

FEDERAL ACQUISITION CIRCULAR

November 7, 2007

Number 2005-21

Federal Acquisition Circular (FAC) 2005-21 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-21 are effective November 7, 2007, except for Items II, III, IV and VII, which are effective December 7, 2007.

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FAC 2005-21 LIST of SUBJECTS

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FAC 2005-21 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 2005-21 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I-SAFETY Act: Implementation of DHS Regulations (FAR Case 2006-023) (Interim)

This interim rule implements the SAFETY Act in the FAR. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of "risk management" and a system of "litigation management." The purpose of the SAFETY Act is to ensure that the threat of liability does not deter potential manufacturers or sellers of antiterrorism technologies from developing, deploying, and commercializing technologies that could save lives. Examples of Qualified Anti-Terrorism Technologies (QATT) identified by DHS include-

- Vulnerability assessment and countermeasure and counter-terrorism planning tools;
- First responder interoperability solution;
- Marine traffic management system;
- Security services, guidelines, systems, and standards;
- Vehicle and cargo inspection system;
- X-ray inspection system;
- Trace explosives detection systems and associated support services;
- Maintenance and repair of screening equipment;
- Risk assessment platform;
- Explosive and weapon detection equipment and services;
- Biological detection and filtration systems;
- Passenger screening services;
- Baggage screening services;
- Chemical, biological, or radiological agent release detectors;
- Vehicle barriers;
- First responder equipment; and
- Architectural and engineering "hardening" products and services.

Replacement pages: General Structure ix and x; 1.6-1 and 1.6-2; 7.1-5 and 7.1-6; 18.1-1 and 18.1-2; 28.3-3 and 28.3-4; 32.4-1 and 32.4-2; 33.2-1 and 33.2-2; 43.1-1 and 43.1-2; Part 50 TOC, pp. 50-1 and 50-2; 50.1-1 thru 50.1-8 (50.1-3 thru 50.1-8 added); 50.2-1 thru 50.2-4 (50.2-3 and 50.2-4 added); Part TOC 52, pp. 52-7 and 52-8; 52.2-359 thru 52.2-362.4 (52.2-362.1 thru 52.2-362.4 added); and Matrix pp. 52.3-31 and 52.3-32.

Item II—Biobased Products Preference Program (FAR Case 2004-032)

This final rule amends the Federal Acquisition Regulation (FAR) to implement 7 U.S.C. 8102 as enacted by section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by Sections 205 and 943 of the Energy Policy Act of 2005. Entitled Federal Procurement of Biobased Products, section 7 U.S.C. 8102 requires that a procurement preference be afforded biobased products within items designated by the Secretary of Agriculture. This program applies to acquisitions by Federal agencies using Federal funds for procurement, as well as Government contractors that use USDA-designated items in performance of a Government contract. It will provide increased opportunities for entities, both large and small, that manufacture or sell biobased products, while decreasing opportunities for businesses that manufacture or sell similar non-biobased products or provide components for the manufacturing of such products. A list of USDA-designated items is available at <http://www.usda.gov/biopreferred>.

Replacement pages: General Structure v and vi; 2.1-1 and 2.1-2; 4.12-1 and 4.12-2; 7.1-1 and 7.1-2; 11.1-1 thru 11.1-4; 11.3-1 and 11.3-2; 12.3-1 and 12.3-2; 13.2-1 and 13.2-2; Part 23 TOC, pp. 23-1 and 23-2; 23.1-1 and 23.1-2; 23.4-1 and 23.4-2; 23.7-1 and 23.7-2; 42.3-3 and 42.3-4; 45.1-1 and 45.1-2; Part 52 TOC, pp. 52-3 and 52-4; 52.2-133 thru 52.2-136 (52.2-134.1 and 52.2-134.2 added); and Matrix pp. 52.3-15 and 52.3-16.

Item III—FAR Part 27 Rewrite in Plain Language (FAR Case 1999-402)

This final rule clarifies, streamlines, and updates text and clauses on Patents, Data, and Copyrights (FAR Part 27). This effort focused on rewriting the current FAR language into "plain language," with the ultimate goal of making the policies and procedures more understandable to the reader. This rewrite was not intended to include substantive changes to Part 27 policies or procedures, except where necessary to comply with current statutory or regulatory requirements, or to resolve internal inconsistencies within FAR Part 27 and its associated clauses.

Replacement pages: General Structure v and vi; 2.1-1 thru 2.1-16; 3.1-5 and 3.1-6; 12.2-3 and 12.2-4; 15.4-19 and 15.4-20; 18.1-1 and 18.1-2; 19.1-1 thru 19.1-4; Part 27 TOC, pp. 27-1 and 27-2; 27.1-1 and 27.1-2; 27.2-1 thru 27.2-4; 27.3-1 thru 27.3-8; 27.4-1 thru 27.4-10; 27.5-1 and 27.5-2; 33.1-5 and 33.1-6; Part 52 TOC, pp. 52-5 and 52-6; 52.2-153 thru 52.2-172 (52.2-173 thru 52.2-178 removed); and Matrix pp. 52.3-17 thru 52.3-20.

Item IV—Federal Computer Network (FACNET) Architecture (FAR Case 2006-015)

This final rule amends the Federal Acquisition Regulation (FAR) to remove FACNET references and provide the opportunity to recognize the evolution of alternative technologies, processes, etc. that Federal agencies are using and will use to satisfy their acquisition needs without removing the use of FACNET for Federal agencies that may use the system. Where necessary in the FAR, the term has been replaced with a more appropriate term that incorporates various electronic data interchange systems. The proposed rule published February 1, 2007 is adopted as final without change.

Replacement pages: 2.1-7 and 2.1-8; 4.5-1 and 4.5-2; 5.1-1 and 5.1-2; 5.2-1 and 5.2-2; 13.1-3 thru 13.1-6; 13.3-5 and 13.3-6.

Item V—Exemption of Certain Service Contracts from the Service Contract Act (SCA) (FAR Case 2001-004) (Interim)

This interim rule amends Federal Acquisition Regulation (FAR) Parts 4, 15, 17, 22, and 52 to implement the U.S. Department of Labor's (DoL) final rule issued January 18, 2001 (66 FR 5327) amending the regulations at 29 CFR part 4 to exempt certain contracts for services meeting specific criteria from coverage under the Service Contract Act. This rule imposes the DoL criteria and does not utilize the term "commercial services." The rule incorporates slight revisions to the current exemption for consistency with the current DoL regulations and clarification of appropriate course of action for the contracting officer.

Replacement pages: 4.12-1 and 4.12-2; 15.1-1 and 15.1-2; 17.1-3 and 17.1-4; Part 22 TOC, pp. 22-1 and 22-2; 22.10-1 thru 22.10-14 (22.10-13 thru 22.10-14 added); Part 52 TOC, pp. 52-3 thru 52-8; 52.2-27 thru 52.2-30; 52.2-33 thru 52.2-42.2; 52.2-123 thru 52.2-126; 52.2-129 thru 52.2-132.2 (52.2-132.1 and 52.2-132.2 added); and Matrix pp. 52.3-15 and 52.3-16.

Item VI—Local Community Recovery Act of 2006 (FAR Case 2006-014) (Interim)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a second interim rule amending the Federal Acquisition Regulation (FAR) to implement legislative amendments to the Stafford Act at 42 U.S.C. 5150.

The first rule implemented The Local Community Recovery Act of 2006, Pub.L. 109-218, which addressed set-asides for major

disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency. This local area set-aside could be done along with a small business set-aside.

After the first rule was published for comments in August, 2006, Congress further amended the same area of the Stafford Act in the Department of Homeland Security Appropriations Act, 2007, Public Law 109-295. The amended statute contains requirements for transitioning work to local firms in the geographic area affected by the disaster or emergency and for justifications for expenditures to entities outside the major disaster or emergency area. This second interim rule encompasses all of these changes.

Replacement pages: General Structure i and ii; 5.2-3 and 5.2-4; Part 6 TOC, pp. 6-1 and 6-2; 6.2-1 and 6.2-2; 12.3-1 and 12.3-2; 18.2-1 and 18.2-2; Part 26 TOC, 26-1 and 26-2; 26.2-1 and 26.2-2; 52.2-39 and 52.2-40; 52.2-151 thru 52.2-152.2; and Matrix pp. 52.3-17 and 52.3-18.

Item VII--Labor Standards for Contracts Containing Construction Requirements--Contract Pricing Method References (FAR Case 2007-001)

This final rule amends the Federal Acquisition Regulation (FAR) to revise references to published pricing sources available to the contracting officer in FAR 22.404-12(c)(2). The rule removes the reference to "R.S. Means Cost Estimating System" as a commercial source for pricing data. The revision will provide greater flexibilities for contracting officers when selecting sources of pricing data.

Replacement pages: 22.4-9 and 22.4-10.

Item VIII--Technical Amendments

Editorial changes are made at FAR 25 and 52 in order to update references.

Replacement pages: 1.1-3 thru 1.1-8; 25.1-1 and 25.1-2; 52.2-39 and 52.2-40; 52.2-93 and 52.2-94; 52.2-141 and 52.2-142; 52.2-149 and 52.2-150; Matrix pp. 52.3-17 and 52.3-18; 53.2-1 and 53.2-2; 53.3-175 thru 53.3-178.

LOOSELEAF ONLY CORRECTIONS

1. Section 1.106 is corrected by correcting the order of FAR Segment 52.225-18 with OMB Control Number "9000-0161" by placing it after FAR Segment 52.225-11 with OMB Control Number "9000-0141".

Replacement pages: 1.1-3 thru 1.1-8.

2. Section 7.105 is corrected by removing paragraph (b)(18) and redesignating paragraphs (b)(19) through (b)(22) as (b)(18) through (b)(21).

Replacement pages: 7.1-5 and 7.1-6.

3. Section heading 33.205 is corrected by removing "Relationship of the Act to Public Law 85-804" and inserting "Relationship of the Act to Pub. L. 85-804" in its place.

Replacement pages: Part 33 TOC, pp. 33-1 and 33-2; 33.2-1 and 33.2-2.

4. The Matrix is corrected in the table, entry "52.219-28", by revising the entries under the headings "IBR" and "UCF" by removing "No" and "A" and adding "Yes" and "I" in its place, respectively.

Replacement pages: Matrix pp. 52.3-13 and 52.3-14

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FAC 2005-21 FILING INSTRUCTIONS

NOTE: The FAR is now segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.1-1" is page one of Subpart 1.1, and "5.2-3" is page three of Subpart 5.2.

Remove Pages

Structure

pp. i and ii
ix and x

1.1-3 thru 1.1-8
1.6-1 and 1.6-2

4.12-1 and 4.12-2

5.2-3 and 5.2-4

TOC Part 6

pp. 6-1 and 6-2
6.2-1 and 6.2-2
6.6-1 and 6.6-2

7.1-5 and 7.1-6

12.3-1 and 12.3-2

15.1-1 and 15.1-2

17.1-3 and 17.1-4

18.1-1 and 18.1-2
18.2-1 and 18.2-2

TOC Part 22

pp. 22-1 and 22-2
22.10-1 thru 22.10-12

25.1-1 and 25.1-2

TOC Part 26

pp. 26-1 and 26-2
26.2-1 and 26.2-2

28.3-3 and 28.3-4

32.4-1 and 32.4-2

Insert Pages

Structure

pp. i and ii
ix and x

1.1-3 thru 1.1-8
1.6-1 and 1.6-2

4.12-1 and 4.12-2

5.2-3 and 5.2-4

TOC Part 6

pp. 6-1 and 6-2
6.2-1 and 6.2-2
None

7.1-5 and 7.1-6

12.3-1 and 12.3-2

15.1-1 and 15.1-2

17.1-3 and 17.1-4

18.1-1 and 18.1-2
18.2-1 and 18.2-2

TOC Part 22

pp. 22-1 and 22-2
22.10-1 thru 22.10-14

25.1-1 and 25.1-2

TOC Part 26

pp. 26-1 and 26-2
26.2-1 and 26.2-2

28.3-3 and 28.3-4

32.4-1 and 32.4-2

TOC Part 33
pp. 33-1 and 33-2
33.2-1 and 33.2-2

43.1-1 and 43.1-2

TOC Part 50
pp. 50-1 and 50-2
50.1-1 and 50.1-2
50.2-1 and 50.2-2

TOC Part 52
pp. 52-3 thru 52-8
52.2-27 thru 52.2-30
52.2-33 thru 52.2-42.2
52.2-93 and 52.2-94
52.2-123 thru 52.2-126
52.2-129 thru 52.2-132

52.2-141 and 52.2-142
52.2-149 thru 52.2-152.2

52.2-359 thru 52.2-362

Matrix
pp. 52.3-13 thru
52.3-18
52.3-31 and 52.3-32

53.2-1 and 53.2-2
53.3-175 thru 53-178

TOC Part 33
pp. 33-1 and 33-2
33.2-1 and 33.2-2

43.1-1 and 43.1-2

TOC Part 50
pp. 50-1 and 50-2
50.1-1 thru 50.1-8
50.2-1 thru 50.2-4

TOC Part 52
pp. 52-3 thru 52-8
52.2-27 thru 52.2-30
52.2-33 thru 52.2-42.2
52.2-93 and 52.2-94
52.2-123 thru 52.2-126
52.2-129 thru
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52.2-141 and 52.2-142
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FEDERAL ACQUISITION REGULATION

General Structure and Subparts

SUBCHAPTER A—GENERAL

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

- 1.1 Purpose, Authority, Issuance
- 1.2 Administration
- 1.3 Agency Acquisition Regulations
- 1.4 Deviations from the FAR
- 1.5 Agency and Public Participation
- 1.6 Career Development, Contracting Authority, and Responsibilities
- 1.7 Determinations and Findings

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- 2.2 Definitions Clause

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- 3.2 Contractor Gratuities to Government Personnel
- 3.3 Reports of Suspected Antitrust Violations
- 3.4 Contingent Fees
- 3.5 Other Improper Business Practices
- 3.6 Contracts with Government Employees or Organizations Owned or Controlled by Them
- 3.7 Voiding and Rescinding Contracts
- 3.8 Limitation on the Payment of Funds to Influence Federal Transactions
- 3.9 Whistleblower Protections for Contractor Employees

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- 4.2 Contract Distribution
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- 4.4 Safeguarding Classified Information Within Industry
- 4.5 Electronic Commerce in Contracting
- 4.6 Contract Reporting
- 4.7 Contractor Records Retention
- 4.8 Government Contract Files
- 4.9 Taxpayer Identification Number Information
- 4.10 Contract Line Items
- 4.11 Central Contractor Registration
- 4.12 Representations and Certifications
- 4.13 Personal Identity Verification
- 4.14 Reporting Subcontract Awards

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- 5.2 Synopses of Proposed Contract Actions
- 5.3 Synopses of Contract Awards
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- 5.5 Paid Advertisements
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- 6.2 Full and Open Competition After Exclusion of Sources
- 6.3 Other Than Full and Open Competition
- 6.4 Sealed Bidding and Competitive Proposals
- 6.5 Competition Advocates

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- 7.2 Planning for the Purchase of Supplies in Economic Quantities
- 7.3 Contractor Versus Government Performance
- 7.4 Equipment Lease or Purchase
- 7.5 Inherently Governmental Functions

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- 8.2 [Reserved]
- 8.3 [Reserved]
- 8.4 Federal Supply Schedules
- 8.5 Acquisition of Helium
- 8.6 Acquisition from Federal Prison Industries, Inc.
- 8.7 Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled
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- 8.9 [Reserved]
- 8.10 [Reserved]
- 8.11 Leasing of Motor Vehicles

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- 9.2 Qualifications Requirements
- 9.3 First Article Testing and Approval
- 9.4 Debarment, Suspension, and Ineligibility
- 9.5 Organizational and Consultant Conflicts of Interest
- 9.6 Contractor Team Arrangements
- 9.7 Defense Production Pools and Research and Development Pools

PART 47—TRANSPORTATION

- 47.1 General
- 47.2 Contracts for Transportation or for Transportation-Related Services
- 47.3 Transportation in Supply Contracts
- 47.4 Air Transportation by U.S.-Flag Carriers
- 47.5 Ocean Transportation by U.S.-Flag Vessels

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- 48.1 Policies and Procedures
- 48.2 Contract Clauses

PART 49—TERMINATION OF CONTRACTS

- 49.1 General Principles
- 49.2 Additional Principles for Fixed-Price Contracts Terminated for Convenience
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- 49.4 Termination for Default
- 49.5 Contract Termination Clauses
- 49.6 Contract Termination Forms and Formats

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

- 50.1 Extraordinary Contractual Actions
- 50.2 Support Anti-terrorism by Fostering Effective Technologies Act of 2002

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

- 51.1 Contractor Use of Government Supply Sources
- 51.2 Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

SUBCHAPTER H—CLAUSES AND FORMS**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 52.1 Instructions for Using Provisions and Clauses
- 52.2 Text of Provisions and Clauses
- 52.3 Provision and Clause Matrix

PART 53—FORMS

- 53.1 General
- 53.2 Prescription of Forms
- 53.3 Illustration of Forms

APPENDIX**INDEX**

1.104 Applicability.

The FAR applies to all acquisitions as defined in [Part 2](#) of the FAR, except where expressly excluded.

1.105 Issuance.**1.105-1 Publication and code arrangement.**

(a) The FAR is published in—

- (1) The daily issue of the *Federal Register*;
- (2) Cumulated form in the *Code of Federal Regulations* (CFR); and
- (3) A separate loose-leaf edition.

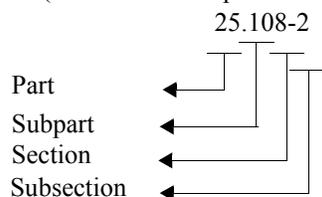
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see [Subpart 1.3](#)). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (*e.g.*, part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence:

(a)(1)(i)(A)(I)(i)

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

(i) Part would be “FAR Part 9” outside the FAR and “Part 9” within the FAR.

(ii) Subpart would be “FAR Subpart 9.1” outside the FAR and “Subpart 9.1” within the FAR.

(iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.

(iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.

(v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

1.105-3 Copies.

Copies of the FAR in *Federal Register*, loose-leaf, CD-ROM, and CFR form may be purchased from the—

Superintendent of Documents
Government Printing Office (GPO)
Washington, DC 20402.

