA of follow-on bundled or consolidated requirements*. For each follow-on bundled or consolidated requirement, the *contracting officer shall* obtain the following from the requiring activity and notify the SBA PCR no later than 30 days prior to issuance of the *solicitation*:

(1) The amount of savings and benefits achieved under the prior consolidation or *bundling*.

(2) Whether such savings and benefits will continue to be realized if the contract remains consolidated or bundled.

(3) Whether such savings and benefits would be greater if the *procurement* requirements were divided into separate *solicitations* suitable for award to small business concerns.

(4) List of requirements that have been added or deleted for the follow-on.

(f) *Annual notification to the public of the rationale for bundled requirements.* The agency *shall* publish on its website a list and rationale for any bundled requirement for which the agency solicited *offers* or issued an award. The notification *shall* be made annually within 30 days of the agency's data certification regarding the validity and verification of data entered in the Federal *Procurement* Data System to the Office of Federal *Procurement* Policy (see 4.604).

(g) *Notification to public of bundling policy*. In accordance with 15 U.S.C. 644(q)(2)(A)(ii), agencies *shall* publish the Governmentwide policy regarding contract *bundling*, including regarding the

solicitation of teaming and joint ventures, on their agency website.

7.107-6 Solicitation provision.

The *contracting officer shall* insert the provision at 52.207-6, *Solicitation* of *Offers* from Small Business Concerns and *Small Business Teaming Arrangements* or Joint Ventures (*Multiple-Award Contracts*), in *solicitations* for *multiple-award contracts* above the substantial *bundling* threshold of the agency (see 7.107-4(a)).

7.108 Additional requirements for telecommuting.

In accordance with 41 U.S.C. 3306(f), an agency *shall* generally not discourage a contractor from allowing its employees to telecommute in the performance of Government contracts. Therefore, agencies *shall* not-

(a) Include in a *solicitation* a requirement that prohibits an *offeror* from permitting its employees to telecommute unless the *contracting officer* first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The *contracting officer shall* document the basis for the determination *in writing* and specify the prohibition in the *solicitation*; or

(b) When telecommuting is not prohibited, unfavorably evaluate an *offer* because it includes telecommuting, unless the *contracting officer* first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is permitted. The *contracting officer shall* document the basis for the determination *in writing* and address the evaluation procedures in the *solicitation*.

Subpart 7.2 - Planning for the Purchase of Supplies in Economic Quantities

7.200 Scope of subpart.

This subpart prescribes policies and procedures for gathering information from *offerors* to assist the Government in planning the most advantageous quantities in which *supplies should* be purchased.

7.201 [Reserved]

7.202 Policy.

(a) Agencies are required by 10 U.S.C. 3242 and 41 U.S.C.3310 to procure *supplies* in such quantity as-

(1) Will result in the total cost and unit cost most advantageous to the Government, where practicable; and

(2) Does not exceed the quantity reasonably expected to be required by the agency.

(b) Each *solicitation* for a contract for *supplies* is required, if practicable, to include a provision inviting each *offeror* responding to the *solicitation*-

(1) To state an opinion on whether the quantity of the *supplies* proposed to be acquired is economically advantageous to the Government; and

(2) If applicable, to recommend a quantity or quantities which would be more economically advantageous to the Government. Each such recommendation is required to include a quotation of the total price and the unit price for *supplies* procured in each recommended quantity.

7.203 Solicitation provision.

Contracting officers shall insert the provision at 52.207-4, Economic Purchase Quantity-*Supplies*, in *solicitations* for *supplies*. The provision need not be inserted if the *solicitation* is for a contract under the General Services Administration's multiple award schedule contract program, or if the *contracting officer* determines that-

(a) The Government already has the data;

(b) The data is otherwise readily available; or

(c) It is impracticable for the Government to vary its future requirements.

7.204 Responsibilities of contracting officers.

(a) *Contracting officers* are responsible for transmitting *offeror* responses to the *solicitation* provision at 52.207-4 to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for *supplies* under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by *offerors* are only one of many data inputs required for determining the most economical order quantities, *contracting officers should* generally take no action to revise quantities to be acquired in connection with the instant *procurement*. However, if a significant price variation is evident from *offeror* responses, and the potential for significant savings is apparent, the *contracting officer shall* consult with the cognizant inventory manager or requirements development activity before proceeding with an award or negotiations. If this consultation discloses that the Government *should* be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the *solicitation* for the item *should* be amended or canceled and a new requisition *should* be obtained.