1.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.4	9000-0003
4.102	9000-0033
4.5	9000-0137
4.602	9000-0145
4.603	9000-0145
4.7	9000-0034
4.9	9000-0097
5.405	9000-0036
7.2	9000-0082
8.5	9000-0113
9.1	9000-0011
9.2	9000-0020
14.201	9000-0034
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0037

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1.106

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FAR segment	OMB Control Number	FAR segment	OMB Control Number
14.407	9000-0038	51.1	9000-0031
14.5	9000-0041	51.2	9000-0032
15.2	9000-0037	52.203-2	9000-0018
15.209	9000-0034	52.203-7	9000-0091
15.4	9000-0013	52.204-3	9000-0097
15.404-1(f)	9000-0080	52.204-6	9000-0145
14.407-2	9000-0078	52.204-7	9000-0159
15.408	9000-0115	52.207-3	9000-0114
19.7	9000-0006	52.208-8	9000-0113
19.12	9000-0150	52.208-9	9000-0113
22.103	9000-0065	52.209-1(b)	9000-0020
22.8	1215-0072	52.209-1(c)	9000-0083
22.11	9000-0066	52.209-5	9000-0094
22.13	1215-0072	52.209-6	9000-0094
22.14	1215-0072		
23.602	9000-0107	52.211-8	9000-0043
23.9	9000-0139	52.211-9	9000-0043
27.3	9000-0095	52.212-1(k)	9000-0159
27.4	9000-0090		
28.1	9000-0045	52.212-3	9000-0136
28.2	9000-0045	52.212-4(t)	9000-0159
29.304	9000-0059	52.214-14	9000-0047
30.6	9000-0129	52.214-15	9000-0044
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32	9000-0035	52.214-26	9000-0034
32.000	9000-0138	52.214-28	9000-0013
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32.5	9000-0010 and	52.215-9	9000-0078
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32.7	9000-0074	52.215-13	9000-0013
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42.13	9000-0076	52.216-7	9000-0069
45	9000-0075	52.216-10	9000-0067
46	9000-0077	52.216-15	9000-0069
47	9000-0061	52.216-16	9000-0067
47.208	9000-0056	52.216-17	9000-0067
48	9000-0027	52.219-9	9000-0006
49	9000-0028	52.219-10	9000-0006
50	9000-0029	52.219-19	9000-0100

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FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.219-20	9000-0100	52.228-13	9000-0045
52.219-21	9000-0100	52.228-15	9000-0045
52.219-22	9000-0150	52.228-16	9000-0045
52.219-23	9000-0150	52.229-2	9000-0059
52.219-25	9000-0150	52.230-6	9000-0129
52.222-2	9000-0065	52.232-1	9000-0070
52.222-4	1215-0119	52.232-2	9000-0070
52.222-6	1215-0140	52.232-3	9000-0070
52.222-8	1215-0149 and	52.232-4	9000-0070
	1215-0017	52.232-5	9000-0070
52.222-11	9000-0014	52.232-6	9000-0070
52.222-18	9000-0127	52.232-7	9000-0070
52.222-21	1215-0072	52.232-8	9000-0070
52.222-22	1215-0072	52.232-9	9000-0070
52.222-23	1215-0072	52.232-10	9000-0070
52.222-25	1215-0072	52.232-11	9000-0070
52.222-26	1215-0072	52.232-12	9000-0073
52.222-27	1215-0072	52.232-13	9000-0010
52.222-32	9000-0154	52.232-14	9000-0010
52.222-35	1215-0072	52.232-15	9000-0010
52.222-36	1215-0072	52.232-16	9000-0010
52.222-41	1215-0017 and	52.232-20	9000-0074
	1215-0150		
52.222-46	9000-0066	52.232-22	9000-0074
52.223-4	9000-0134	52.232-27	9000-0102
52.223-5	9000-0147	52.232-29	9000-0138
52.223-6(b)(5)	9000-0101	52.232-30	9000-0138
52.223-7	9000-0107	52.232-31	9000-0138
52.223-9	9000-0134	52.232-32	9000-0138
52.223-13	9000-0139	52.233-1	9000-0035
52.223-14	9000-0139	52.234-1	9000-0133
52.225-2	9000-0024	52.236-5	9000-0062
52.225-4	9000-0130	52.236-13	1220-0029 and
52.225-6	9000-0025		9000-0060
52.225-8	9000-0022	52.236-15	9000-0058
52.225-9	9000-0141	52.236-19	9000-0064
52.225-11	9000-0141	52.241-1	9000-0126
52.225-18	9000-0161	52.241-3	9000-0122
52.227-14	9000-0090	52.241-7	9000-0123
52.227-15	9000-0090	52.241-13	9000-0124
52.227-16	9000-0090	52.243-1	9000-0026
52.227-17	9000-0090	52.243-2	9000-0026
52.227-18	9000-0090	52.243-3	9000-0026
52.227-19	9000-0090	52.243-4	9000-0026
52.227-20	9000-0090	52.243-6	9000-0026
52.227-21	9000-0090	52.243-7	9000-0026
52.227-22	9000-0090	52.245-1	9000-0075
52.227-23	9000-0090	52.245-9	9000-0075
52.228-1	9000-0045	52.246-2	9000-0077
52.228-2	9000-0045	52.246-3	9000-0077
52.228-12	9000-0135	52.246-4	9000-0077

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.246-5	9000-0077	SF 330	9000-0157
52.246-6	9000-0077	SF 1403	9000-0011
52.246-7	9000-0077	SF 1404	9000-0011
52.246-8	9000-0077	SF 1405	9000-0011
52.246-10	9000-0077	SF 1406	9000-0011
52.246-12	9000-0077	SF 1407	9000-0011
52.246-15	9000-0077	SF 1408	9000-0011
52.247-2	9000-0053	SF 1413	9000-0014
52.247-29	9000-0061	SF 1416	9000-0045
52.247-30	9000-0061	SF 1418	9000-0045
52.247-31	9000-0061	SF 1428	9000-0075
52.247-32	9000-0061	SF 1429	9000-0075
52.247-33	9000-0061	SF 1435	9000-0012
52.247-34	9000-0061	SF 1436	9000-0012
52.247-35	9000-0061	SF 1437	9000-0012
52.247-36	9000-0061	SF 1438	9000-0012
52.247-37	9000-0061	SF 1439	9000-0012
52.247-38	9000-0061	SF 1440	9000-0012
52.247-39	9000-0061	SF 1443	9000-0010
52.247-40	9000-0061	SF 1444	9000-0089
52.247-41	9000-0061	SF 1445	9000-0089
52.247-42	9000-0061	SF 1446	9000-0089
52.247-43	9000-0061	OF 312	9000-0150
52.247-44	9000-0061		
52.247-48	9000-0061		
52.247-51	9000-0057		
52.247-53	9000-0055		
52.247-57	9000-0061		
52.247-63	9000-0054		
52.247-64	9000-0061		
52.247-68	9000-0056		
52.248-1	9000-0027		
52.248-2	9000-0027		
52.248-3	9000-0027		
52.249-2	9000-0028		
52.249-3	9000-0028		
52.249-5	9000-0028		
52.249-6	9000-0028		
52.249-11	9000-0028		
52.250-1	9000-0029		
SF 24	9000-0045		
SF 25	9000-0045		
SF 25A	9000-0045		
SF 28	9000-0001		
SF 34	9000-0045		
SF 35	9000-0045		
SF 273	9000-0045		
SF 274	9000-0045		
SF 275	9000-0045		
SF 294	9000-0006		
SF 295	9000-0007		

1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act ([41 U.S.C. 425](#)), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in [Part 2](#) apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see [1.102-4\(b\)](#)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the

final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the *Code of Federal Regulations*, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

1.109 Statutory acquisition-related dollar thresholds—adjustment for inflation.

(a) [41 U.S.C. 431a](#) requires that the FAR Council periodically adjust all statutory acquisition-related dollar thresholds in the FAR for inflation, except as provided in paragraph (c) of this section. This adjustment is calculated every 5 years, starting in October 2005, using the Consumer Price Index (CPI) for all-urban consumers, and supersedes the applicability of any other provision of law that provides for the adjustment of such acquisition-related dollar thresholds.

(b) The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council.

(c) The statute does not permit escalation of acquisition-related dollar thresholds established by the Davis-Bacon Act ([40 U.S.C. 3141](#) through 3144, 3146, and 3147), the Service Contract Act of 1965 ([41 U.S.C. 351](#), *et seq.*), or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979 ([19 U.S.C. 2511](#), *et seq.*).

(d) A matrix showing calculation of the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available via the Internet at <http://acquisition.gov/far/facsframe.html>.

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**Subpart 1.6—Career Development,
Contracting Authority, and Responsibilities**

1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency’s contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under [1.603](#).

(b) Agency heads may mutually agree to—

- (1) Assign contracting functions and responsibilities from one agency to another; and
- (2) Create joint or combined offices to exercise acquisition functions and responsibilities.

1.602 Contracting officers.

1.602-1 Authority.

(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see [1.603-1](#)) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers’ authority shall be readily available to the public and agency personnel.

(b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

1.602-2 Responsibilities.

Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. Contracting officers shall—

- (a) Ensure that the requirements of [1.602-1\(b\)](#) have been met, and that sufficient funds are available for obligation;
- (b) Ensure that contractors receive impartial, fair, and equitable treatment; and

(c) Request and consider the advice of specialists in audit, law, engineering, information security, transportation, and other fields, as appropriate.

1.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

“Ratification,” as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

“Unauthorized commitment,” as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) The ratification authority in paragraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(4) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the Government Accountability Office for resolution. (See [1.602-3\(d\)](#).)

(5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with [Subpart 33.2](#), Disputes and Appeals.

(c) *Limitations.* The authority in paragraph (b)(2) of this subsection may be exercised only when—

- (1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
- (2) The ratifying official has the authority to enter into a contractual commitment;
- (3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
- (4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
- (5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;
- (6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the Government Accountability Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR [Subpart 50.1](#). Legal advice should be obtained in these cases.

1.603 Selection, appointment, and termination of appointment.

1.603-1 General.

Subsection 414(4) of Title 41, United States Code, requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel, June 24, 1992.

1.603-2 Selection.

In selecting contracting officers, the appointing official shall consider the complexity and dollar value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include—

(a) Experience in Government contracting and administration, commercial purchasing, or related fields;

(b) Education or special training in business administration, law, accounting, engineering, or related fields;

(c) Knowledge of acquisition policies and procedures, including this and other applicable regulations;

(d) Specialized knowledge in the particular assigned field of contracting; and

(e) Satisfactory completion of acquisition training courses.

1.603-3 Appointment.

(a) Contracting officers shall be appointed in writing on an [SF 1402](#), Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

(b) Agency heads are encouraged to delegate micro-purchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an [SF 1402](#), but shall be appointed in writing in accordance with agency procedures.

1.603-4 Termination.

Termination of a contracting officer appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination shall operate retroactively.

Subpart 4.12—Representations and Certifications

4.1200 Scope.

This subpart prescribes policies and procedures for requiring submission and maintenance of representations and certifications via the Online Representations and Certifications Application (ORCA) to—

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

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

4.1201 Policy.

(a) Prospective contractors shall complete electronic annual representations and certifications at <http://orca.bpn.gov> in conjunction with required registration in the Central Contractor Registration (CCR) database (see FAR 4.1102).

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

(2) When the conditions in paragraph (b) of the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, apply, contractors that represented they were small businesses prior to award of a contract must update the representations and certifications in ORCA as directed by the clause. Contractors that represented they were other than small businesses prior to award of a contract may update the representations and certifications in ORCA as directed by the clause, if their size status has changed since contract award.

(c) Data in ORCA is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via ORCA, the contracting officer must reference the date of ORCA verification in the contract file, or include a paper copy of the electronically-submitted representations and certifications in the file. Either of these actions satisfies contract file documentation requirements of [4.803\(a\)\(11\)](#). However, if an offeror identifies changes to ORCA data pursuant to the FAR provisions at [52.204-8\(c\)](#) or [52.212-3\(l\)](#), the contracting officer must include a copy of the changes in the contract file.

4.1202 Solicitation provision and contract clause.

Except for commercial item solicitations issued under FAR [Part 12](#), insert in solicitations the provision at [52.204-8](#),

Annual Representations and Certifications. When the clause at [52.204-7](#), Central Contractor Registration, is included in the solicitation, do not include the following representations and certifications:

(a) [52.203-2](#), Certificate of Independent Price Determination.

(b) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(c) [52.204-3](#), Taxpayer Identification.

(d) [52.204-5](#), Women-Owned Business (Other Than Small Business).

(e) [52.209-5](#), Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

(f) [52.214-14](#), Place of Performance—Sealed Bidding.

(g) [52.215-6](#), Place of Performance.

(h) [52.219-1](#), Small Business Program Representations (Basic & Alternate I).

(i) [52.219-2](#), Equal Low Bids.

(j) [52.219-19](#), Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

(k) [52.219-21](#), Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

(l) [52.219-22](#), Small Disadvantaged Business Status (Basic & Alternate I).

(m) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

(n) [52.222-22](#), Previous Contracts and Compliance Reports.

(o) [52.222-25](#), Affirmative Action Compliance.

(p) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements.

(q) [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

(r) [52.223-4](#), Recovered Material Certification.

(s) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(t) [52.223-13](#), Certification of Toxic Chemical Release Reporting.

(u) [52.225-2](#), Buy American Act Certificate.

(v) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternate I & II).

(w) [52.225-6](#), Trade Agreements Certificate.

(x) [52.226-2](#), Historically Black College or University and Minority Institution Representation.

(y) [52.227-6](#), Royalty Information (Basic & Alternate I).

(z) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

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including those resulting from a previously synopsis advance notice, unless one of the exceptions in [5.202](#) applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see [Part 35](#)) or before changing its basic purpose and mission, the sponsor must transmit at least three notices over a 90-day period to the GPE and the *Federal Register*, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice must indicate the scope and nature of the effort to be performed and request comments. Notice is not required where the action is required by law.

(c) *Special notices.* Contracting officers may transmit to the GPE special notices of procurement matters such as business fairs, long-range procurement estimates, prebid or pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(d) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by [5.202](#), contracting officers must transmit to the GPE a synopsis of each proposed contract action for which the total fee (including phases and options) is expected to exceed \$25,000.

(2) When the total fee is expected to exceed \$10,000 but not exceed \$25,000, the contracting officer must comply with [5.101\(a\)\(2\)](#). When the proposed contract action is not required to be synopsis under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with [5.101\(b\)](#).

(e) *Public-private competitions under OMB Circular A-76.* (1) The contracting officer shall make a formal public announcement for each streamlined or standard competition. The public announcement shall include, at a minimum, the agency, agency component, location, type of competition (streamlined or standard), activity being competed, incumbent service providers, number of Government personnel performing the activity, name of the Competitive Sourcing Official, name of the contracting officer, name of the Agency Tender Official, and projected end date of the competition.

(2) The contracting officer shall announce the end of the streamlined or standard competition by making a formal public announcement of the performance decision. (See OMB Circular A-76.)

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under [Subpart 19.8](#), the contracting officer must transmit a synopsis of the proposed contract action to the GPE. The synopsis may be transmitted to the GPE concurrent with submission of the agency offering

(see [19.804-2](#)) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, women-owned small business, veteran-owned small business and service-disabled veteran-owned small business concerns, and to meet established subcontracting plan goals:

(1) A contractor awarded a contract exceeding \$100,000 that is likely to result in the award of any subcontracts.

(2) A subcontractor or supplier, at any tier, under a contract exceeding \$100,000, that has a subcontracting opportunity exceeding \$10,000.

(b) The notices must describe—

(1) The business opportunity;

(2) Any prequalification requirements; and

(3) Where to obtain technical data needed to respond to the requirement.

5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE must address the following data elements, as applicable:

(1) Action Code.

(2) Date.

(3) Year.

(4) Government Printing Office (GPO) Billing Account Code.

(5) Contracting Office ZIP Code.

(6) Classification Code.

(7) Contracting Office Address.

(8) Subject.

(9) Proposed Solicitation Number.

(10) Opening and Closing Response Date.

(11) Contact Point or Contracting Officer.

(12) Contract Award and Solicitation Number.

(13) Contract Award Dollar Amount.

(14) Contract Line Item Number.

(15) Contract Award Date.

(16) Contractor.

- (17) Description.
 - (18) Place of Contract Performance.
 - (19) Set-aside Status.
- (b) *Transmittal*. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.
- (c) *General format for "Description."* Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested including the following, as appropriate:
- (1) National Stock Number (NSN) if assigned.
 - (2) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see [Subpart 9.2](#)).
 - (3) Manufacturer, including part number, drawing number, etc.
 - (4) Size, dimensions, or other form, fit or functional description.
 - (5) Predominant material of manufacture.
 - (6) Quantity, including any options for additional quantities.
 - (7) Unit of issue.
 - (8) Destination information.
 - (9) Delivery schedule.
 - (10) Duration of the contract period.
 - (11) For a proposed contract action in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, enter—
 - (i) A description of the procedures to be used in awarding the contract (*e.g.*, request for oral or written quotation or solicitation); and
 - (ii) The anticipated award date.
 - (12) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(13) Numbered notes (see paragraph (e) of this section), including instructions for set-asides for small businesses.

(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source (see paragraph (e) of this section) and insert a statement of the reason justifying the lack of competition.

(15) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(16) If solicitations synopsisized through the GPE will not be made available through the GPE, provide information on how to obtain the solicitation.

(17) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

(18) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, such as FedTeDS (<https://www.fedtedds.gov>), from which the technical data may be obtained.

(d) *Set-asides*. When the proposed acquisition provides for a total or partial small business set-aside, HUBZone small business set-aside, or a service-disabled veteran-owned small business set-aside, the appropriate Numbered Note will be cited. When the proposed acquisition provides for a local area set-aside (see [Subpart 26.2](#)) the contracting officer shall identify this set-aside in the synopsis.

(e) *Numbered notes*. Numbered Notes are footnotes to be used by contracting officers to eliminate the unnecessary duplication of information that appears in various announcements. An explanation of the numbered notes appears at <http://www.fedbizopps.gov>.

(f) *Codes to be used in Synopses to identify services or supplies*. Contracting officers must use one of the classification codes identified at <http://www.fedbizopps.gov> to identify services or supplies in synopses.

(g) *Cancellation of synopsis*. Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE. Cancellations of solicitations must be made in accordance with [14.209](#) and [14.404-1](#).

PART 6—COMPETITION REQUIREMENTS

<i>Sec.</i>			
6.000	Scope of part.	6.302	Circumstances permitting other than full and open competition.
6.001	Applicability.	6.302-1	Only one responsible source and no other supplies or services will satisfy agency requirements.
6.002	Limitations.	6.302-2	Unusual and compelling urgency.
6.003	[Reserved]	6.302-3	Industrial mobilization; engineering, developmental, or research capability; or expert services.
	Subpart 6.1—Full and Open Competition	6.302-4	International agreement.
6.100	Scope of subpart.	6.302-5	Authorized or required by statute.
6.101	Policy.	6.302-6	National security.
6.102	Use of competitive procedures.	6.302-7	Public interest.
	Subpart 6.2—Full and Open Competition After Exclusion of Sources	6.303	Justifications.
6.200	Scope of subpart.	6.303-1	Requirements.
6.201	Policy.	6.303-2	Content.
6.202	Establishing or maintaining alternative sources.	6.304	Approval of the justification.
6.203	Set-asides for small business concerns.	6.305	Availability of the justification.
6.204	Section 8(a) competition.		Subpart 6.4—Sealed Bidding and Competitive Proposals
6.205	Set-asides for HUBZone small business concerns.	6.401	Sealed bidding and competitive proposals.
6.206	Set-asides for service-disabled veteran-owned small business concerns.		Subpart 6.5—Competition Advocates
6.207	Set-asides for local firms during a major disaster or emergency.	6.501	Requirement.
	Subpart 6.3—Other Than Full and Open Competition	6.502	Duties and responsibilities.
6.300	Scope of subpart.		
6.301	Policy.		

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Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.

This subpart prescribes policy and procedures for providing for full and open competition after excluding one or more sources.

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in [6.102](#).

6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other non-profit institution or a federally funded research and development center;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) (see [Subpart 1.7](#)) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in paragraph (a)(1) of this section is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

6.203 Set-asides for small business concerns.

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business

Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.

(c) [Subpart 19.5](#) prescribes policies and procedures that shall be followed with respect to set-asides.

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100-656, contracting officers may limit competition to eligible 8(a) contractors (see [Subpart 19.8](#)).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

6.205 Set-asides for HUBZone small business concerns.

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 ([15 U.S.C. 631](#) note), contracting officers in participating agencies (see [19.1302](#)) may set aside solicitations to allow only qualified HUBZone small business concerns to compete (see [19.1305](#)).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for qualified HUBZone small business concerns.

6.206 Set-asides for service-disabled veteran-owned small business concerns.

(a) To fulfill the statutory requirements relating to the Veterans Benefits Act of 2003 ([15 U.S.C. 657f](#)), contracting officers may set-aside solicitations to allow only service-disabled veteran-owned small business concerns to compete (see [19.1405](#)).

(b) No separate justification or determination and findings are required under this part to set aside a contract action for service-disabled veteran-owned small business concerns.

6.207 Set-asides for local firms during a major disaster or emergency.

(a) To fulfill the statutory requirements relating to [42 U.S.C. 5150](#), contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete (see [Subpart 26.2](#)).

(b) No separate justification or determination and findings is required under this part to set aside a contract action. The set-aside area specified by the contracting officer shall be a geographic area within the area identified in a Presidential declaration(s) of major disaster or emergency and any additional geographic areas identified by the Department of Homeland Security.

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(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.

(14) *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](#)).

(15) *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 Federal Technical Data Solution (FedTeDS) (see [5.102\(a\)](#)).

(16) *Environmental and energy conservation objectives.* Discuss all applicable environmental and energy conservation objectives associated with the acquisition (see [Part 23](#)), the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.

(17) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see [Subpart 4.4](#)). For information technology acquisitions, discuss how agency information security requirements will be met. 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](#)).

(18) *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.

(19) *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; and

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

(20) *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.

(21) *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 bundling.

(a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified ([15 U.S.C. 644\(e\)\(2\)](#)). Market research may indicate that bundling is necessary and justified if an agency or the Government would derive measurably substantial benefits (see [10.001\(a\)\(2\)\(iv\)](#) and [\(a\)\(3\)\(vi\)](#)).

(b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to—

(1) Ten percent of the estimated contract or order value (including options) if the value is \$86 million or less; or

(2) Five percent of the estimated contract or order value (including options) or \$8.6 million, whichever is greater, if the value exceeds \$86 million.

(c) Without power of delegation, the service acquisition executive for the military departments, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when—

(1) The expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency's mission success; and

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

(d) Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the bundled requirements.

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in

[7.104\(d\)\(2\)](#). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

(1) Identify the specific benefits anticipated to be derived from bundling;

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

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

(4) Specify 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) Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

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

(f) The contracting officer must justify bundling in acquisition strategy documentation.

(g) In assessing whether cost savings would be achieved through bundling, the contracting officer must consider the cost that has been charged or, where data is available, could be charged by small business concerns for the same or similar work.

(h) The requirements of this section, except for paragraph (e), do not apply if a cost comparison analysis will be performed in accordance with OMB Circular A-76.

7.108 Additional requirements for telecommuting.

In accordance with section 1428 of Public Law 108-136, 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 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Public Law 103-355 ([41 U.S.C. 264](#), note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at [52.212-1](#), Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, [SF 1449](#)). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with [12.302](#).

(2) *The provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with [Subpart 1.4](#). Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at [4.601](#)(a). Use the provision with its Alternate II in solicitations for acquisitions for which small disadvantaged business procurement mechanisms are authorized on a regional basis.

(3) *The clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. The contracting officer may tailor this clause in accordance with [12.302](#).

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5](#)(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104](#)(d). When cost information is obtained pursuant to [Part 15](#) to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored. Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at [52.212-2](#), Evaluation—Commercial Items, in solicitations for commercial items (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [Subpart 14.2](#) or [Subpart 15.3](#), as an addendum (see [12.302](#)(d)).

(d) *Use of required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in [12.302](#). For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at [16.506](#) may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in [17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of recovered material when appropriate for the item being acquired.

(4) When setting aside under the Stafford Act ([Subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the Online Representations and Certifications Application (ORCA) Database.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring [52.212-4](#), Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [Subpart 32.11](#));
- (4) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace,

support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the [SF 1449](#) if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the [SF 1449](#); a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the [SF 1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this [Part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

- (a) [Standard Form \(SF\) 1449](#);
- (b) Continuation of any block from [SF 1449](#), such as—
 - (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage), or if set aside for emerging small businesses;
 - (2) Block 18B for remittance address;
 - (3) Block 19 for contract line item numbers;
 - (4) Block 20 for schedule of supplies/services; or
 - (5) Block 25 for accounting data;
- (c) Contract clauses—
 - (1) [52.212-4](#), Contract Terms and Conditions—Commercial Items, by reference (see [SF 1449](#) block 27a);
 - (2) Any addendum to [52.212-4](#); and
 - (3) [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes and Executive orders;
- (d) Any contract documents, exhibits or attachments; and
- (e) Solicitation provisions—
 - (1) [52.212-1](#), Instructions to Offerors—Commercial Items, by reference (see [SF 1449](#), Block 27a);
 - (2) Any addendum to [52.212-1](#);
 - (3) [52.212-2](#), Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and
 - (4) [52.212-3](#), Offeror Representations and Certifications—Commercial Items.

15.000 Scope of part.

This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. A contract awarded using other than sealed bidding procedures is a negotiated contract (see [14.101](#)).

15.001 Definitions.

As used in this part—

“Deficiency” is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

“Proposal modification” is a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

“Weakness” means a flaw in the proposal that increases the risk of unsuccessful contract performance. A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

15.002 Types of negotiated acquisition.

(a) *Sole source acquisitions.* When contracting in a sole source environment, the request for proposals (RFP) should be tailored to remove unnecessary information and requirements; *e.g.*, evaluation criteria and voluminous proposal preparation instructions.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors’ proposals, leading to selection of the proposal representing the best value to the Government (see [2.101](#)).

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.

This subpart describes some of the acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition.

15.101 Best value continuum.

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk

of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

15.101-1 Tradeoff process.

(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and

(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with [15.406](#).

15.101-2 Lowest price technically acceptable source selection process.

(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. If the contracting officer documents the file pursuant to [15.304](#)(c)(3)(iv), past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as an evaluation factor, it shall be evaluated in accordance with [15.305](#). However, the comparative assessment in [15.305](#)(a)(2)(i) does not apply. If the contracting officer determines that a small business’ past performance is not acceptable, the matter shall be referred to the Small Business Administration for a Certificate of Competency determination, in accordance with the procedures contained in [Subpart 19.6](#) and [15 U.S.C. 637\(b\)\(7\)](#).

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Exchanges may occur (see [15.306](#)).

15.102 Oral presentations.

(a) Oral presentations by offerors as requested by the Government may substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see [15.208](#)) and content (see [15.306](#)). Oral presentations provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.

(b) The solicitation may require each offeror to submit part of its proposal through oral presentations. However, representations and certifications shall be submitted as required in the FAR provisions at [52.204-8\(c\)](#) or [52.212-3\(l\)](#), and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

(c) Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the acquisition; and

(4) The impact (including cost) on small businesses. In considering the costs of oral presentations, contracting offic-

ers should also consider alternatives to on-site oral presentations (*e.g.*, teleconferencing, video teleconferencing).

(d) When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

(3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The location, date, and time for the oral presentations;

(5) The restrictions governing the time permitted for each oral presentation; and

(6) The scope and content of exchanges that may occur between the Government's participants and the offeror's representatives as part of the oral presentations, including whether or not discussions (see [15.306\(d\)](#)) will be permitted during oral presentations.

(e) The contracting officer shall maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) shall be at the discretion of the source selection authority. A copy of the record placed in the file may be provided to the offeror.

(f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(g) If, during an oral presentation, the Government conducts discussions (see [15.306\(d\)](#)), the Government must comply with [15.306](#) and [15.307](#).

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

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

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

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

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

17.106-2 Solicitations.

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

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

(1) First program year; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Level unit prices.* Multi-year contract procedures provide for the amortization of certain costs over the entire contract quantity resulting in identical (level) unit prices (except

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

17.107 Options.

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

17.108 Congressional notification.

(a) Except for DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of \$11.5 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on appropriations of the House of Representatives and Senate and the appropriate oversight committees of the House and Senate for the agency in question. Information on such committees may not be readily available to contracting officers. Accordingly, agencies should provide such information through its internal regulations. The contract may not be awarded until the thirty-first day after the date of notification.

(b) For DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of

\$114.5 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and appropriations of the House of Representatives and Senate. The contract may not be awarded until the thirty-first day after the date of notification.

17.109 Contract clauses.

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

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

(1) Shall add the clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), when the contract includes the clause at [52.222-41](#), Service Contract Act of 1965;

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

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

18.000 Scope of part.

(a) This part identifies acquisition flexibilities that are available for emergency acquisitions. These flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process. This part includes—

- (1) Generally available flexibilities; and
- (2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in FAR [Part 3](#), Improper Business Practices and Personal Conflicts of Interest.

(c) Additional flexibilities may be authorized in an executive agency supplement to the FAR.

18.001 Definition.

“Emergency acquisition flexibilities”, as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used—

- (a) In support of a contingency operation as defined in [2.101](#);
- (b) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or
- (c) When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

The FAR includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These acquisition flexibilities do not require an emergency declaration or designation of contingency operation.

18.102 Central contractor registration.

Contracts awarded to support unusual and compelling needs or emergency acquisitions are exempt from the requirements pertaining to Central Contractor Registration. (See [4.1102](#).)

18.103 Synopses of proposed contract actions.

Contracting officers need not submit a synopsis notice when there is an unusual and compelling urgency and the Government would be seriously injured if the agency complied with the notice time periods. (See [5.202](#)(a)(2).)

18.104 Unusual and compelling urgency.

Agencies may limit the number of sources and full and open competition need not be provided for contracting actions involving urgent requirements. (See [6.302-2](#).)

18.105 Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts.

Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedule contracts (see [Subpart 8.4](#)), multi-agency BPAs (See [8.405-3](#)(a)(4)), or multi-agency, indefinite-delivery contracts (see [16.505](#)(a)(7)). These contracting methods may offer agency advance planning, pre-negotiated line items, and special terms and conditions that permit rapid response.

18.106 Acquisitions from Federal Prison Industries, Inc. (FPI).

Purchase from FPI is not mandatory and a waiver is not required if public exigency requires immediate delivery or performance (see [8.605](#)(b)).

18.107 Javits-Wagner-O’Day (JWOD) specification changes.

Contracting officers are not held to the notification required when changes in JWOD specifications or descriptions are required to meet emergency needs. (See [8.712](#)(d).)

18.108 Qualifications requirements.

Agencies may determine not to enforce qualification requirements when an emergency exists. (See [9.206-1](#).)

18.109 Priorities and allocations.

The Defense Priorities and Allocations System (DPAS) supports authorized national defense programs and was established to facilitate rapid industrial mobilization in case of a national emergency. (See [Subpart 11.6](#).)

18.110 Soliciting from a single source.

For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source under certain circumstances. (See [13.106-1](#)(b).)

18.111 Oral requests for proposals.

Oral requests for proposals are authorized under certain conditions. (See [15.203](#)(f).)

18.112 Letter contracts.

Letter contracts may be used when contract performance must begin immediately. (See [16.603](#).)

18.113 Interagency acquisitions under the Economy Act.

Interagency acquisitions are authorized under certain conditions. (See [Subpart 17.5](#).)

18.114 Contracting with the Small Business**Administration (The 8(a) Program).**

Contracts may be awarded to the Small Business Administration (SBA) for performance by eligible 8(a) firms on either a sole source or competitive basis. (See [Subpart 19.8](#).)

18.115 HUBZone sole source awards.

Contracts may be awarded to Historically Underutilized Business Zone (HUBZone) small business concerns on a sole source basis. (See [19.1306](#).)

18.116 Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.

Contracts may be awarded to Service-disabled Veteran-owned Small Business (SDVOSB) concerns on a sole source basis. (See [19.1406](#).)

18.117 Overtime approvals.

Overtime approvals may be retroactive if justified by emergency circumstances. (See [22.103-4\(i\)](#).)

18.118 Trade agreements.

The policies and procedures of FAR [25.4](#) may not apply to acquisitions not awarded under full and open competition (see [25.401\(a\)\(5\)](#)).

18.119 Use of patented technology under the North American Free Trade Agreement.

Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. (See [27.208](#).)

18.120 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions when a performance bond or a performance bond and payment bond is required. (See [28.101-1\(c\)](#).)

18.121 Advance payments.

Agencies may authorize advance payments to facilitate the national defense for actions taken under Public Law 85-804 (see [Subpart 50.1](#), Extraordinary Contractual Actions). These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts. (See [32.405](#).)

18.122 Assignment of claims.

The use of the no-setoff provision may be appropriate to facilitate the national defense in the event of a national emergency or natural disaster. (See [32.803\(d\)](#).)

18.123 Electronic funds transfer.

Electronic funds transfer payments may be waived for acquisitions to support unusual and compelling needs or emergency acquisitions. (See [32.1103\(e\)](#).)

18.124 Protest to GAO.

When urgent and compelling circumstances exist, agency protest override procedures allow the head of the contracting activity to determine that the contracting process may continue after GAO has received a protest. (See [33.104\(b\)](#) and (c).)

18.125 Contractor rent-free use of Government property.

Rental requirements do not apply to items of Government production and research property that are part of a general program approved by the Federal Emergency Management Agency and meet certain criteria. (See [45.301](#).)

18.126 Extraordinary contractual actions.

[Subpart 50.1](#) prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 ([50 U.S.C. 1431-1434](#)). This includes—

- (a) Amending contracts without consideration (see [50.103-2\(a\)](#));
- (b) Correcting or mitigating mistakes in a contract (see [50.103-2\(b\)](#)); and
- (c) Formalizing informal commitments (See [50.103-2\(c\)](#)).

Subpart 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

(a) *Contingency operation* is defined in [2.101](#).

(b) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See [2.101](#) and [13.201](#)(g).)

(c) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See [2.101](#).)

(d) *SF 44, Purchase Order-Invoice-Voucher*. The normal threshold for the use of the [SF 44](#) is at or below the micro-purchase threshold. Agencies may, however, establish higher dollar limitations for purchases made to support a contingency operation. (See [13.306](#).)

(e) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased for acquisitions to support a contingency operation. (See [13.500](#)(e).)

18.202 Defense or recovery from certain attacks.

(a) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [2.101](#).)

(b) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [2.101](#).)

(c) *Commercial items to facilitate defense and recovery*. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from nuclear, biological,

chemical, or radiological attack. (See [12.102](#)(f)(1) and [13.500](#)(e).)

(d) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased when it is determined the acquisition is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [13.500](#)(e).)

18.203 Incidents of national significance, emergency declaration, or major disaster declaration.

(a) *Disaster or emergency assistance activities*. Preference will be given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Preference may take the form of local area set-asides or an evaluation preference. (See [6.207](#) and [Subpart 26.2](#).)

(b) *Ocean transportation by U.S. flag vessels*. The provisions of the Cargo Preference Act of 1954 may be waived in emergency situations. (See [47.502](#)(c).)

18.204 Resources.

(a) *National Response Plan*. The National Response Plan (NRP) provides a single, comprehensive framework for the management of domestic incidents where Federal involvement is necessary as required by the Homeland Security Act of 2002 (Public Law 107-296). The NRP only applies to incidents of national significance, defined as an actual or potential high-impact event that requires a coordinated and effective response by an appropriate combination of Federal, State, local, tribal, nongovernmental, and/or private-sector entities in order to save lives, minimize damage, and provide for long-term community recovery and mitigation activities. The Department of Homeland Security is responsible for the NRP. The NRP is available at http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0566.xml.

(b) *OFPP Guidelines*. The Office of Federal Procurement Policy (OFPP) “Emergency Acquisitions Guide” is available at http://www.whitehouse.gov/omb/procurement/guides/emergency_acquisitions_guide.pdf.

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Subpart 22.10—Service Contract Act of 1965, as Amended

22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended ([41 U.S.C. 351](#), *et seq.*), the applicable provisions of the Fair Labor Standards Act of 1938, as amended ([29 U.S.C. 201](#), *et seq.*), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925).

22.1001 Definitions.

As used in this subpart—

“Act” or “Service Contract Act” means the Service Contract Act of 1965.

“Agency labor advisor” means an individual responsible for advising contracting agency officials on Federal contract labor matters.

“Contractor” includes a subcontractor at any tier whose subcontract is subject to the provisions of the Act.

“Multiple year contracts” means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multiyear contracts (see [17.103](#)).

“Service contract” means any Government contract, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted under section 7 of the Act ([41 U.S.C. 356](#); see [22.1003-3](#) and [22.1003-4](#)), or any subcontract at any tier thereunder. See [22.1003-5](#) and 29 CFR 4.130 for a partial list of services covered by the Act.

“Service employee” means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541. The term “service employee” includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act ([43 U.S.C. 1331](#), *et seq.*), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession in a foreign country (29 CFR 4.112).

“Wage and Hour Division” means the unit in the Employment Standards Administration of the Department of Labor to which is assigned functions of the Secretary of Labor under the Act.

“Wage determination” means a determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of

the Act ([41 U.S.C. 351\(a\)](#) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

22.1002 Statutory requirements.

22.1002-1 General.

Service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under [41 U.S.C. 353\(d\)](#), service contracts may not exceed 5 years.

22.1002-2 Wage determinations based on prevailing rates.

Contractors performing on service contracts in excess of \$2,500 to which no predecessor contractor’s collective bargaining agreement applies shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act.

22.1002-3 Wage determinations based on collective bargaining agreements.

(a) Successor contractors performing on contracts in excess of \$2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor’s collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines—

(1) After a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality; or

(2) That the wages and fringe benefits are not the result of arm’s length negotiations.

(b) Paragraphs in this [Subpart 22.10](#) which deal with this statutory requirement and the Department of Labor’s implementing regulations are [22.1010](#), concerning notification to contractors and bargaining representatives of procurement dates; [22.1012-2](#), explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and [22.1013](#) and [22.1021](#), explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm’s length bargaining.

22.1002-4 Application of the Fair Labor Standards Act minimum wage.

No contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act ([29 U.S.C. 206](#)).

22.1003 Applicability.**22.1003-1 General.**

This [Subpart 22.10](#) applies to all Government contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted in [22.1003-3](#) and [22.1003-4](#) of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

22.1003-2 Geographical coverage of the Act.

The Act applies to service contracts performed in the United States (see [22.1001](#)). The Act does not apply to contracts performed outside the United States.

22.1003-3 Statutory exemptions.

The Act does not apply to—

(a) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

(b) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act ([41 U.S.C. 35-45](#));

(c) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(d) Any contract for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(e) Any contract for public utility services;

(f) Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(g) Any contract for operating postal contract stations for the U.S. Postal Service.

22.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(a) The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act other than section 10 ([41 U.S.C. 358](#)). These will be made only in special circumstances where it has

been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards ([41 U.S.C. 353\(b\)](#)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels and the agency labor advisor to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in [22.1003-3](#) of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(c) *Contracts for maintenance, calibration or repair of certain equipment.*— (1) *Exemption.* The Secretary of Labor has exempted from the Act contracts and subcontracts in which the primary purpose is to furnish maintenance, calibration, or repair of the following types of equipment, if the conditions at paragraph (c)(2) of this subsection are met:

(i) Automated data processing equipment and office information/word processing systems.

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, “Medical Diagnostic Equipment;” Class 6525, “X-Ray Equipment;” FSC Group 66, Class 6630, “Chemical Analysis Instruments;” and Class 6665, “Geographical and Astronomical Instruments;” are largely composed of the types of equipment exempted in this paragraph).

(iii) Office/business machines not otherwise exempt pursuant to paragraph (c)(1)(i) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(2) *Conditions.* The exemption at paragraph (c)(1) of this subsection applies if all the following conditions are met for a contract (or a subcontract):

(i) The items of equipment to be serviced under the contract are used regularly for other than Government purposes and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such equipment. As defined at 29 CFR 4.123(e)(1)(ii)(B)—

(A) An established catalog price is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(iii) The contractor will use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing the same equipment of commercial customers.

(iv) The apparent successful offeror certifies to the conditions in paragraph (c)(2)(i) through (iii) of this subsection. (See [22.1006\(e\)](#).)

(3) *Affirmative determination and contract award.*

(i) For source selections where the contracting officer has established a competitive range, if the contracting officer determines that one or more of the conditions in paragraphs [22.1003-4](#) (c)(2)(i) through (iii) of an offeror's certification will not be met, the contracting officer shall identify the deficiency to the offeror before receipt of the final proposal revisions. Unless the offeror provides a revised offer acknowledging applicability of the Service Contract Act or demonstrating to the satisfaction of the contracting officer an ability to meet all required conditions for exemption, the offer will not be further considered for award.

(ii) The contracting officer shall determine in writing the applicability of this exemption to the contract before contract award. If the apparent successful offeror will meet all conditions in paragraph (c)(2) of this subsection, the contracting officer shall make an affirmative determination and award the contract without the otherwise applicable Service Contract Act clause(s).

(iii) If the apparent successful offeror does not certify to the conditions in paragraph (c)(2)(i) through (iii) of this

subsection, the contracting officer shall incorporate in the contract the Service Contract Act clause (see [22.1006\(a\)\(2\)](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(4) *Department of Labor determination.* (i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (c)(2) of this subsection has not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) shall be followed.

(ii) If the Department of Labor determines after award of the subcontract that any conditions for exemption in paragraph (c)(2) of this subsection have not been met, the exemption shall be deemed inapplicable. The contractor may be responsible for ensuring that the subcontractor complies with the Act, effective as of the date of the subcontract award.

(d) *Contracts for certain services.—* (1) *Exemption.* Except as provided in paragraph (d)(5) of this subsection, the Secretary of Labor has exempted from the Act contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (d)(2) of this subsection are met:

(i) Automobile or other vehicle (*e.g.*, aircraft) maintenance services (other than contracts or subcontracts to operate a Government motor pool or similar facility).

(ii) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

(iii) Hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (which must not include ongoing contracts for lodging on an as needed or continuing basis).

(iv) Maintenance, calibration, repair, and/or installation (where the installation is not subject to the Davis-Bacon Act, as provided in 29 CFR 4.116(c)(2)) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis.

(v) Transportation by common carrier of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services).

(vi) Real estate services, including real property appraisal services, related to housing Federal agencies or disposing of real property owned by the Government.

(vii) Relocation services, including services of real estate brokers and appraisers to assist Federal employees or military personnel in buying and selling homes (which shall not include actual moving or storage of household goods and related services).

(2) *Conditions.* The exemption for the services in paragraph (d)(1) of this subsection applies if all the following conditions are met for a contract (or for a subcontract):

(i)(A) The contract will be awarded on a sole-source basis; or

(B) Except for services identified in paragraph (d)(1)(iv) of this subsection, the contractor will be selected for award based on other factors in addition to price or cost, with the combination of other factors at least as important as price or cost in selecting the contractor.

(ii) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

(iii) The contract services are furnished at prices that are, or are based on, established catalog or market prices. As defined at 29 CFR 4.123(e)(2)(ii)(C)—

(A) An established catalog price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(iv) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(v) The contractor will use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing commercial customers.