Subpart 7.3 - Contractor Versus Government Performance

7.300 [Reserved]

7.301 Definitions.

Definitions of "inherently governmental activity" and other terms applicable to this subpart are set forth at Attachment D of the Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated *May* 29, 2003 (the Circular).

7.302 Policy.

(a) The Circular provides that it is the policy of the Government to-

(1) Perform inherently governmental activities with Government personnel; and

(2) Subject commercial activities to the forces of competition.

(b) As provided in the Circular, agencies *shall*-

(1) Not use contractors to perform inherently governmental activities;

(2) Conduct public-private competitions in accordance with the provisions of the Circular and, as applicable, these regulations;

(3) Give appropriate consideration relative to cost when making performance decisions between agency and contractor performance in public-private competitions;

(4) Consider the Agency Tender Official an interested party in accordance with 31 U.S.C. 3551 to 3553 for purposes of filing a protest at the Government Accountability Office; and

(5) Hear contests in accordance with OMB Circular A-76, Attachment B, Paragraph F.

(c) When using sealed bidding in public-private competitions under OMB Circular A-76, *contracting officers shall* not hold discussions to correct deficiencies.

7.303 [Reserved]

7.304 [Reserved]

7.305 Solicitation provisions and contract clause.

(a) The *contracting officer shall*, when soliciting *offers* and tenders, insert in *solicitations* issued for standard competitions the provision at 52.207-1, Notice of Standard Competition.

(b) The *contracting officer shall*, when soliciting *offers*, insert in *solicitations* issued for streamlined competitions the provision at 52.207-2, Notice of Streamlined Competition.

(c) The *contracting officer shall* insert the clause at 52.207-3, Right of First Refusal of Employment,

in all *solicitations* which *may* result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the *solicitations*, whether or not a public-private competition is conducted. The 10-*day* period in the clause *may* be varied by the *contracting officer* up to a period of 90 days.

Subpart 7.4 - Equipment Acquisition

7.400 Scope of subpart.

This subpart—

(a)Implements section 555 of the FAA (Federal Aviation Administration) Reauthorization Act of 2018 (Pub. L. 115-254);

(b)Provides guidance when acquiring equipment and more than one method of *acquisition* is available for use; and

(c)Applies to both the initial *acquisition* of equipment and the renewal or extension of existing equipment leases or rental agreements.

7.401 Acquisition considerations.

(a)

(1)Agencies *shall* acquire equipment using the method of *acquisition* most advantageous to the Government based on a case-by-case analysis of comparative costs and other factors in accordance with this subpart and agency procedures.

(2)The methods of *acquisition* to be compared in the analysis *shall* include, at a minimum—

(i)Purchase;

(ii)Short-term rental or lease;

(iii)Long-term rental or lease;

(iv)*Interagency acquisition* (see 2.101); and

(v)Agency *acquisition* agreements, if applicable, with a State or local government.

(b)

(1)The factors to be compared in the analysis *shall* include, at a minimum:

(i)Estimated length of the period the equipment is to be used and the extent of use within that period;

(ii)Financial and operating advantages of alternative types and makes of equipment;

(iii)Cumulative rent, lease, or other periodic payments, however described, for the estimated period of use;

(iv)Net purchase price;

(v)Transportation, installation, and storage costs;

(vi)Maintenance, repair, and other service costs; and

(vii)Potential obsolescence of the equipment because of imminent technological improvements.

(2)The following additional factors *should* be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

(i)Availability of purchase *options*.

(ii)Cancellation, extension, and early return conditions and fees.

(iii)Ability to swap out or exchange equipment.

(iv)Available *warranties*.

(v)*Insurance*, environmental, or licensing requirements.

(vi)Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.

(vii)Trade-in or salvage value.

(viii)Imputed interest.

(ix)Availability of a servicing capability, especially for highly complex equipment; *e.g.*, can the equipment be serviced by the Government or other sources if it is purchased?