(vi) The contracting officer (or contractor with respect to a subcontract) determines in advance, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the conditions in paragraph (d)(2)(ii) through (v) of this subsection. If the services are currently being performed under contract, the contracting officer (or contractor with respect to a subcontract) shall consider the practices of the existing contractor in making a determination regarding the conditions in paragraphs (d)(2)(ii) through (v) of this subsection.

(vii)(A) The apparent successful offeror certifies that the conditions in paragraphs (d)(2)(ii) through (v) will be met; and

(B) For other than sole source awards, the contracting officer determines that the same certification is obtained from substantially all other offerors that are—

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306\(c\)](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)).

(3) *Contract award or resolicitation.* (i) If the apparent successful offeror does not certify to the conditions, the contracting officer shall insert in the contract the applicable Service Contract Act clause(s) (see [22.1006\(a\)\(2\)](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(ii) The contracting officer shall award the contract without the otherwise applicable Service Contract Act clause(s) if—

(A) The apparent successful offeror certifies to the conditions in paragraphs (d)(2)(ii) through (v) of this subsection;

(B) The contracting officer determines that the same certification is obtained from substantially all other offerors that are—

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)); and

(C) The contracting officer has no reason to doubt the certification.

(iii) If the conditions in paragraph (d)(3)(ii) of this subsection are not met, then the contracting officer shall resolicit, amending the solicitation by removing the exemption provision from the solicitation (see [22.1006\(e\)\(4\)](#)), and inserting in the contract the applicable Service Contract Act clause(s) (see [22.1006\(a\)\(2\)](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(4) *Department of Labor determination.* (i) If the Department of Labor determines after award of the contract that any conditions for exemption at paragraph (d)(2) of this subsection have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) shall be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (d)(2) of this subsection have not been met with respect to a subcontract, the exemption shall be deemed inapplicable and the contractor may be responsible for ensuring that the subcontractor complies with the Act, effective as of the date of the subcontract award.

(5) *Exceptions.* The exemption at paragraph (d)(1) of this subsection does not apply to solicitations and contracts (subcontracts)—

(i) Awarded under the Javits-Wagner-O’Day Act, [41 U.S.C. 47](#) (see [Subpart 8.7](#)).

(ii) For the operation of a Government facility, or part of a Government facility (but may be applicable to subcontracts for services); or

(iii) Subject to Section 4(c) of the Service Contract Act (see [22.1002-3](#)).

22.1003-5 Some examples of contracts covered.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Act (see 29 CFR 4.130 for additional examples):

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

(c) Custodial, janitorial, housekeeping, and guard services.

(d) Food service and lodging.

(e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.

(f) Snow, trash, and garbage removal.

(g) Aerial spraying and aerial reconnaissance for fire detection.

(h) Some support services at installations, including grounds maintenance and landscaping.

(i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.

(j) Electronic equipment maintenance and operation and engineering support services.

(k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see [22.1003\(c\)\(1\)](#) and (d)(1)(iv).)

(l) Operation, maintenance, or logistics support of a Federal facility.

(m) Data collection, processing and analysis services.

22.1003-6 Repair distinguished from remanufacturing of equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Public Contracts Act, rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in either subparagraphs (a)(1) or (a)(2) of this subsection are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual component parts.

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down.

(ii) Outmoded parts are replaced.

(iii) The item or equipment is rebuilt or reassembled.

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include the following:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see [22.1003\(c\)\(1\)](#) and (d)(1)(iv)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.

22.1003-7 Questions concerning applicability of the Act.

If the contracting officer questions the applicability of the Act to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

22.1004 Department of Labor responsibilities and regulations.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

- (a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);
- (b) Wage determination procedures (29 CFR part 4, subparts A and B);
- (c) Application of the Act (rulings and interpretations) (29 CFR Part 4, Subpart C);
- (d) Compensation standards (29 CFR Part 4, Subpart D);
- (e) Enforcement (29 CFR Part 4, Subpart E);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);
- (g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and
- (h) Practice before the Administrative Review Board (29 CFR part 8).

22.1005 [Reserved]

22.1006 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the clause at [52.222-41](#), Service Contract Act of 1965, in solicitations and contracts if the contract is subject to the Act and is—

- (i) Over \$2,500; or
- (ii) For an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.

(2) If the solicitation includes the provision at [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification, or [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification, the contracting officer shall not insert the clause at [52.222-41](#) (or any of the associated Service Contract Act clauses prescribed in this section for possible use when [52.222-41](#) applies) in the resultant contract unless the contracting officer determines, in accordance with

paragraphs (c)(3) or (d)(3) of subsection [22.1003-4](#), that the Service Contract Act applies to the contract. (In such case, do not insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, in the contract, in accordance with the prescription at paragraph (e)(2) or (e)(4) of this subsection.)

(b) The contracting officer shall insert the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Act is applicable. (See [22.1016](#).)

(c)(1) The contracting officer shall insert the clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at [52.222-41](#), Service Contract Act of 1965, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see [22.1002-2](#) and [22.1002-3](#)). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at [52.222-43](#) (subparagraphs (d)(1), (2) and (3)), or [52.222-44](#) (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at [52.222-41](#), Service Contract Act of 1965, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage

determinations and contracts subject to contractor collective bargaining agreements (see [22.1002-2](#) and [22.1002-3](#)).

(3) The clauses prescribed in paragraph [22.1006\(c\)\(1\)](#) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in [16.203-4\(d\)](#) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph [22.1006\(c\)](#).

(d) [Reserved]

(e)(1) The contracting officer shall insert the provision at [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification, in solicitations that include the clause at [52.222-41](#), Service Contract Act of 1965, but the contract may be exempt from the Service Contract Act in accordance with [22.1003-4\(c\)](#).

(2) The contracting officer shall insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, in solicitations that include the provision at [52.222-48](#), and resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(c\)\(3\)](#), that the Service Contract Act does not apply.

(3) The contracting officer shall insert the provision at [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification, in solicitations that include the clause at [52.222-41](#), Service Contract Act of 1965, but the contract may be exempt from the Service Contract Act in accordance with [22.1003-4\(d\)](#).

(4) The contracting officer shall insert the clause at [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, in solicitations that include the provision at [52.222-52](#), and resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(d\)\(3\)](#), that the Service Contract Act does not apply.

(f) The contracting officer shall insert the clause at [52.222-49](#), Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in [22.1009-4](#).

22.1007 Requirement to obtain wage determinations.

The contracting officer shall obtain wage determinations for the following service contracts:

(a) Each new solicitation and contract in excess of \$2,500.

(b) Each contract modification which brings the contract above \$2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of \$2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division.

22.1008 Procedures for obtaining wage determinations.

22.1008-1 Obtaining wage determinations.

(a) Contracting officers may obtain most prevailing wage determinations using the WDOL website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the WDOL website, to request a wage determination directly from the Department of Labor. If the WDOL database does not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(b) In using the e98 process to obtain prevailing wage determinations, contracting officers shall provide as complete and accurate information on the e98 as possible. Contracting officers shall ensure that the email address submitted on an e98 request is accurate.

(c) The contracting officer must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the WDOL.

(d) Although the WDOL website provides assistance to the contracting agency to select the correct wage determination, the contracting agency remains responsible for the wage determination selected. If the contracting agency has used the e98 process, the Department of Labor will respond to the contracting agency based on the information provided on the e98. The contracting agency may rely upon the Department of Labor response as the correct wage determination for the contract.

(e) To obtain the applicable wage determination for each contract action, the contracting officer shall determine the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(1) Determine the classes of service employees to be utilized in performance of the contract using the Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory). The Directory can be found on WDOL's Library Page, and is for sale by the Superintendent of Documents, U.S. Government Printing Office.

(2) Determine the locality where the services will be performed (see [22.1009](#)).

(3) Determine whether Section 4(c) of the Act applies (see [22.1008-2](#), [22.1010](#) and [22.1002-2](#)).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of [5 U.S.C. 5341](#) and/or 5332 (see [22.1016](#)).

(f) If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the agency labor advisor.

22.1008-2 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

(a) Early in the acquisition cycle, the contracting officer shall determine whether section 4(c) of the Act affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract covered by the Act and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) Section 4(c) of the Act provides that a successor contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of section 4(c) of the Act is subject to the following limitations:

(1) Section 4(c) of the Act will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of section 4(c) of the Act under the following conditions:

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see [22.1002-2\(a\)](#)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the

collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see [22.1002-2\(b\)](#)); and

(ii) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see [22.1010](#)).

(d)(1) If section 4(c) of the Act applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at [52.222-41](#), Service Contract Act of 1965, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.)

(2) If the contracting officer has timely received the collective bargaining agreement, the contracting officer may use the WDOL website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the WDOL process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The contracting officer may also use the e98 process on WDOL to request that the Department of Labor prepare the cover wage determination. The Department of Labor's response to the e98 may include a request for the contracting officer to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the Act to a collective bargaining agreement should be directed to the agency labor advisor.

(e)(1) Section 4(c) of the Act will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (ii) that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations (see [22.1013](#) and [22.1021](#)). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

(2) If the contracting officer's review (see [22.1013](#)) indicates that monetary provisions of the collective bargaining agreement may be substantially at variance or may not have been reached as a result of arm's length bargaining, the

contracting officer shall immediately contact the agency labor advisor to consider if further action is warranted.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall access WDOL to obtain the prevailing wage determination for those service employee classifications that are not covered by the collective bargaining agreement. The contracting officer shall separately list in the solicitation and contract the service employee classifications—

- (1) Subject to the collective bargaining agreement; and
- (2) Not subject to any collective bargaining agreement.

22.1009 Place of performance unknown.

22.1009-1 General.

If the place of performance is unknown, the contracting officer may use the procedures in this section. The contracting officer should first attempt to identify the specific places or geographical areas where the services might be performed (see [22.1009-2](#)) and then may follow the procedures either in [22.1009-3](#) or in [22.1009-4](#).

22.1009-2 Attempt to identify possible places of performance.

The contracting officer should attempt to identify the specific places or geographical areas where the services might be performed. The following may indicate possible places of performance:

- (a) Locations of previous contractors and their competitors.
- (b) Databases available via the Internet for lists of prospective offerors and contractors.
- (c) Responses to a presolicitation notice (see [5.204](#)).

22.1009-3 All possible places of performance identified.

(a) If the contracting officer can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful offeror is chosen), the contracting officer shall obtain a wage determination for each locality where services may be performed (see [22.1008](#)).

(b) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting officer shall—

- (1) Obtain wage determinations for the additional places of performance and amend the solicitation to include

all wage determinations. If necessary, the contracting officer shall extend the time for submission of final offers; and

- (2) Follow the procedures in [22.1009-4](#).

22.1009-4 All possible places of performance not identified.

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

(a) Include the following information in the synopsis and solicitation:

- (1) That the place of performance is unknown.
- (2) The possible places or areas of performance that the contracting officer has already identified.
- (3) That the contracting officer will obtain wage determinations for additional possible places of performance if asked to do so in writing.
- (4) The time and date by which offerors must notify the contracting officer of additional places of performance.

(b) Include the information required by paragraphs (a)(2) and (a)(4) of this section in the clause at [52.222-49](#), Service Contract Act—Place of Performance Unknown (see [22.1006\(f\)](#)). The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

(c) The procedures in [14.304](#) shall apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(d) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer shall—

- (1) Obtain wage determinations for the additional places of performance; and
- (2) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(e) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer shall—

- (1) Award the contract;
- (2) Obtain a wage determination; and
- (3) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at [52.222-49](#), Service Contract—Place of Performance Unknown.

22.1010 Notification to interested parties under collective bargaining agreements.

(a) The contracting officer should determine whether the incumbent prime contractor's or its subcontractors' service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the contracting officer shall give both the incumbent contractor and its employees' collective bargaining agent written notification of—

(1) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(2) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(b) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in paragraphs [22.1012-2\(a\)](#) and [\(b\)](#) to apply. The contracting officer shall retain a copy of the notification in the contract file.

22.1011 [Reserved]

22.1012 Applicability of revisions to wage determinations.

22.1012-1 Prevailing wage determinations.

(a)(1) The Wage and Hour Administrator may issue revisions to prevailing wage determinations periodically. The need for inclusion of a revised prevailing wage determination in a solicitation, contract or contract modification (see [22.1007](#)) is determined by the date of receipt of the revised prevailing wage determination by the contracting agency. (Note the distinction between receipt by the agency and receipt by the contracting officer which may occur later.)

(i) For purposes of using WDOL, the time of receipt by the contracting agency shall be the first day of publication of the revised prevailing wage determination on the website.

(ii) For purposes of using the e98 process, the time of receipt by the contracting agency shall be the date the agency receives actual notice of a new or revised prevailing wage determination from the Department of Labor as an e98 response.

(2) In selecting a prevailing wage determination from the WDOL website for use in a solicitation or other contract action, the contracting officer shall monitor the WDOL website to determine whether the applicable wage determination

has been revised. Revisions published on the WDOL website or otherwise communicated to the contracting officer within the timeframes prescribed at [22.1012-1\(b\)](#) and [\(c\)](#) are effective and must be included in the resulting contract. Monitoring can be accomplished by use of the WDOL website's "Alert Service".

(b) The following shall apply when contracting by sealed bidding: a revised prevailing wage determination shall not be effective if it is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(c) For contractual actions other than sealed bidding, a revised prevailing wage determination received by the contracting agency after award of a new contract or a modification as specified in [22.1007\(b\)](#) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(d) If the contracting officer has submitted an e98 to the Department of Labor requesting a prevailing wage determination and has not received a response within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.)

22.1012-2 Wage determinations based on collective bargaining agreements.

(a) In sealed bidding, a new or changed collective bargaining agreement shall not be effective under section 4(c) of the Act if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation.

(b) For contractual actions other than sealed bidding, a new or changed collective bargaining agreement shall not be effective under section 4(c) of the Act if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in [22.1007\(b\)](#), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence

within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work shall be effective for purposes of the successor contract under section 4(c) of the Act.

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely notification required in [22.1010](#) has been given.

(d) If the contracting officer has submitted an e98 to Department of Labor requesting a wage determination based on a collective bargaining agreement and has not received a response from the Department of Labor within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.) If the Department of Labor is unable to provide the wage determination by the latest date needed to maintain the acquisition schedule, the contracting officer shall incorporate the collective bargaining agreement itself in a solicitation or other contract action (*e.g.*, exercise of option) and include a wage determination referencing that collective bargaining agreement created by use of the WDOL website (see [22.1008-1\(d\)\(2\)](#)).

22.1013 Review of wage determination.

(a) *Based on incumbent collective bargaining agreement.*

(1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the contracting officer shall immediately contact the agency labor advisor to consider instituting the procedures in [22.1021](#).

(1) If the contracting officer believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the contracting officer shall contact the agency labor advisor to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall ascertain—

(1) If the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the wage determination contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the contracting officer shall contact the agency labor advisor to determine appropriate action.

22.1014 Delay over 60 days in bid opening or commencement of work.

If a wage determination was obtained through the e98 process, and bid opening, or commencement of work under a

negotiated contract has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted e98, the contracting officer shall submit a new e98. Any revision of a wage determination received by the contracting agency as a result of that communication shall supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in [22.1012-1\(b\)](#) and (c).

22.1015 Discovery of errors by the Department of Labor.

If the Department of Labor discovers and determines, whether before or after a contract award, that a contracting officer made an erroneous determination that the Service Contract Act did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the contracting officer, within 30 days of notification by the Department of Labor, shall include in the contract the clause at [52.222-41](#) and any applicable wage determination issued by the Administrator. If the contract is subject to section 10 of the Act ([41 U.S.C. 358](#)), the Administrator may require retroactive application of that wage determination. The contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

22.1016 Statement of equivalent rates for Federal hires.

(a) The statement required under the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, (see [22.1006\(b\)](#)) shall set forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if [5 U.S.C. 5332](#) (General Schedule—white collar) and/or [5 U.S.C. 5341](#) (Wage Board—blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

22.1017 [Reserved]

22.1018 Notification to contractors and employees.

The contracting officer shall take the following steps to ensure that service employees are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the contractor of the labor standards requirements of the contract relating to the Act and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

(b) At the time of award, furnish the contractor Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Act and satisfies the notice requirements in paragraph (g) of the clause at [52.222-41](#), Service Contract Act of 1965.

(c) Attach any applicable wage determination to Publication WH-1313.

22.1019 Additional classes of service employees.

(a) If the contracting officer is aware that contract performance involves classes of service employees not included in the wage determination, the contracting officer shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at [52.222-41](#), Service Contract Act of 1965). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work. The contractor shall submit [Standard Form \(SF\) 1444](#), Request For Authorization of Additional Classification and Rate. The contracting officer shall review the proposed classification and rate and promptly submit the completed [SF 1444](#) (which must include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent information to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the Wage and Hour Division will require more than 30 days to take action, it will notify the contracting officer within 30 days of receipt of the request that additional time is necessary.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the

wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

(c) Subminimum rates for apprentices, student learners, and handicapped workers are permissible in accordance with paragraph (q) of the clause at [52.222-41](#), Service Contract Act of 1965.

22.1020 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at [52.222-41](#), Service Contract Act of 1965.) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

22.1021 Request for hearing.

(a) A contracting agency or other interested party may request a hearing on an issue presented in [22.1013\(a\)](#). To obtain a hearing for the contracting agency, the contracting officer shall submit a written request through appropriate channels (ordinarily the agency labor advisor) to—

Administrator, Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

(b) A request for a substantial variance hearing shall include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include—

- (1) The number of the wage determinations at issue;
- (2) The name of the contracting agency whose contract is involved;
- (3) A brief description of the services to be performed under the contract;
- (4) The status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period;

(5) A statement of the applicant’s case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;

(6) Names and addresses (to the extent known) of interested parties; and

(7) Any other data required by the Administrator.

(c) A request for an arm’s length hearing shall include—

(1) A statement of the applicant’s case, setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm’s length negotiations;

(2) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period; and

(3) Names and addresses (to the extent known) of interested parties.

(d) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as follows:

(1) For sealed bid contracts, more than 10 days before the award of the contract; or

(2) For negotiated contracts and for contracts with provisions exceeding the initial term by option, before the commencement date of the contract or the follow-up option period.

22.1022 Withholding of contract payments.

Any violations of the clause at [52.222-41](#), Service Contract Act of 1965, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of Deputy Regional Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Act or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld

funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), and Administrative Law Judge, or the Administrative Review Board. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

22.1023 Termination for default.

As provided by the Act, any contractor failure to comply with the requirements of the contract clauses related to the Act may be grounds for termination for default (see paragraph (k) of the clause at [52.222-41](#), Service Contract Act of 1965).

22.1024 Cooperation with the Department of Labor.

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature of the contract services. The contracting officer shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

22.1025 Ineligibility of violators.

A list of persons or firms found to be in violation of the Act is contained in the Excluded Parties List System (see [9.404](#)). No Government contract may be awarded to any violator so listed because of a violation of the Act, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

22.1026 Disputes concerning labor standards.

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at [52.222-41](#), Service Contract Act of 1965, and not under the clause at [52.233-1](#), Disputes.

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25.000 Scope of part.

This part provides policies and procedures for acquiring foreign supplies, services, and construction materials. It implements the Buy American Act, trade agreements, and other laws and regulations.

25.001 General.

(a) The Buy American Act—

(1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see [Subpart 25.1](#)); and

(2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see [Subpart 25.2](#)).

(b) The restrictions in the Buy American Act are not applicable in acquisitions subject to certain trade agreements (see [Subpart 25.4](#)). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the

applicability of the trade agreements are described in [Subpart 25.4](#).

(c) The test to determine the country of origin for an end product under the Buy American Act (see the various country “end product” definitions in [25.003](#)) is different from the test to determine the country of origin for an end product under the trade agreements, or the criteria for the report on end products manufactured outside the United States (see [25.004](#)).

(1) The Buy American Act uses a two-part test to define a “domestic end product” (manufacture in the United States and a formula based on cost of domestic components).

(2) Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the reporting requirement at [25.004](#), the only criterion is whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components.

25.002 Applicability of subparts.

The following table shows the applicability of the subparts. [Subpart 25.5](#) provides comprehensive procedures for offer evaluation and examples.

SUBPART	SUPPLIES FOR USE		CONSTRUCTION		SERVICES PERFORMED	
	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.
25.1 Buy American Act—Supplies	X	—	—	—	—	—
25.2 Buy American Act—Construction Materials	—	—	X	—	—	—
25.3 [Reserved]	—	—	—	—	—	—
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers—Supply Contracts	X	X	—	—	—	—
25.6 [Reserved]						
25.7 Prohibited Sources	X	X	X	X	X	X
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

25.003 Definitions.

As used in this part—

“Canadian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially

transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Caribbean Basin country” means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago.

“Caribbean Basin country end product”—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C. 2703\(b\)](#).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Civil aircraft and related articles” means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

“Component” means an article, material, or supply incorporated directly into an end product or construction material.

“Construction material” means an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Sec.

NOTE: This part has been created to facilitate promulgation of additional FAR and agency level socioeconomic coverage which properly fall under FAR Subchapter D—Socioeconomic Programs, but neither implements nor supplements existing FAR [Parts 19](#), [20](#), or [22](#) through [25](#).

Subpart 26.1—Indian Incentive Program

- 26.100 Scope of subpart.
- 26.101 Definitions.
- 26.102 Policy.
- 26.103 Procedures.
- 26.104 Contract clause.

Subpart 26.2—Disaster or Emergency Assistance Activities

- 26.200 Scope of subpart.

- 26.201 Definitions.
- 26.202 Local area preference.
- 26.202-1 Local area set-aside.
- 26.202-2 Evaluation preference.
- 26.203 Transition of work.
- 26.204 Justification for expenditures to other than local firms.
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Subpart 26.2—Disaster or Emergency Assistance Activities

26.200 Scope of subpart.

This subpart implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5150](#)), which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities.

26.201 Definitions.

“Emergency response contract” means a contract with private entities that supports assistance activities in a major disaster or emergency area, such as debris clearance, distribution of supplies, or reconstruction.

“Local firm” means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

“Major disaster or emergency area” means the area included in the official Presidential declaration(s) and any additional areas identified by the Department of Homeland Security. Major disaster declarations and emergency declarations are published in the Federal Register and are available at <http://www.fema.gov/news/disasters.fema>.

26.202 Local area preference.

When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121](#), *et seq.*), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

26.202-1 Local area set-aside.

The contracting officer may set aside solicitations to allow only local firms within a specific geographic area to compete (see [6.207](#)).

(a) The contracting officer, in consultation with the requirements office, shall define the specific geographic area for the local set-aside.

(b) A major disaster or emergency area may span counties in several contiguous States. The set-aside area need not include all the counties in the declared disaster/emergency area(s), but cannot go outside it.

(c) The contracting officer shall also determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area (see [Part 19](#)).

26.202-2 Evaluation preference.

The contracting officer may use an evaluation preference, when authorized in agency regulations.

26.203 Transition of work.

(a) In anticipation of potential emergency response requirements, agencies involved in response planning should consider awarding emergency response contracts before a major disaster or emergency occurs to ensure immediate response and relief. These contracts should be structured to respond to immediate emergency response needs, and should not be structured in any way that may inhibit the transition of emergency response work to local firms (*e.g.*, unnecessarily broad scopes of work or long periods of performance).

(b) [42 U.S.C. 5150\(b\)\(2\)](#) requires that agencies performing response, relief, and reconstruction activities transition to local firms any work performed under contracts in effect on the date on which the President declares a major disaster or emergency, unless the head of such agency determines in writing that it is not feasible or practicable. This determination may be made on an individual contract or class basis. The written determination shall be prepared within a reasonable time given the circumstances of the emergency.

(c) In effecting the transition, agencies are not required to terminate or renegotiate existing contracts. Agencies should transition the work at the earliest practical opportunity after consideration of the following:

(1) The potential duration of the disaster or emergency.

(2) The severity of the disaster or emergency.

(3) The scope and structure of the existing contract, including its period of performance and the milestone(s) at which a transition is reasonable (*e.g.*, before exercising an option).

(4) The potential impact of a transition, including safety, national defense, and mobilization.

(5) The expected availability of qualified local offerors who can provide the products or services at a reasonable price.

(d) The agency shall transition the work to local firms using the local area set-aside identified in [26.202-1](#).

26.204 Justification for expenditures to other than local firms.

(a) [42 U.S.C. 5150\(b\)\(1\)](#) requires that, subsequent to any Presidential declaration of a major disaster or emergency, any expenditure of Federal funds, under an emergency response contract not awarded to a local firm, must be justified in writing in the contract file. The justification should include consideration for the scope of the major disaster or emergency and the immediate requirements or needs of supplies and services to ensure life is protected, victims are cared for, and property is protected.

(b) The justification may be made on an individual or class basis. The contracting officer approves the justification.

26.205 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at [52.226-3](#), Disaster or Emergency Area Representation, in

solicitations involving the local area set-aside. For commercial items, see [12.301\(e\)\(4\)](#).

(b) The contracting officer shall insert the clause at [52.226-4](#), Notice of Disaster or Emergency Area Set-aside in solicitations and contracts involving local area set-asides.

(c) The contracting officer shall insert the clause at [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area, in all solicitations and contracts that involve local area set-asides.

person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability*. When contract performance involves use of vessels, the contracting officer shall require, as determined by the agency, vessel collision liability and protection and indemnity liability insurance.

28.308 Self-insurance.

(a) When it is anticipated that 50 percent or more of the self-insurance costs to be incurred at a segment of a contractor's business will be allocable to negotiated Government contracts, and the self-insurance costs at the segment for the contractor's fiscal year are expected to be \$200,000 or more, the contractor shall submit, in writing, information on its proposed self-insurance program to the administrative contracting officer and obtain that official's approval of the program. The submission shall be by segment or segments of the contractor's business to which the program applies and shall include—

(1) A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;

(2) If available, the corporate insurance manual and organization chart detailing fiscal responsibilities for insurance;

(3) The terms regarding insurance coverage for any Government property;

(4) The contractor's latest financial statements;

(5) Any self-insurance feasibility studies or insurance market surveys reporting comparative alternatives;

(6) Loss history, premiums history, and industry ratios;

(7) A formula for establishing reserves, including percentage variations between losses paid and losses reserved;

(8) Claims administration policy, practices, and procedures;

(9) The method of calculating the projected average loss; and

(10) A disclosure of all captive insurance company and reinsurance agreements, including methods of computing cost.

(b) Programs of self-insurance covering a contractor's insurable risks, including the deductible portion of purchased insurance, may be approved when examination of a program indicates that its application is in the Government's interest. Agencies shall not approve a program of self-insurance for workers' compensation in a jurisdiction where workers' compensation does not completely cover the employer's liability to employees, unless the contractor—

(1) Maintains an approved program of self-insurance for any employer's liability not so covered; or

(2) Shows that the combined cost to the Government of self-insurance for workers' compensation and commercial insurance for employer's liability will not exceed the cost of covering both kinds of risk by commercial insurance.

(c) Once the administrative contracting officer has approved a program, the contractor must submit to that official for approval any major proposed changes to the program. Any program approval may be withdrawn if a contracting officer finds that either—

(1) Any part of a program does not comply with the requirements of this subpart and/or the criteria at [31.205-19](#); or

(2) Conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

(d) To qualify for a self-insurance program, a contractor must demonstrate ability to sustain the potential losses involved. In making the determination, the contracting officer shall consider the following factors:

(1) The soundness of the contractor's financial condition, including available lines of credit.

(2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.

(3) The history of previous losses, including frequency of occurrence and the financial impact of each loss.

(4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks.

(5) The contractor's compliance with Federal and State laws and regulations.

(e) Agencies shall not approve a program of self-insurance for catastrophic risks (e.g., see [50.104-3](#), Special procedures for unusually hazardous or nuclear risks). Should performance of Government contracts create the risk of catastrophic losses, the Government may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both.

(f) Self-insurance programs to protect a contractor against the costs of correcting its own defects in materials or workmanship shall not be approved. For these purposes, normal rework estimates and warranty costs will not be considered self-insurance.

28.309 Contract clauses for workers' compensation insurance.

(a) The contracting officer shall insert the clause at [52.228-3](#), Workers' Compensation Insurance (Defense Base Act), in solicitations and contracts when the Defense Base Act applies (see [28.305](#)) and—

(1) The contract will be a public-work contract performed outside the United States; or

(2) The contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) and is not excluded by [28.305\(b\)\(2\)](#).

(b) The contracting officer shall insert the clause at [52.228-4](#), Worker’s Compensation and War-Hazard Insurance Overseas, in solicitations and contracts when the contract will be a public-work contract performed outside the United States and the Secretary of Labor waives the applicability of the Defense Base Act (see [28.305\(d\)](#)).

28.310 Contract clause for work on a Government installation.

(a) Insert the clause at [52.228-5](#), Insurance—Work on a Government Installation, in solicitations and contracts if a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the contract will require work on a Government installation, unless—

(1) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or

(2) All work on the Government installation will be performed outside the United States and its outlying areas.

(b) The contracting officer may insert the clause at [52.228-5](#) in solicitations and contracts described in paragraphs (a)(1) and (2) of this section if it is in the Government’s interest to do so.

28.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

28.311-1 Contract clause.

In accordance with agency acquisition regulations, the contracting officer shall insert the clause at [52.228-7](#), Insur-

ance—Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated.

28.311-2 Agency solicitation provisions and contract clauses.

Agencies may prescribe their own solicitation provisions and contract clauses to implement the basic policies contained in this [Subpart 28.3](#).

28.312 Contract clause for insurance of leased motor vehicles.

The contracting officer shall insert the clause at [52.228-8](#), Liability and Insurance—Leased Motor Vehicles, in solicitations and contracts for the leasing of motor vehicles (see [Subpart 8.11](#)).

28.313 Contract clauses for insurance of transportation or transportation-related services.

(a) The contracting officer shall insert the clause at [52.228-9](#), Cargo Insurance, in solicitations and contracts for transportation or for transportation-related services, except when freight is shipped under rates subject to released or declared value.

(b) The contracting officer shall insert a clause substantially the same as that at [52.228-10](#), Vehicular and General Public Liability Insurance, in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient.

* * * * *

Subpart 32.4—Advance Payments for Non-Commercial Items

32.400 Scope of subpart.

This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in [32.404](#). This subpart does not apply to commercial advance payments, which are subject to [Subpart 32.2](#).

32.401 Statutory authority.

The agency may authorize advance payments in negotiated and sealed bid contracts if the action is appropriate under—

- (a) Section 305 of the Federal Property and Administrative Services Act of 1949 ([41 U.S.C. 255](#));
- (b) The Armed Services Procurement Act ([10 U.S.C. 2307](#)); or
- (c) Pub. L. 85-804 ([50 U.S.C. 1431-1435](#)) and Executive Order 10789, November 14, 1958 (3 CFR 1958 Supp. pp. 72-74) (see [Subpart 50.1](#) for other applications of this statute).

32.402 General.

(a) A limitation on authority to grant advance payments under Pub. L. 85-804 ([50 U.S.C. 1431-1435](#)) is described at [50.102-3\(b\)\(4\)](#).

(b) Advance payments may be provided on any type of contract; however, the agency shall authorize advance payments sparingly. Except for the contracts described in [32.403\(a\)](#) and (b), advance payment is the least preferred method of contract financing (see [32.106](#)) and generally they should not be authorized if other types of financing are reasonably available to the contractor in adequate amounts. Loans and credit at excessive interest rates or other exorbitant charges, or loans from other Government agencies, are not considered reasonably available financing.

(c) If statutory requirements and standards for advance payment determinations are met, the contracting officer shall generally recommend that the agency authorize advance payments.

- (1) The statutory requirements are that—
 - (i) The contractor gives adequate security;
 - (ii) The advance payments will not exceed the unpaid contract price (see [32.410\(b\)](#), paragraph (a)(2)); and
 - (iii) The agency head or designee determines, based on written findings, that the advance payment—
 - (A) Is in the public interest (under [32.401\(a\)](#) or (b)); or
 - (B) Facilitates the national defense (under [32.401\(c\)](#)).
- (2) The standards for advance payment determinations are that—

(i) The advance payments will not exceed the contractor’s interim cash needs based on—

- (A) Analysis of the cash flow required for contract performance;
 - (B) Consideration of the reimbursement or other payment cycle; and
 - (C) To the extent possible, employment of the contractor’s own working capital;
- (ii) The advance payments are necessary to supplement other funds or credit available to a contractor;
 - (iii) The recipient is otherwise qualified as a responsible contractor;
 - (iv) The Government will benefit from performance prospects or there are other practical advantages; and
 - (v) The case fits one or more of the categories described in [32.403](#).

(d) If necessary, the agency may authorize advance payments in addition to progress or partial payments on the same contract (see [32.501-1\(c\)](#)).

- (e) Each agency that provides advance payments shall—
 - (1) Place the responsibility for making findings and determinations, and for approval of contract terms concerning advance payments (see [32.410](#)), at an organizational level high enough to ensure uniform application of this subpart (see the limitation at [50.102-1\(b\)](#) which also applies to advance payments authorized under Pub. L. 85-804 ([50 U.S.C. 1431-1435](#))); and
 - (2) Establish procedures for coordination, before advance payment authorization, with the activity that provides contract financing support.

(f) If the contract provides for advance payments under Pub. L. 85-804, the contracting officer shall ensure conformance with the requirements of [50.103-7](#).

(g) If the contract provides for advance payments under Pub. L. 85-804, the contracting officer shall ensure conformance with the requirements of [50.103-7](#).

32.403 Applicability.

Advance payments may be considered useful and appropriate for the following:

- (a) Contracts for experimental, research, or development work with nonprofit educational or research institutions.
- (b) Contracts solely for the management and operation of Government-owned plants.
- (c) Contracts for acquisition, at cost, of property for Government ownership.
- (d) Contracts of such a highly classified nature that the agency considers it undesirable for national security to permit assignment of claims under the contract.
- (e) Contracts entered into with financially weak contractors whose technical ability is considered essential to the agency. In these cases, the agency shall closely monitor the contractor’s performance and financial controls to reduce the Government’s financial risk.

(f) Contracts for which a loan by a private financial institution is not practicable, whether or not a loan guarantee under this part is issued; for example, if—

- (1) Financing institutions will not assume a reasonable portion of the risk under a guaranteed loan;
- (2) Loans with reasonable interest rates or finance charges are not available to the contractor; or
- (3) Contracts involve operations so remote from a financial institution that the institution could not be expected to suitably administer a guaranteed loan.

(g) Contracts with small business concerns, under which circumstances that make advance payments appropriate often occur (but see [32.104\(b\)](#)).

(h) Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

32.404 Exclusions.

(a) This subpart does not apply to advance payments authorized by law for—

- (1) Rent;
- (2) Tuition;
- (3) Insurance premiums;
- (4) Expenses of investigations in foreign countries;
- (5) Extension or connection of public utilities for Government buildings or installations;
- (6) Subscriptions to publications;
- (7) Purchases of supplies or services in foreign countries, if—
 - (i) The purchase price does not exceed \$10,000 (or equivalent amount of the applicable foreign currency); and
 - (ii) The advance payment is required by the laws or government regulations of the foreign country concerned;
- (8) Enforcement of the customs or narcotics laws; or
- (9) Other types of transactions excluded by agency procedures under statutory authority.

(b) Agencies may issue their own instructions to deal with advance payment items in paragraph (a) of this section authorized under statutes relevant to their agencies.

32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

(a) Actions that designated agencies may take to facilitate the national defense without regard to other provisions of law relating to contracts, as explained in [50.101-1\(a\)](#), also include making advance payments. These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts.

(b) Bidders may request advance payments before or after award, even if the invitation for bids does not contain an advance payment provision. However, the contracting officer shall reject any bid requiring that advance payments be provided as a basis for acceptance.

(c) When advance payments are requested, the agency may—

- (1) Enter into the contract and provide for advance payments conforming to this [Part 32](#);
- (2) Enter into the contract without providing for advance payments if the contractor does not actually need advance payments; or
- (3) Deny award of the contract if the request for advance payments has been disapproved under [32.409-2](#) and funds adequate for performance are not otherwise available to the offeror.

32.406 Letters of credit.

(a) The Department of the Treasury (Treasury) prescribes regulations and instructions covering the use of letters of credit for advance payments under contracts. See Treasury Department Circular 1075 (31 CFR Part 205), and the implementing instructions in the Treasury Financial Manual, available in offices providing financial advice and assistance.

(b) If agencies provide advance payments to contractors, use of the following methods is required unless the agency has obtained a waiver from the Treasury Department:

- (1) By letter of credit if the contracting agency expects to have a continuing relationship with the contractor for a year or more, with advances totaling at least \$120,000 a year.
- (2) By direct Treasury check if the circumstances do not meet the criteria in paragraph (b)(1) of this section.

(c) If the agency has entered into multiple contracts (or a combination of contract(s) and assistance agreement(s)) involving eligibility of a contractor for more than one letter of credit, the agency shall follow arrangements made under Treasury procedures for—

- (1) Consolidating funding to the same contractor under one letter of credit or
- (2) Replacing multiple letters of credit with a single letter of credit.

(d) The letter of credit enables the contractor to withdraw Government funds in amounts needed to cover its own disbursements of cash for contract performance. Whenever feasible, the agency shall, under the direction and approval of the Department of the Treasury, use a letter of credit method that requires the contractor not to withdraw the Government funds until the contractor's checks have been—

- (1) Forwarded to the payees (delay of drawdown technique), or
- (2) Presented to the contractor's bank for payment (checks paid technique) (see 31 CFR 205.3 and 205.4(d)).

(e) The Treasury regulations provide for terminating the advance financing arrangement if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In such cases, if reversion to normal payment methods is not feasible, the Treasury

PART 33—PROTESTS, DISPUTES, AND APPEALS

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Subpart 33.2—Disputes and Appeals

33.201 Definitions.

As used in this subpart—

“Accrual of a claim” means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

“Alternative dispute resolution (ADR)” means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

“Defective certification” means a certificate which alters or otherwise deviates from the language in [33.207\(c\)](#) or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

“Issue in controversy” means a material disagreement between the Government and the contractor that—

- (1) May result in a claim; or
- (2) Is all or part of an existing claim.

“Misrepresentation of fact” means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for—

- (a) The payment of interest on contractor claims;
- (b) Certification of contractor claims; and
- (c) A civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

33.203 Applicability.

(a) Except as specified in paragraph (b) of this section, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with—

- (1) A foreign government or agency of that government, or
- (2) An international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters “arising under” or “relating to” a contract. Agency Boards of Contract Appeals (BCA’s)

authorized under the Act continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at [52.233-1](#), Disputes, recognizes the “all disputes” authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Act or to constrain the authority of the statutory agency BCA’s in the handling and deciding of contractor appeals under the Act.

33.204 Policy.

The Government’s policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer’s level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable. Certain factors, however, may make the use of ADR inappropriate (see [5 U.S.C. 572\(b\)](#)). Except for arbitration conducted pursuant to the Administrative Dispute Resolution Act (ADRA), ([5 U.S.C. 571](#), *et seq.*) agencies have authority which is separate from that provided by the ADRA to use ADR procedures to resolve issues in controversy. Agencies may also elect to proceed under the authority and requirements of the ADRA.

33.205 Relationship of the Act to Pub. L. 85-804.

(a) Requests for relief under Public Law 85-804 ([50 U.S.C. 1431-1435](#)) are not claims within the Contract Disputes Act of 1978 or the Disputes clause at [52.233-1](#), Disputes, and shall be processed under [Subpart 50.1](#), Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; *i.e.*, legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Contract Disputes Act of 1978 and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor’s allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Act. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) of this section may be cognizable as a request for relief under Public Law 85-804 as imple-

mented by [Subpart 50.1](#). However, the claim must first be submitted to the contracting officer for consideration under the Contract Disputes Act of 1978 because the claim is not cognizable under Public Law 85-804, as implemented by [Subpart 50.1](#), unless other legal authority in the agency concerned is determined to be lacking or inadequate.

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in paragraph (c) of this section when submitting any claim exceeding \$100,000.

(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(c) The certification shall state as follows:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in [15.403-4\(a\)\(1\)\(iii\)](#) regarding cost or pricing data).

(e) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(f) A defective certification shall not deprive a court or an agency BCA of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency BCA, however, the court or agency BCA shall require a defective certification to be corrected.

33.208 Interest on claims.

(a) The Government shall pay interest on a contractor's claim on the amount found due and unpaid from the date that—

(1) The contracting officer receives the claim (certified if required by [33.207\(a\)](#)); or

(2) Payment otherwise would be due, if that date is later, until the date of payment.

(b) Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. (See [32.614](#) for the right of the Government to collect interest on its claims against a contractor.)

(c) With regard to claims having defective certifications, interest shall be paid from either the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate.

33.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the agency official responsible for investigating fraud.