(c)The analysis in paragraph (a) is not required—

(1)When the President has issued an *emergency* declaration or a *major disaster* declaration pursuant to the Robert T. Stafford Disaster Relief and *Emergency* Assistance Act (42 U.S.C. 5121 *et seq*.);

(2)In other *emergency* situations if the *agency head* makes a determination that obtaining such equipment is necessary in order to protect human life or property; or

(3)When otherwise authorized by law.

7.402 Acquisition methods.

(a) Purchase method.

(1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative rental or leasing costs exceed the purchase costs.

(2) Agencies *should* not rule out the purchase method of equipment *acquisition* in favor of renting or

leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Rent or lease method.*

(1) The rent or lease method is appropriate if it is to the Government's advantage under the circumstances. The rent or lease method *may* also serve as a short-term measure when the circumstances—

(i) Require immediate use of equipment to meet program or system goals; but

(ii) Do not currently support *acquisition* by purchase.

(2) If a rent or lease method is justified, a rental or lease agreement with *option* to purchase is preferable.

(3) Generally, a long term rental or lease agreement *should* be avoided, but *may* be appropriate if an *option* to purchase or other favorable terms are included.

(4) If a rental or lease agreement with *option* to purchase is used, the contract *shall* state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

7.403 General Services Administration assistance and OMB guidance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in rent, lease, or purchase decisions by providing information such as-

(1) Pending price adjustments to Federal Supply Schedule contracts;

(2) Recent or imminent technological developments;

(3) New techniques; and

(4) Industry or market trends.

(b) For additional GSA assistance and guidance, agencies *may*—

(1)Request information from the GSA FAS National Customer Service Center by phone at 1-800-488-3111 or by email at ncsccustomer.service@gsa.gov; and

(2)See GSA website, Schedule 51 V Hardware Superstore-Equipment Rental, (https://www.gsa.gov/buying-selling/products-services/industrial-products-services/rental-of-industrial-equipment).

(c) For additional OMB guidance, see—

(1)Section 13, Special Guidance for Lease-Purchase Analysis, and paragraph 8.c.(2), Lease-Purchase Analysis, of OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, (https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A94/a094.pdf);

and

(2)Appendix B, Budgetary Treatment of Lease-Purchases and Leases of Capital Assets, of OMB Circular A-11, Preparation, Submission, and Execution of the Budget, (https://www.whitehouse.gov/wp-content/uploads/2018/06/app_b.pdf).

7.404 Contract clause.

The *contracting officer shall* insert a clause substantially the same as the clause in 52.207-5, *Option* to Purchase Equipment, in *solicitations* and contracts involving a rental or lease agreement with *option* to purchase.

Subpart 7.5 - Inherently Governmental Functions

7.500 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that *inherently governmental functions* are not performed by contractors.

7.501 [Reserved]

7.502 Applicability.

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or *personal services contracts* issued under statutory authority.

7.503 Policy.

(a) Contracts *shall* not be used for the performance of *inherently governmental functions*.

(b) Agency decisions which determine whether a function is or is not an *inherently governmental function may* be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be *inherently governmental functions* or which *shall* be treated as such. This list is not all inclusive:

(1) The direct conduct of criminal investigations.

(2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.

(3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.

(4) The conduct of foreign relations and the determination of foreign policy.

(5) The determination of agency policy, such as determining the content and application of regulations, among other things.

(6) The determination of Federal program priorities for budget requests.

(7) The direction and control of Federal employees.

(8) The direction and control of intelligence and counter-intelligence operations.

(9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

(10) The approval of position descriptions and performance standards for Federal employees.

(11) The determination of what Government property is to be disposed of and on what terms (although an agency *may* give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal *procurement* activities with respect to prime contracts-

(i) Determining what *supplies* or services are to be acquired by the Government (although an agency *may* give contractors authority to acquire *supplies* at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor *products* or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and *inspections*.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 3718 (relating to private attorney collection services), but not including-

(i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and *invoice* examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity.

(d) The following is a list of examples of functions generally not considered to be *inherently governmental functions*. However, certain services and actions that are not considered to be *inherently governmental functions may* approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and *should*-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analyses, feasibility studies, and strategy *options* to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor’s performance.

(6) Services in support of *acquisition planning*.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing *inspection* services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation *shall* include procedures requiring the *agency head* or designated requirements official to provide the *contracting officer*, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment *should* place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work *products*. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a *solicitation*.