33.210 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Act. In accordance with agency policies and [33.214](#), contracting officers are authorized to use ADR procedures to resolve claims. The authority to decide or resolve claims does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

33.211 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

(1) Review the facts pertinent to the claim;

(2) Secure assistance from legal and other advisors;

(3) Coordinate with the contract administration office or contracting office, as appropriate; and

(4) Prepare a written decision that shall include a—

43.000 Scope of part.

This part prescribes policies and procedures for preparing and processing contract modifications for all types of contracts including construction and architect-engineer contracts. It does not apply to—

(a) Orders for supplies or services not otherwise changing the terms of contracts or agreements (*e.g.*, delivery orders under indefinite-delivery contracts); or

(b) Modifications for extraordinary contractual relief (see [Subpart 50.1](#)).

Subpart 43.1—General**43.101 Definitions.**

As used in this part—

“Administrative change” means a unilateral (see [43.103\(b\)](#)) contract change, in writing, that does not affect the substantive rights of the parties (*e.g.*, a change in the paying office or the appropriation data).

“Effective date”—

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed upon by the contracting parties.

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the termination contracting officer’s previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

43.102 Policy.

(a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not—

(1) Execute contract modifications;

(2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or

(3) Direct or encourage the contractor to perform work that should be the subject of a contract modification.

(b) Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the

Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless impractical.

(c) The Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (FASA), and Section 4402 of the Clinger-Cohen Act of 1996, Public Law 104-106, authorize, but do not require, contracting officers, if requested by the prime contractor, to modify contracts without requiring consideration to incorporate changes authorized by FASA or Clinger-Cohen Act amendments into existing contracts. Contracting officers are encouraged, if appropriate, to modify contracts without requiring consideration to incorporate these new policies. The contract modification should be accomplished by inserting into the contract, as a minimum, the current version of the applicable FAR clauses.

43.103 Types of contract modifications.

Contract modifications are of the following types:

(a) *Bilateral*. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to—

(1) Make negotiated equitable adjustments resulting from the issuance of a change order;

(2) Definitize letter contracts; and

(3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral*. A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to—

(1) Make administrative changes;

(2) Issue change orders;

(3) Make changes authorized by clauses other than a changes clause (*e.g.*, Property clause, Options clause, or Suspension of Work clause); and

(4) Issue termination notices.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and—

(1) Confirm that it is a change, direct the mode of further performance, and plan for its funding;

(2) Countermand the alleged change; or

(3) Notify the contractor that no change is considered to have occurred.

(b) The clause at [52.243-7](#), Notification of Changes, which is prescribed in [43.107](#)—

(1) Incorporates the policy expressed in paragraph (a) of this section;

(2) Requires the contractor to notify the Government promptly of any Government conduct that the contractor considers a change to the contract, and

(3) Specifies the responsibilities of the contractor and the Government with respect to such notifications.

43.105 Availability of funds.

(a) The contracting officer shall not execute a contract modification that causes or will cause an increase in funds without having first obtained a certification of fund availability, except for modifications to contracts that—

(1) Are conditioned on availability of funds (see [32.703-2](#)); or

(2) Contain a limitation of cost or funds clause (see [32.704](#)).

(b) The certification required by paragraph (a) of this section shall be based on the negotiated price, except that modi-

fications executed before agreement on price may be based on the best available estimate of cost.

43.106 [Reserved]

43.107 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at [52.243-7](#), Notification of Changes, in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than \$1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

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50.000 Scope of part.

This part—

(a)(1) Prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 ([50 U.S.C. 1431-1434](#)) and Executive Order 10789, dated November 14, 1958. It does not cover advance payments (see [Subpart 32.4](#)); and

(2) Implements indemnification authority granted by Pub. L. 85-804 and paragraph 1A of E.O. 10789 with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act); and

(b) Implements SAFETY Act liability protections to promote development and use of anti-terrorism technologies.

Subpart 50.1—Extraordinary Contractual Actions

50.100 Definitions.

As used in this part—

“Approving authority” means an agency official or contract adjustment board authorized to approve actions under Pub. L. 85-804 and E.O. 10789.

“Secretarial level” means a level at or above the level of a deputy assistant agency head, or a contract adjustment board.

50.101 General.

50.101-1 Authority.

(a) Pub. L. 85-804 empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to making, performing, amending, or modifying contracts, whenever the President considers that such action would facilitate the national defense.

(b) E.O. 10789 authorizes the heads of the following agencies to exercise the authority conferred by Pub. L. 85-804 and to delegate it to other officials within the agency: the Government Printing Office; the Department of Homeland Security; the Tennessee Valley Authority; the National Aeronautics and Space Administration; the General Services Administration; the Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, and Transportation Departments; the Department of Energy for functions transferred to that Department from other authorized agencies; and any other agency that may be authorized by the President.

50.101-2 Policy.

(a) The authority conferred by Pub. L. 85-804 may not—

(1) Be used in a manner that encourages carelessness and laxity on the part of persons engaged in the defense effort; or

(2) Be relied upon when other adequate legal authority exists within the agency.

(b) Actions authorized under Pub. L. 85-804 shall be accomplished as expeditiously as practicable, consistent with the care, restraint, and exercise of sound judgment appropriate to the use of such extraordinary authority.

(c) Certain kinds of relief previously available only under Pub. L. 85-804; *e.g.*, rescission or reformation for mutual mistake, are now available under the authority of the Contract Disputes Act of 1978. In accordance with paragraph (a)(2) of this subsection, [Part 33](#) must be followed in preference to [Subpart 50.1](#) for such relief. In case of doubt as to whether [Part 33](#) applies, the contracting officer should seek legal advice.

50.101-3 Records.

Agencies shall maintain complete records of all actions taken under this [Subpart 50.1](#). For each request for relief processed, these records shall include, as a minimum—

(a) The contractor’s request;

(b) All relevant memorandums, correspondence, affidavits, and other pertinent documents;

(c) The Memorandum of Decision (see [50.103-6](#) and [50.104-2](#)); and

(d) A copy of the contractual document implementing an approved request.

50.102 Delegation of and limitations on exercise of authority.

50.102-1 Delegation of authority.

An agency head may delegate in writing authority under Pub. L. 85-804 and E.O. 10789, subject to the following limitations:

(a) Authority delegated shall be to a level high enough to ensure uniformity of action.

(b) Authority to approve requests to obligate the Government in excess of \$55,000 may not be delegated below the secretarial level.

(c) Regardless of dollar amount, authority to approve any amendment without consideration that increases the contract price or unit price may not be delegated below the secretarial level, except in extraordinary cases or classes of cases when the agency head finds that special circumstances clearly justify such delegation.

(d) Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary or Administrator of the agency

concerned, the Public Printer, or the Chairman of the Board of Directors of the Tennessee Valley Authority (see [50.104-3](#)).

50.102-2 Contract adjustment boards.

An agency head may establish a contract adjustment board with authority to approve, authorize, and direct appropriate action under this [Subpart 50.1](#) and to make all appropriate determinations and findings. The decisions of the board shall not be subject to appeal; however, the board may reconsider and modify, correct, or reverse its previous decisions. The board shall determine its own procedures and have authority to take all action necessary or appropriate to conduct its functions.

50.102-3 Limitations on exercise of authority.

(a) Pub. L. 85-804 is not authority for—

- (1) Using a cost-plus-a-percentage-of-cost system of contracting;
- (2) Making any contract that violates existing law limiting profit or fees;
- (3) Providing for other than full and open competition for award of contracts for supplies or services; or
- (4) Waiving any bid bond, payment bond, performance bond, or other bond required by law.

(b) No contract, amendment, or modification shall be made under Pub. L. 85-804's authority—

- (1) Unless the approving authority finds that the action will facilitate the national defense;
- (2) Unless other legal authority within the agency concerned is deemed to be lacking or inadequate;
- (3) Except within the limits of the amounts appropriated and the statutory contract authorization (however, indemnification agreements authorized by an agency head ([50.104-3](#)) are not limited to amounts appropriated or to contract authorization); and
- (4) That will obligate the Government for any amount over \$28.5 million, unless the Senate and House Committees on Armed Services are notified in writing of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification. However, this paragraph (b)(4) does not apply to indemnification agreements authorized under [50.104-3](#).

(c) No contract shall be amended or modified unless the contractor submits a request before all obligations (including final payment) under the contract have been discharged. No amendment or modification shall increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, if the contract was negotiated under [10 U.S.C. 2304\(a\)\(15\)](#) or [41 U.S.C. 252\(c\)\(14\)](#), or FAR [14.404-1\(f\)](#).

(d) No informal commitment shall be formalized unless—

(1) The contractor submits a written request for payment within 6 months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment; and

(2) The approving authority finds that, at the time the commitment was made, it was impracticable to use normal contracting procedures.

(e) The exercise of authority by officials below the secretarial level is subject to the following additional limitations:

(1) The action shall not—

- (i) Release a contractor from performance of an obligation over \$55,000;
- (ii) Result in an increase in cost to the Government over \$55,000;
- (iii) Deal with, or directly affect, any matter that has been submitted to the Government Accountability Office; or
- (iv) Involve disposal of Government surplus property.

(2) Mistakes shall not be corrected by an action obligating the Government for over \$1,000, unless the contracting officer receives notice of the mistake before final payment.

(3) The correction of a contract because of a mistake in its making shall not increase the original contract price to an amount higher than the next lowest responsive offer of a responsible offeror.

(f) No executive department or agency shall exercise the indemnification authority granted under paragraph 1A of E.O. 10789 with respect to any supply or service that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology unless—

(1) For the Department of Defense, the Secretary of Defense has determined that the exercise of authority under E.O. 10789 is necessary for the timely and effective conduct of the United States military or intelligence activities, after consideration of the authority provided under the SAFETY Act (Subtitle G of title VIII of the Homeland Security Act of 2002, [6 U.S.C. 441-444](#)); or

(2) For other departments and agencies that have authority under E.O. 10789—

(i) The Secretary of Homeland Security has advised whether the use of the authority under the SAFETY Act would be appropriate; and

(ii) The Director of the Office of Management and Budget has approved the exercise of authority under the Executive order.

50.103 Contract adjustments.

This section prescribes standards and procedures for processing contractors' requests for contract adjustment under Pub. L. 85-804 and E.O. 10789.

50.103-1 General.

The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by Pub. L. 85-804.

Whether appropriate action will facilitate the national defense is a judgment to be made on the basis of all of the facts of the case. Although it is impossible to predict or enumerate all the types of cases in which action may be appropriate, examples are included in [50.103-2](#). Even if all of the factors in any of the examples are present, other considerations may warrant denying a contractor's request for contract adjustment. The examples are not intended to exclude other cases in which the approving authority determines that the circumstances warrant action.

50.103-2 Types of contract adjustment.

(a) *Amendments without consideration.* (1) When an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be amended without consideration, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(2) When a contractor suffers a loss (not merely a decrease in anticipated profits) under a defense contract because of Government action, the character of the action will generally determine whether any adjustment in the contract will be made, and its extent. When the Government directs its action primarily at the contractor and acts in its capacity as the other contracting party, the contract may be adjusted in the interest of fairness. Thus, when Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.

(b) *Correcting mistakes.* (1) A contract may be amended or modified to correct or mitigate the effect of a mistake. The following are examples of mistakes that may make such action appropriate:

- (i) A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.
- (ii) A contractor's mistake so obvious that it was or should have been apparent to the contracting officer.
- (iii) A mutual mistake as to a material fact.

(2) Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly.

(c) *Formalizing informal commitments.* Under certain circumstances, informal commitments may be formalized to permit payment to persons who have taken action without a formal contract; for example, when a person, responding to an agency official's written or oral instructions and relying in good faith upon the official's apparent authority to issue them,

has furnished or arranged to furnish supplies or services to the agency, or to a defense contractor or subcontractor, without formal contractual coverage. Formalizing commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

50.103-3 Contract adjustment.

(a) *Contractor requests.* A contractor seeking a contract adjustment shall submit a request in duplicate to the contracting officer or an authorized representative. The request, normally a letter, shall state as a minimum—

- (1) The precise adjustment requested;
- (2) The essential facts, summarized chronologically in narrative form;
- (3) The contractor's conclusions based on these facts, showing, in terms of the considerations set forth in [50.103-1](#) and [50.103-2](#), when the contractor considers itself entitled to the adjustment; and
- (4) Whether or not—
 - (i) All obligations under the contracts involved have been discharged;
 - (ii) Final payment under the contracts involved has been made;
 - (iii) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and
 - (iv) The contractor has sought the same, or a similar or related, adjustment from the Government Accountability Office or any other part of the Government, or anticipates doing so.

(b) *Contractor certification.* A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that—

- (1) The request is made in good faith; and
- (2) The supporting data are accurate and complete to the best of that person's knowledge and belief.

50.103-4 Facts and evidence.

(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under [50.103-3\(a\)](#) with any of the following information:

- (1) A brief description of the contracts involved, the dates of execution and amendments, the items being acquired, the price or prices, the delivery schedules, and any special contract provisions relevant to the request.
- (2) A history of performance indicating when work under the contracts or commitments began, the progress made to date, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion.

(3) A statement of payments received, due, and yet to be received or to become due, including advance and progress payments; amounts withheld by the Government; and information as to any obligations of the Government yet to be performed under the contracts.

(4) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes.

(5) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose, be disposed of under the contract terms.

(6) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, as necessary to support the request's monetary elements.

(8) A list of persons connected with the contracts who have factual knowledge of the subject matter, including, when possible, their names, offices or titles, addresses, and telephone numbers.

(9) A statement and evidence of steps taken to reduce losses and claims to a minimum.

(10) Any other relevant statements or evidence that may be required.

(b) *Amendments without consideration-essentiality a factor.* When a request involves possible amendment without consideration, and essentiality to the national defense is a factor ([50.103-2\(a\)\(1\)](#)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed.

(3) A statement and evidence of the contractor's estimate of the final price of the contracts, taking into account all known or contemplated escalation, changes, extras, and the like.

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts, other than those stated in response to paragraph (b)(3) of this subsection.

(5) An estimate of the contractor's total profit or loss under the contracts if it is enabled to complete them at the estimated final contract price, broken down between profit or loss to date and completion profit or loss.

(6) An estimate of the contractor's total profit or loss from other Government business and all other sources, from the date of the first contract involved to the estimated completion date of the last contract involved.

(7) A statement of the amount of any tax refunds to date, and an estimate of those anticipated, for the period from the date of the first contract involved to the estimated completion date of the last contract involved.

(8) A detailed statement of efforts the contractor has made to obtain funds from commercial sources to enable contract completion.

(9) A statement of the minimum amount the contractor needs as an amendment without consideration to enable contract completion, and the detailed basis for that amount.

(10) An estimate of the time required to complete each contract if the request is granted.

(11) A statement of the factors causing the loss under the contracts involved.

(12) A statement of the course of events anticipated if the request is denied.

(13) Balance sheets, preferably certified by a certified public accountant, (i) for the contractor's fiscal year immediately preceding the date of the first contract, (ii) for each subsequent fiscal year, (iii) as of the request date, and (iv) projected as of the completion date of all the contracts involved (assuming the contractor is enabled to complete them at the estimated final prices), together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated and broken down by affiliates. They should show all transactions between the contractor and its affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner.

(14) A list of all salaries, bonuses, and other compensation paid or furnished to the principal officers or partners, and of all dividends and other withdrawals, and of all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments without consideration-essentiality not a factor.* When a request involves possible amendment without consideration because of Government action, and essentiality to the national defense is not a factor ([50.103-2\(a\)\(2\)](#)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A clear statement of the precise Government action that the contractor considers to have caused a loss under the contract, with evidence to support each essential fact.

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(3) The estimated total loss under the contract, with detailed supporting analysis.

(4) The estimated loss resulting specifically from the Government action, with detailed supporting analysis.

(d) *Correcting mistakes.* When a request involves possible correction of a mistake ([50.103-2\(b\)](#)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A statement and evidence of the precise error made, ambiguity existing, or misunderstanding arising, showing what it consists of, how it occurred, and the intention of the parties.

(2) A statement explaining when the mistake was discovered, when the contracting officer was given notice of it, and whether this notice was given before completion of work under, or the effective termination date of, the contract.

(3) An estimate of profit or loss under the contract, with detailed supporting analysis.

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalizing informal commitments.* When a request involves possible formalizing of an informal commitment ([50.103-2\(c\)](#)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) Copies of any written instructions or assurances (or a sworn statement of any oral instructions or assurances) given the contractor, and identification of the Government official who gave them.

(2) A statement as to when the contractor furnished or arranged to furnish the supplies or services involved, and to whom.

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances that led to this reliance.

(4) Evidence that, when performing the work, the contractor expected to be compensated directly for it by the Government and did not anticipate recovering the costs in some other way.

(5) A cost breakdown supporting the amount claimed as fair compensation for the work performed.

(6) A statement and evidence of the impracticability of providing, in an appropriate contractual instrument, for the work performed.

50.103-5 Processing cases.

(a) In response to a contractor request made in accordance with [50.103-3\(a\)](#), the contracting officer or an authorized representative shall make a thorough investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is

lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel.

(b) When a case involves matters of interest to more than one Government agency, the interested agencies should maintain liaison with each other to determine whether joint action should be taken.

(c) When additional funds are required from another agency, the contracting agency may not approve adjustment requests before receiving advice that the funds will be available. The request for this advice shall give the contractor's name, the contract number, the amount of proposed relief, a brief description of the contract, and the accounting classification or fund citation. If the other agency makes additional funds available, the agency considering the adjustment request shall be solely responsible for any action taken on the request.

(d) When essentiality to the national defense is an issue ([50.103-2\(a\)\(1\)](#)), agencies considering requests for amendment without consideration involving another agency shall obtain advice on the issue from the other agency before making the final decision. When this advice is received, the agency considering the request for amendment without consideration shall be responsible for taking whatever action is appropriate.

50.103-6 Disposition.

When approving or denying a contractor's request made in accordance with [50.103-3\(a\)](#), the approving authority shall sign and date a Memorandum of Decision containing—

(a) The contractor's name and address, the contract identification, and the nature of the request;

(b) A concise description of the supplies or services involved;

(c) The decision reached and the actual cost or estimated potential cost involved, if any;

(d) A statement of the circumstances justifying the decision;

(e) Identification of any of the foregoing information classified "Confidential" or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and

(f) If some adjustment is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense." The case files supporting this statement will show the derivation and rationale for the dollar amount of the award. When the dollar amount exceeds the amounts supported by audit or other independent reviews, the approving authority will further document the rationale for deviating from the recommendation.

50.103-7 Contract requirements.

(a) Pub. L. 85-804 and E.O. 10789 require that every contract entered into, amended, or modified under this [Subpart 50.1](#) shall contain—

- (1) A citation of Pub. L. 85-804 and E.O. 10789;
- (2) A brief statement of the circumstances justifying the action; and
- (3) A recital of the finding that the action will facilitate the national defense.

(b) The authority in [50.101-1\(a\)](#) shall not be used to omit from contracts, when otherwise required, the clauses at [52.203-5](#), Covenant Against Contingent Fees; [52.215-2](#), Audit and Records-Negotiation; [52.222-4](#), Contract Work Hours and Safety Standards Act-Overtime Compensation; [52.222-6](#), Davis-Bacon Act; [52.222-10](#), Compliance With Copeland Act Requirements; [52.222-20](#), Walsh-Healey Public Contracts Act; [52.222-26](#), Equal Opportunity; and [52.232-23](#), Assignment of Claims.

50.104 Residual powers.

This section prescribes standards and procedures for exercising residual powers under Pub. L. 85-804. The term “residual powers” includes all authority under Pub. L. 85-804 except—

- (a) That covered by section [50.103](#); and
- (b) The authority to make advance payments (see [Subpart 32.4](#)).

50.104-1 Standards for use.

Subject to the limitations in [50.102-3](#), residual powers may be used in accordance with the policies in [50.101-2](#) when necessary and appropriate, all circumstances considered. In authorizing the inclusion of the clause at [52.250-1](#), Indemnification Under Public Law 85-804, in a contract or subcontract, an agency head may require the indemnified contractor to provide and maintain financial protection of the type and amount determined appropriate. In deciding whether to approve use of the indemnification clause, and in determining the type and amount of financial protection the indemnified contractor is to provide and maintain, an agency head shall consider such factors as self-insurance, other proof of financial responsibility, workers’ compensation insurance, and the availability, cost, and terms of private insurance. The approval and determination shall be final.

50.104-2 General.

(a) When approving or denying a proposal for the exercise of residual powers, the approving authority shall sign and date a Memorandum of Decision containing substantially the same information called for by [50.103-6](#).

(b) Every contract entered into, amended, or modified under residual powers shall comply with the requirements of [50.103-7](#).

50.104-3 Special procedures for unusually hazardous or nuclear risks.

(a) *Indemnification requests.* (1) Contractor requests for the indemnification clause to cover unusually hazardous or nuclear risks should be submitted to the contracting officer and shall include the following information:

- (i) Identification of the contract for which the indemnification clause is requested.
- (ii) Identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested, with a statement indicating how the contractor would be exposed to them.

(iii) A statement, executed by a corporate official with binding contractual authority, of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear, including—

- (A) Names of insurance companies, policy numbers, and expiration dates;
- (B) A description of the types of insurance provided (including the extent to which the contractor is self-insured or intends to self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;
- (C) Dollar limits per occurrence and annually, and any other limitation, for relevant segments of the total insurance coverage;
- (D) Deductibles, if any, applicable to losses under the policies;
- (E) Any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and
- (F) Applicable workers’ compensation insurance coverage.

(iv) The controlling or limiting factors for determining the amount of financial protection the contractor is to provide and maintain, with information regarding the availability, cost, and terms of additional insurance or other forms of financial protection.

(v) Whether the contractor’s insurance program has been approved or accepted by any Government agency; and whether the contractor has an indemnification agreement covering similar risks under any other Government program, and, if so, a brief description of any limitations.

(vi) If the contractor is a division or subsidiary of a parent corporation—

(A) A statement of any insurance coverage of the parent corporation that bears on the risks for which the contractor seeks indemnification; and

(B) A description of the precise legal relationship between parent and subsidiary or division.

(2) If the dollar value of the contractor’s insurance coverage varies by 10 percent or more from that stated in an indemnification request submitted in accordance with paragraph (a)(1) of this subsection, or if other significant changes

in insurance coverage occur after submission and before approval, the contractor shall immediately submit to the contracting officer a brief description of the changes.

(b) *Action on indemnification requests.* (1) The contracting officer, with assistance from legal counsel and cognizant program office personnel, shall review the indemnification request and ascertain whether it contains all required information. If the contracting officer, after considering the facts and evidence, denies the request, the contracting officer shall notify the contractor promptly of the denial and of the reasons for it. If recommending approval, the contracting officer shall forward the request (as modified, if necessary, by negotiation) through channels to the appropriate official specified in [50.102-1\(d\)](#). The contracting officer's submission shall include all information submitted by the contractor and—

(i) All pertinent information regarding the proposed contract or program, including the period of performance, locations, and facilities involved;

(ii) A definition of the unusually hazardous or nuclear risks involved in the proposed contract or program, with a statement that the parties have agreed to it;

(iii) A statement by responsible authority that the indemnification action would facilitate the national defense;

(iv) A statement that the contract will involve unusually hazardous or nuclear risks that could impose liability upon the contractor in excess of financial protection reasonably available;

(v) A statement that the contractor is complying with applicable Government safety requirements;

(vi) A statement of whether the indemnification should be extended to subcontractors; and

(vii) A description of any significant changes in the contractor's insurance coverage (see [50.104-3\(a\)\(2\)](#)) occurring since submission of the indemnification request.

(2) Approval of a request to include the indemnification clause in a contract shall be by a Memorandum of Decision executed by the appropriate official specified in [50.102-1\(d\)](#).

(3) When use of the indemnification clause is approved under paragraph (b)(2) of this subsection, the definition of unusually hazardous or nuclear risks (see paragraph (b)(1)(ii) of this subsection) shall be incorporated into the contract, along with the clause.

(4) When approval is—

(i) Authorized in the Memorandum of Decision; and

(ii) Justified by the circumstances, the contracting officer may approve the contractor's written request to provide for indemnification of subcontractors, using the same procedures as those required for contractors.

50.104-4 Contract clause.

The contracting officer shall insert the clause at [52.250-1](#), Indemnification Under Public Law 85-804, in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see [50.104-3\(b\)\(3\)](#)). In cost-reimbursement contracts, the contracting officer shall use the clause with its Alternate I.

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Subpart 50.2—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

50.200 Scope of subpart.

This subpart implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act) liability protections to promote development and use of anti-terrorism technologies.

50.201 Definitions.

“Act of terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

- (1) Is unlawful.
- (2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.
- (3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

“Pre-qualification designation notice” means a notice in a procurement solicitation or other publication by the Government stating that the technology to be procured either affirmatively or presumptively satisfies the technical criteria necessary to be deemed a qualified anti-terrorism technology. A pre-qualification designation notice authorizes successful offeror(s) to submit streamlined SAFETY Act applications for SAFETY Act designation and receive expedited processing of those applications.

“Qualified Anti-Terrorism Technology (QATT)” means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

“SAFETY Act certification” means a determination by Department of Homeland Security (DHS) pursuant to [6 U.S.C. 442](#), as further delineated in 6 CFR 25.8 and 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller's specifications, and

is safe for use as intended. “Block certification” refers to a technology class that DHS has determined to be an approved class of approved products for homeland security.

“SAFETY Act designation” means a determination by DHS pursuant to [6 U.S.C. 443](#), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act. “Block designation” refers to a technology class that DHS has determined to be a QATT.

50.202 Authorities.

The following authorities apply:

- (a) Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), [6 U.S.C. 441-444](#).
- (b) Executive Order 13286 of February 28, 2003, Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security.
- (c) Executive Order 10789 of November 14, 1958, Contracting Authority of Government Agencies in Connection with National Defense Functions.
- (d) 6 CFR Part 25.

50.203 General.

(a) As part of the Homeland Security Act of 2002, Pub. L. 107-296, Congress enacted the SAFETY Act to—

(1) Encourage the development and use of anti-terrorism technologies that will enhance the protection of the nation; and

(2) Provide risk management and litigation management protections for sellers of QATTs and others in the supply and distribution chain.

(b) The SAFETY Act's liability protections are complementary to the Terrorism Risk Insurance Act of 2002.

(c) Questions concerning the SAFETY Act may be directed to DHS Office of SAFETY Act Implementation (OSAI). Additional information about the SAFETY Act may be found at <http://www.SAFETYAct.gov>.

50.204 Policy.

(a) Agencies should—

(1) Determine whether the technology to be procured is appropriate for SAFETY Act protections;

(2) Encourage offerors to seek SAFETY Act protections for their offered technologies, even in advance of the issuance of a solicitation; and

(3) Not mandate SAFETY Act protections for acquisitions because applying for SAFETY Act protections for a particular technology is the choice of the offeror.

(b) Agencies shall not solicit offers contingent upon SAFETY Act designation or certification before contract award unless authorized in accordance with [50.205-3](#).

(c) Agencies shall not solicit offers or award contracts presuming DHS will issue a SAFETY Act designation or certifi-

cation after contract award unless authorized in accordance with [50.205-4](#).

(d) The DHS determination to extend SAFETY Act protections for a particular technology is not a determination that the technology meets, or fails to meet, the requirements of a solicitation.

50.205 Procedures.

50.205-1 SAFETY Act Considerations.

(a) *SAFETY Act applicability.* Requiring activities shall review requirements to identify potential technologies that prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might cause, and may be appropriate for SAFETY Act protections. In questionable cases, the agency shall consult with DHS. For acquisitions involving such technologies, the requiring activity should address through preliminary discussions with DHS whether a block designation or block certification exists for the technology being acquired.

(1) If one does exist, the requiring activity shall inform the contracting officer to notify offerors.

(2) If one does not exist, see [50.205-2](#), Pre-qualification designation notice.

(b) *Early consideration of the SAFETY Act.* Acquisition officials shall consider SAFETY Act issues as early in the acquisition cycle as possible. Normally, this would be at the point where the required capabilities or performance characteristics are addressed. This is important because the processing times for issuing determinations on all types of SAFETY Act applications vary depending on many factors, including the influx of applications to DHS and the technical complexity of individual applications.

(c) *Industry outreach.* When applicable, acquisition officials should include SAFETY Act considerations in all industry outreach efforts including, but not limited to, requests for information, draft requests for proposal, and industry conferences.

(d) *Reciprocal waiver of claims.* For purposes of 6 CFR 25.5(e), the Government is not a customer from which a contractor must request a reciprocal waiver of claims.

50.205-2 Pre-qualification designation notice.

(a) *Requiring activity responsibilities.* (1) If the requiring activity determines that the technology to be acquired may qualify for SAFETY Act protection, the requiring activity is responsible for requesting a pre-qualification designation notice from DHS. DHS will then determine whether the technology identified in the request either affirmatively or presumptively satisfies the technical criteria for SAFETY Act designation. An affirmative determination means the technology described in the pre-qualification designation notice sat-

isfies the technical criteria for SAFETY Act designation as a QATT. A presumptive determination means that the technology is a good candidate for SAFETY Act designation as a QATT. In either case, the notice will authorize offerors to—

(i) Submit a streamlined application for SAFETY Act designation; and

(ii) Receive expedited review of their application for SAFETY Act designation.

(2) The requiring activity shall make requests using the procurement pre-qualification request form available at <http://www.SAFETYAct.gov>. The website includes instructions for completing and submitting the form.

(3) The requiring activity shall provide a copy of the request, as well as a copy of the resulting pre-qualification designation notice or DHS denial, to the contracting officer.

(b) *Contracting officer responsibilities.* Upon receipt of the documentation specified in paragraph (a)(3) of this subsection, the contracting officer shall—

(1) Include in any pre-solicitation notice ([Subpart 5.2](#)) that a pre-qualification designation notice has been—

(i) Requested and is under review by DHS;

(ii) Denied by DHS; or

(iii) Issued and a copy will be included with the solicitation; and

(2) Incorporate the pre-qualification designation notice into the solicitation.

50.205-3 Authorization of offers contingent upon SAFETY Act designation or certification before contract award.

(a) Contracting officers may authorize such contingent offers, only if—

(1) DHS has issued—

(i) For offers contingent upon SAFETY Act designation, a pre-qualification designation notice or a block designation; or

(ii) For offers contingent upon SAFETY Act certification, a block certification;

(2) To the contracting officer's knowledge, the Government has not provided advance notice so that potential offerors could have obtained SAFETY Act designations/certifications for their offered technologies before release of any solicitation; and

(3) Market research shows that there will be insufficient competition without SAFETY Act protections or the subject technology would be sold to the Government only with SAFETY Act protections.

(b) Contracting officers shall not authorize offers contingent upon obtaining a SAFETY Act certification (as opposed to a SAFETY Act designation), unless a block certification applies to the solicitation.

50.205-4 Authorization of awards made presuming SAFETY Act designation or certification after contract award.

(a) When necessary to award a contract prior to DHS issuing SAFETY Act protections, contracting officers may award contracts presuming that DHS will issue a SAFETY Act designation/certification to the contractor after contract award only if—

- (1) The criteria of [50.205-3\(a\)](#) are met;
- (2) The chief of the contracting office (or other official designated in agency procedures) approves the action; and
- (3) The contracting officer advises DHS of the timelines for potential award and consults DHS as to when DHS could reasonably complete evaluations of offerors’ applications for SAFETY Act designations or certifications.

(b) Contracting officers shall not authorize offers presuming that SAFETY Act certification will be obtained (as opposed to a SAFETY Act designation), unless a block certification applies to the solicitation.

50.206 Solicitation provisions and contract clause.

(a) Insert the provision at [52.250-2](#), SAFETY Act Coverage Not Applicable, in solicitations if—

- (1) The agency consulted with DHS on a questionable case of SAFETY Act applicability to an acquisition in accordance with [50.205-1\(a\)](#), and after the consultation, the agency has determined that SAFETY Act protection is not applicable for the acquisition; or
- (2) DHS has denied approval of a pre-qualification designation notice.

(b)(1) Insert the provision at [52.250-3](#), SAFETY Act Block Designation/Certification, in a solicitation when DHS has

issued a block designation/certification for the solicited technologies.

(2) Use the provision at [52.250-3](#) with its Alternate I when contingent offers are authorized in accordance with [50.205-3](#).

(3) Use the provision at [52.250-3](#) with its Alternate II when offers presuming SAFETY Act designation or certification are authorized in accordance with [50.205-4](#). If this alternate is used, the contracting officer may alter the number of days within which offerors must submit their SAFETY Act designation or certification application.

(c)(1) Insert the provision at [52.250-4](#), SAFETY Act Pre-qualification Designation Notice, in a solicitation for which DHS has issued a pre-qualification designation notice.

(2) Use the provision at [52.250-4](#) with its Alternate I when contingent offers are authorized in accordance with [50.205-3](#).

(3) Use the provision at [52.250-4](#) with its Alternate II when offers presuming SAFETY Act designation or certification are authorized in accordance with [50.205-4](#). If this alternate is used, the contracting officer may alter the number of days within which offerors must submit their SAFETY Act designation or certification application.

(d) Insert the clause at [52.250-5](#), SAFETY Act—Equitable Adjustment—

(1) In the solicitation, if the provision at [52.250-3](#) or [52.250-4](#) is used with its Alternate II; and

(2) In any resultant contract, if DHS has not issued SAFETY Act designation or certification to the successful offeror before contract award.

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 - 52.242-9 [Reserved]
 - 52.242-10 [Reserved]
 - 52.242-11 [Reserved]
 - 52.242-12 [Reserved]
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 - 52.246-10 [Reserved]
 - 52.246-11 Higher-Level Contract Quality Requirement.
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 - 52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.
 - 52.246-20 Warranty of Services.
 - 52.246-21 Warranty of Construction.
 - 52.246-22 [Reserved]
 - 52.246-23 Limitation of Liability.
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 - 52.247-1 Commercial Bill of Lading Notations.
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 - 52.247-7 Freight Excluded.
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 - 52.247-9 Agreed Weight—General Freight.
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 - 52.247-11 Net Weight—Household Goods or Office Furniture.
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 - 52.247-13 Accessorial Services—Moving Contracts.
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 - 52.247-15 Contractor Responsibility for Loading and Unloading.
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 - 52.247-17 Charges.
 - 52.247-18 Multiple Shipments.
 - 52.247-19 Stopping in Transit for Partial Unloading.
 - 52.247-20 Estimated Quantities or Weights for Evaluation of Offers.
 - 52.247-21 Contractor Liability for Personal Injury and/or Property Damage.
 - 52.247-22 Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.
 - 52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.
 - 52.247-24 Advance Notification by the Government.

- 52.247-25 Government-Furnished Equipment With or Without Operators.
 - 52.247-26 Government Direction and Marking.
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 - 52.247-28 Contractor's Invoices.
 - 52.247-29 F.o.b. Origin.
 - 52.247-30 F.o.b. Origin, Contractor's Facility.
 - 52.247-31 F.o.b. Origin, Freight Allowed.
 - 52.247-32 F.o.b. Origin, Freight Prepaid.
 - 52.247-33 F.o.b. Origin, with Differentials.
 - 52.247-34 F.o.b. Destination.
 - 52.247-35 F.o.b. Destination, Within Consignee's Premises.
 - 52.247-36 F.a.s. Vessel, Port of Shipment.
 - 52.247-37 F.o.b. Vessel, Port of Shipment.
 - 52.247-38 F.o.b. Inland Carrier, Point of Exportation.
 - 52.247-39 F.o.b. Inland Point, Country of Importation.
 - 52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.
 - 52.247-41 C.& f. Destination.
 - 52.247-42 C.i.f. Destination.
 - 52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.
 - 52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.
 - 52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.
 - 52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.
 - 52.247-47 Evaluation—F.o.b. Origin.
 - 52.247-48 F.o.b. Destination—Evidence of Shipment.
 - 52.247-49 Destination Unknown.
 - 52.247-50 No Evaluation of Transportation Costs.
 - 52.247-51 Evaluation of Export Offers.
 - 52.247-52 Clearance and Documentation Requirements—Shipments to DoD Air or Water Terminal Transshipment Points.
 - 52.247-53 Freight Classification Description.
 - 52.247-54 [Reserved]
 - 52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.
 - 52.247-56 Transit Arrangements.
 - 52.247-57 Transportation Transit Privilege Credits.
 - 52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.
 - 52.247-59 F.o.b. Origin—Carload and Truckload Shipments.
 - 52.247-60 Guaranteed Shipping Characteristics.
 - 52.247-61 F.o.b. Origin—Minimum Size of Shipments.
 - 52.247-62 Specific Quantities Unknown.
 - 52.247-63 Preference for U.S.-Flag Air Carriers.
 - 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.
 - 52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.
 - 52.247-66 Returnable Cylinders.
 - 52.247-67 Submission of Transportation Documents for Audit.
 - 52.247-68 Report of Shipment (REPSHIP).
 - 52.248-1 Value Engineering.
 - 52.248-2 Value Engineering—Architect-Engineer.
 - 52.248-3 Value Engineering—Construction.
 - 52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).
 - 52.249-2 Termination for Convenience of the Government (Fixed-Price).
 - 52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).
 - 52.249-4 Termination for Convenience of the Government (Services) (Short Form).
 - 52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
 - 52.249-6 Termination (Cost-Reimbursement).
 - 52.249-7 Termination (Fixed-Price Architect-Engineer).
 - 52.249-8 Default (Fixed-Price Supply and Service).
 - 52.249-9 Default (Fixed-Price Research and Development).
 - 52.249-10 Default (Fixed-Price Construction).
 - 52.249-11 [Reserved]
 - 52.249-12 Termination (Personal Services).
 - 52.249-13 [Reserved]
 - 52.249-14 Excusable Delays.
 - 52.250-1 Indemnification Under Public Law 85-804.
 - 52.250-2 SAFETY Act Coverage Not Applicable.
 - 52.250-3 SAFETY Act Block Designation/Certification.
 - 52.250-4 SAFETY Act Pre-qualification Designation Notice.
 - 52.250-5 SAFETY Act—Equitable Adjustment.
 - 52.251-1 Government Supply Sources.
 - 52.251-2 Interagency Fleet Management System Vehicles and Related Services.
 - 52.252-1 Solicitation Provisions Incorporated by Reference.
 - 52.252-2 Clauses Incorporated by Reference.
 - 52.252-3 Alterations in Solicitation.
 - 52.252-4 Alterations in Contract.
 - 52.252-5 Authorized Deviations in Provisions.
 - 52.252-6 Authorized Deviations in Clauses.
 - 52.253-1 Computer Generated Forms.
- Subpart 52.3—Provision and Clause Matrix**
- 52.300 Scope of subpart.
 - 52.301 Solicitation provisions and contract clauses (Matrix).

52.212-1 Instructions to Offerors—Commercial Items.

As prescribed in [12.301\(b\)\(1\)](#), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS
(NOV 2007)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet ([SF 1449](#)). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](#), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) “Remit to” address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR [52.212-3](#) (see FAR [52.212-3\(l\)](#)) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the [SF 1449](#), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation

on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation*. (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service Specifications Section
Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407

Telephone (202) 619-8925
Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST web-sites:

(i) ASSIST (<http://assist.daps.dla.mil>).

(ii) Quick Search (<http://assist.daps.dla.mil/quicksearch>).

(iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Data Universal Numbering System (DUNS) Number*. (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR [Subpart 32.11](#)) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.

(k) *Central Contractor Registration*. Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

- (1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.
- (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]

Technical and past performance, when combined, are _____ *[Contracting Officer state, in accordance with FAR 15.304, the relative importance of all other evaluation factors, when combined, when compared to price.]*

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before

the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—
COMMERCIAL ITEMS (NOV 2007)

An offeror shall complete only paragraph (l) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (b) through (k) of this provision.

(a) *Definitions.* As used in this provision—

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassem-

bled and reassembled, the place of reassembly is not the place of manufacture.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer Identification Number (TIN)* ([26 U.S.C. 6109](#), [31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\)](#) and 3325(d), reporting requirements of [26 U.S.C. 6041](#), 6041A,

and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) *Taxpayer Identification Number (TIN)*.

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(5) *Common parent*.

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:
Name _____.
TIN _____.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) *Small business concern*. The offeror represents as part of its offer that it is, is not a small business concern.

(2) *Veteran-owned small business concern*. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern*. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#).

(2) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

Line Item No.

[List as necessary]

(3) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) *Trade Agreements Certificate.* (Applies only if the clause at FAR [52.225-5](#), Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#). For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12689).* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) Are, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) Have, have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) Are, are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).* [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at [22.1503\(b\)](#).]

(1) *Listed end products.*

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

[] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Act.* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

[] (1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4\(c\)\(1\)](#). The offeror does does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4\(c\)\(2\)\(ii\)](#)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

[] (2) Certain services as described in FAR [22.1003-4\(d\)\(1\)](#). The offeror does does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l)(1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (l)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR [52.212-3](#), Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this

solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs _____.

[Offeror to identify the applicable paragraphs at (b) through (k) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]

(End of provision)

Alternate I (Apr 2002). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.)

[The offeror shall check the category in which its ownership falls]:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

Alternate II (Oct 2000). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged busi-

ness concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (FEB 2007)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*— (1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable

charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. 3701](#), *et seq.*, Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at [52.212-5](#).

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

Alternate I (Feb 2007). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i) and (l) for those in the basic clause.

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) *Definitions.* (1) The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference. As used in this clause—

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

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

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

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

(iii) *Materials* means—

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

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

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

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any sub-*

contracts for services to be excluded from the hourly rates prescribed in the schedule.]; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR [Subpart 2.1](#), entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) *Payments.* (1) *Services accepted.* Payment shall be made for services accepted by the Government that have been delivered to the delivery destination(s) set forth in this contract. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR [2.101](#), the price to

be paid for such materials shall be the contractor's established catalog or market price, adjusted to reflect the—

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other Direct Costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: *[Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert "None"."]*

(2) *Indirect Costs (Material Handling, Subcontract Administration, etc.).* The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: *[Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert "None".)]*

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously

accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* (i) Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(ii) Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(6) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(7) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR part 1315.

(8) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(9) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS— COMMERCIAL ITEMS (NOV 2007)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(2) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

___ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

___ (2) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).

___ (3) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

___ (4) [Reserved]

___ (5)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

___ (ii) Alternate I (OCT 1995) of [52.219-6](#).

___ (iii) Alternate II (MAR 2004) of [52.219-6](#).

___ (6)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

___ (ii) Alternate I (OCT 1995) of [52.219-7](#).

___ (iii) Alternate II (MAR 2004) of [52.219-7](#).

___ (7) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

___ (8)(i) [52.219-9](#), Small Business Subcontracting Plan (NOV 2007) ([15 U.S.C. 637\(d\)\(4\)](#)).

___ (ii) Alternate I (OCT 2001) of [52.219-9](#).

___ (iii) Alternate II (OCT 2001) of [52.219-9](#).

___ (9) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

___ (10) [52.219-16](#), Liquidated Damages— Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

___ (11)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

___ (ii) Alternate I (JUNE 2003) of [52.219-23](#).

___ (12) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

___ (13) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

___ (14) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).

___ (15) [52.219-28](#), Post Award Small Business Program Rerepresentation (JUNE 2007) ([15 U.S.C. 632\(a\)\(2\)](#)).

___ (16) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

___ (17) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (AUG 2007) (E.O. 13126).

___ (18) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

___ (19) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

— (20) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (21) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).

— (22) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (23) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

— (24)(i) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) (Applies to all contracts).

— (ii) Alternate I (AUG 2007) of [52.222-50](#).

— (25)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)).

— (ii) Alternate I (AUG 2000) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)).

— (26) [52.225-1](#), Buy American Act—Supplies (JUNE 2003) ([41 U.S.C. 10a-10d](#)).

— (27)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (AUG 2007) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).

— (ii) Alternate I (JAN 2004) of [52.225-3](#).

— (iii) Alternate II (JAN 2004) of [52.225-3](#).

— (28) [52.225-5](#), Trade Agreements (NOV 2007) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (29) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (30) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (31) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (32) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (33) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (34) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

— (35) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

— (36) [52.232-36](#), Payment by Third Party (MAY 1999) ([31 U.S.C. 3332](#)).

— (37) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (38)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

— (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (NOV 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.237-11](#), Accepting and Dispensing of \$1 Coin (AUG 2007) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals

under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(ii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(iii) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)).

(v) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(vii) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) ([22 U.S.C. 7104\(g\)](#)). Flow down required in accordance with paragraph (f) of FAR clause [52.222-50](#).

(viii) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(x) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (Feb 2000). As prescribed in [12.301](#)(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor’s delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.*(1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor’s expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice “FAST PAY.” Invoices not prominently marked “FAST PAY” via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor

shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

(1) National stock number and/or manufacturer's part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers "FAST PAY" When outer shipping containers are not marked "FAST PAY," the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor's invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS
(OTHER THAN COMMERCIAL ITEMS) (NOV 2007)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(iv) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(vii) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(2) Listed below are additional clauses that apply:

(i) [52.232-1](#), Payments (APR 1984).

(ii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iii) [52.232-11](#), Extras (APR 1984).

(iv) [52.232-25](#), Prompt Payment (OCT 2003).

- (v) [52.233-1](#), Disputes (JULY 2002).
- (vi) [52.244-6](#), Subcontracts for Commercial Items (MAR 2007).
- (vii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JAN 2006) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) [52.222-20](#), Walsh-Healey Public Contracts Act (DEC 1996) ([41 U.S.C. 35-45](#)) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*)

(vii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) [52.225-1](#), Buy American Act—Supplies (JUNE 2003) ([41 U.S.C. 10a-10d](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

- (A) Is set aside for small business concerns; or
- (B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(ix) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor

Registration (CCR) database as its source of EFT information.)

(x) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xi) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEPT 2006) (Applies to contracts over \$30,000).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(iv) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of

common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does

not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

52.219-9 Small Business Subcontracting Plan.

As prescribed in [19.708\(b\)](#), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or

Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The

plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use 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 as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees.

As prescribed in [22.1605](#), insert the following clause:

NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING
PAYMENT OF UNION DUES OR FEES (DEC 2004)

(a) *Definition.* As used in this clause—

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended ([45 U.S.C. 151-188](#))).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to—

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for non-compliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

52.222-40 [Reserved]

52.222-41 Service Contract Act of 1965.

As prescribed in [22.1006](#)(a), insert the following clause:

SERVICE CONTRACT ACT OF 1965 (NOV 2007)

(a) *Definitions.* As used in this clause—

“Act” means the Service Contract Act of 1965 ([41 U.S.C. 351](#), *et seq.*).

“Contractor,” when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“Service employee” means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administra-

tively exempted by the Secretary of Labor or exempted by [41 U.S.C. 356](#), as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit [Standard Form \(SF\) 1444](#), Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed [SF 1444](#) (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank var-

ious job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every

2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result

of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report

required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or

Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in [22.1006\(c\)\(2\)](#), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (FEB 2002)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any

decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

52.222-45 [Reserved]

52.222-46 Evaluation of Compensation for Professional Employees.

As prescribed in [22.1103](#), insert the following provision:

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envi-

sioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor’s ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

52.222-47 [Reserved]

52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

As prescribed in [22.1006](#)(e)(1), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT CERTIFICATION (NOV 2007)

(a) The offeror shall check the following certification:

CERTIFICATION

The offeror does does not certify that—

(1) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the offeror in substantial quantities to the general public in the course of normal business operations;

(2) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(i) An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(ii) An “established market price” is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror; and

(3) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract are the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR [22.1003-4](#)(c)(3) that the Service Contract Act—

(1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements, in this solicitation will not be included in any resultant contract awarded to this offeror, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause in this solicitation at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, will not be included in any resultant contract awarded to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible, if the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

52.222-49 Service Contract Act—Place of Performance Unknown.

As prescribed in [22.1006](#)(f), insert the following clause:

SERVICE CONTRACT ACT—PLACE OF PERFORMANCE UNKNOWN (MAY 1989)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following:

_____ [insert places or areas]. The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ [insert time and date].

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

52.222-50 Combating Trafficking in Persons.

As prescribed in [22.1705](#)(a), insert the following clause:

COMBATING TRAFFICKING IN PERSONS (AUG 2007)

(a) *Definitions.* As used in this clause—

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the

use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—

(i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may render the Contractor subject to—

(1) Required removal of a Contractor employee or employees from the performance of the contract;

(2) Required subcontractor termination;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(End of clause)

Alternate 1 (Aug 2007). As prescribed in [22.1705\(b\)](#), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

(i)(A) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and

(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title	Document may be obtained from:	Applies performance to in/at:
_____	_____	_____
_____	_____	_____

[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the U.S. to which the document applies.]

52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.

As prescribed in [22.1006\(e\)\(2\)](#), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT—REQUIREMENTS (NOV 2007)

(a) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations.

(b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(1) An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(2) An “established market price” is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract shall be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Contractor shall consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

(End of clause)

52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

As prescribed in [22.1006\(e\)\(3\)](#), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICES—CERTIFICATION (NOV 2007)

(a) The offeror shall check the following certification:

CERTIFICATION

The offeror does does not certify that—

(1) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(2) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;

(3) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the

available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR [22.1003-4\(d\)\(3\)](#) that the Service Contract Act—

(1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at FAR [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, in this solicitation will not be included in any resultant contract awarded to this offer, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause of this solicitation at [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, will not be included in any resultant contract to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible if the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.

As prescribed in [22.1006\(e\)\(4\)](#), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICES— REQUIREMENTS (NOV 2007)

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided

by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(d) The Contractor uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

(e) (1) Any subcontract for these exempt services shall be awarded on a sole-source basis; or

(2) Except for services identified in FAR [22.1003-4\(d\)\(1\)\(iv\)](#), the subcontractor shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost in selecting the Contractor.

(f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Act shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(h) The Contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(End of clause)

transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* The Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.

52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

As prescribed in [25.1101\(b\)\(2\)\(i\)](#), insert the following provision:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT CERTIFICATE (AUG 2007)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian or Moroccan end product,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian or Moroccan end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act-Free Trade Agreements-Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian or Moroccan End Products) or Israeli End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(d) The Government will evaluate offers in accordance with the policies and procedures of [Part 25](#) of the Federal Acquisition Regulation.

(End of provision)

Alternate I (Jan 2004). As prescribed in [25.1101\(b\)\(2\)\(ii\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

LINE ITEM NO.

[List as necessary]

Alternate II (Jan 2004). As prescribed in [25.1101\(b\)\(2\)\(iii\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

CANADIAN OR ISRAELI END PRODUCTS:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

52.225-5 Trade Agreements.

As prescribed in [25.1101\(c\)\(1\)](#), insert the following clause:

TRADE AGREEMENTS (NOV 2007)

(a) *Definitions.* As used in this clause—
“Caribbean Basin country end product”—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C. 2703\(b\)](#).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services)

incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of clause)

Alternate I (Aug 2007). As prescribed in 25.1102(c)(3), add the following definition of “Bahrainian or Mexican construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian or Mexican construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian or Mexican construction materials.

(2) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.225-12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.

As prescribed in 25.1102(d)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JAN 2005)

(a) *Definitions.* “Construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of

FAR clause [52.225-11](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (May 2002). As prescribed in [25.1102\(d\)\(2\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-11](#).

Alternate II (Aug 2007). As prescribed in [25.1102\(d\)\(3\)](#), add the definition of “Bahrainian or Mexican construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain or Mexico, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-11](#), the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Bahrainian or Mexican construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-11](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-11](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Bahrainian or Mexican construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

52.225-13 Restrictions on Certain Foreign Purchases.

As prescribed in [25.1103\(a\)](#), insert the following clause:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR Chapter V and/or on OFAC’s website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.225-14 Inconsistency between English Version and Translation of Contract.

As prescribed at [25.1103\(b\)](#), insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

52.225-15 [Reserved]

52.225-16 [Reserved]

52.225-17 Evaluation of Foreign Currency Offers.

As prescribed in [25.1103\(c\)](#), insert the following provision:

EVALUATION OF FOREIGN CURRENCY OFFERS (FEB 2000)

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using [*Contracting Officer to insert source of rate*] in effect as follows:

- (a) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.
- (b) For acquisitions conducted using negotiation procedures—

(1) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(2) On the date specified for receipt of proposal revisions.

(End of provision)

52.225-18 Place of Manufacture.

As prescribed in [25.1101\(f\)](#), insert the following solicitation provision:

PLACE OF MANUFACTURE (SEPT 2006)

(a) *Definitions.* As used in this clause—

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

(b) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

- (1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or
- (2) Outside the United States.

(End of provision)

52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

As prescribed in [26.104](#), insert the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)

(a) *Definitions.* As used in this clause:

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with [25 U.S.C. 1452\(c\)](#) and any “Native” as defined in the Alaska Native Claims Settlement Act ([43 U.S.C. 1601](#)).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of [25 U.S.C., Chapter 17](#).

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with [25 U.S.C. 1452\(c\)](#).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises ([25 U.S.C. 1544](#)) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the—

U.S. Department of the Interior
 Bureau of Indian Affairs (BIA)
 Attn: Chief, Division of Contracting and Grants
 Administration
 1849 C Street, NW,
 MS-2626-MIB
 Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

52.226-2 Historically Black College or University and Minority Institution Representation.

As prescribed in [26.304](#), insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND
 MINORITY INSTITUTION REPRESENTATION (MAY 2001)

(a) *Definitions.* As used in this provision—

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a

Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act ([20 U.S.C. 1101a](#)).

- (b) *Representation.* The offeror represents that it—
- is is not a historically black college or university;
 - is is not a minority institution.

(End of provision)

52.226-3 Disaster or Emergency Area Representation.

As prescribed in [26.205](#)(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION
 (NOV 2007)

(a) *Set-aside area.* The area covered in this contract is:

[Contracting Officer to fill in with definite geographic boundaries.]

(b) *Representations.* The offeror represents that it does does not reside or primarily do business in the designated set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

- (1) The offeror had its main operating office in the area; and
- (2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

- (1) Physical location(s) of the offeror’s permanent office(s) and date any office in the set-aside area(s) was established;
- (2) Current state licenses;
- (3) Record of past work in the set-aside area(s) (*e.g.*, how much and for how long);
- (4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;
- (5) Percentage of the offeror’s gross revenues attributable to work performed in the set-aside area;
- (6) Number of permanent employees the offeror employs in the set-aside area;
- (7) Membership in local and state organizations in the set-aside area; and
- (8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror

to submit with its offer documentation to support the representation.

(End of provision)

52.226-4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in [26.205](#)(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE

(NOV 2007)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in

[*Contracting Officer to fill in with definite geographic boundaries.*] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in [26.205](#)(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE

DISASTER OR EMERGENCY AREA (NOV 2007)

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of

contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the area designated in the clause at FAR [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

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(b) The Contractor’s right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

52.249-11 [Reserved]

52.249-12 Termination (Personal Services).

As prescribed in [49.505\(a\)](#), insert the following clause in solicitations and contracts for personal services (see [Part 37](#)):

TERMINATION (PERSONAL SERVICES) (APR 1984)

The Government may terminate this contract at any time upon at least 15 days’ written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days’ written notice to the Contracting Officer.

(End of clause)

52.249-13 [Reserved]

52.249-14 Excusable Delays.

As prescribed in [49.505\(b\)](#), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, and labor-hour contracts. When used in construction contracts, substitute the words “completion time” for “delivery schedule” in the last sentence of the clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. “Default” includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

52.250-1 Indemnification Under Public Law 85-804.

As prescribed in [50.104-4](#) insert the following clause:

INDEMNIFICATION UNDER PUBLIC LAW 85-804
(APR 1984)

(a) “Contractor’s principal officials,” as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing—

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Public Law 85-804 ([50 U.S.C. 1431-1435](#)) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against—

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for—

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor's property.

(e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall—

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may be reasonably be expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(End of clause)

Alternate I (Apr 1984). In cost-reimbursement contracts, add the following paragraph (i) to the basic clause:

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government's obligations under this clause are—

(1) Excepted from the release required under this contract's clause relating to allowable cost; and

(2) Not affected by this contract's Limitation of Cost or Limitation of Funds clause.

52.250-2 SAFETY Act Coverage Not Applicable.

As prescribed in [50.206\(a\)](#), insert the following provision:

SAFETY ACT COVERAGE NOT APPLICABLE (NOV 2007)

The Government has determined that the product(s) or service(s) being acquired by this action is not an anti-terrorism technology as that term is defined by the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), [6 U.S.C. 441-444](#). Proposals in which either acceptance or pricing is made contingent upon SAFETY Act designation as a qualified anti-terrorism technology or SAFETY Act certification as an approved product for homeland security of the proposed product or service will not be considered for award. See FAR [Subpart 50.2](#).

(End of provision)

52.250-3 SAFETY Act Block Designation/Certification.

As prescribed in [50.206\(b\)\(1\)](#), insert the following provision:

SAFETY ACT BLOCK DESIGNATION/CERTIFICATION (NOV 2007)

(a) *Definitions.* As used in this provision—

“Act of terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag ves-

sel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

“Qualified Anti-Terrorism Technology (QATT)” means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

“SAFETY Act certification” means a determination by Department of Homeland Security (DHS) pursuant to [6 U.S.C. 442](#), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller’s specifications, and is safe for use as intended. “Block certification” refers to a technology class that DHS has determined to be an approved class of approved products for homeland security.

“SAFETY Act designation” means a determination by DHS pursuant to [6 U.S.C. 443](#), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act. “Block designation” refers to a technology class that DHS has determined to be a QATT.

(b) The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), [6 U.S.C. 441-444](#), creates certain liability limitations for claims arising out of, relating to, or resulting from an act of terrorism where QATTs have been deployed. It also confers other important benefits. SAFETY Act designation and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria. For some classes of technologies, DHS may issue a block designation/certification in order to lessen the burdens for filing for SAFETY Act designation or SAFETY Act certifications by not requiring applicants to provide certain information otherwise required and in order to offer expedited review of any application submitted pursuant to a block designation/certification. Block designations/certifications will be issued only for technolo-

gies that rely on established performance standards or defined technical characteristics.

(c)(1) DHS has issued a block designation or block certification for the technology to be acquired under this solicitation.

(2) This block designation or block certification is attached to this solicitation and contains essential information, including—

(i) A detailed description of and specification for the technology covered by the block designation or block certification;

(ii) A listing of those portions of the SAFETY Act application kit that must be completed and submitted by applicants;

(iii) The date of its expiration; and

(iv) Any other terms and conditions.

(3) Offerors should read this block designation or block certification carefully to make sure they comply with its terms if they plan to take advantage of SAFETY Act coverage for their technology(ies).

(d) A determination by DHS to issue a SAFETY Act designation or SAFETY Act certification based on this block designation/certification is not a determination that the technology meets, or fails to meet, the requirements of this solicitation. All determinations by DHS are based on factors set forth in the SAFETY Act, and are made independent of, and without regard to, the specific terms, conditions, specifications, statements of work, or evaluation factors set forth in the solicitation.

(e) Neither SAFETY Act designation nor certification is in any way a requirement of this action. Whether to seek the benefits of the SAFETY Act for a proposed product or service is entirely up to the offeror. Additional information about the SAFETY Act and this block designation/certification may be found at the SAFETY Act website at <http://www.SAFETYAct.gov> or requests may be mailed to:

Directorate of Science and Technology
SAFETY Act/room 4320
Department of Homeland Security
Washington, DC 20528

(f) Proposals in which pricing or any other terms or conditions are offered contingent upon SAFETY Act designation or SAFETY Act certification of the proposed product(s) or service(s) will not be considered for award.

(End of provision)

Alternate I (Nov 2007). As prescribed in [50.206\(b\)\(2\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals made contingent upon SAFETY Act designation (or SAFETY Act certification, if a block certification exists) before award. When an offer is made contingent upon SAFETY Act designation or

certification, the offeror also may submit an alternate offer without the contingency.

(2) The Government may award a contract based on a contingent offer only if the offeror demonstrates that DHS has issued a SAFETY Act designation (or SAFETY Act certification, if a block certification exists) for the offeror's proposed technology prior to contract award.

(3) The Government reserves the right to award the contract prior to DHS resolution of the offeror's application for SAFETY Act designation (or SAFETY Act certification, if a block certification exists).

Alternate II (Nov 2007). As prescribed in [50.206\(b\)\(3\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit offers presuming that SAFETY Act designation (or SAFETY Act certification, if a block certification exists) will be obtained before or after award.

(2) An offeror is eligible for award only if the offeror—

(i) Files a SAFETY Act designation (or SAFETY Act certification) application, limited to the scope of the applicable block designation (or block certification), within 15 days after submission of the proposal;

(ii) Pursues its SAFETY Act designation (or SAFETY Act certification) application in good faith; and

(iii) Agrees to obtain the amount of insurance DHS requires for issuing any SAFETY Act designation (or SAFETY Act certification).

(3) If DHS has not issued a SAFETY Act designation (or SAFETY Act certification) to the successful offeror before contract award, the contracting officer will include the clause at [52.250-5](#) in the resulting contract.

52.250-4 SAFETY Act Pre-qualification Designation Notice.

As prescribed in [50.206\(c\)\(1\)](#), insert the following provision:

SAFETY ACT PRE-QUALIFICATION DESIGNATION NOTICE (NOV 2007)

(a) *Definitions*. As used in this provision—

“Act of terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruc-

tion, injury or other loss to citizens or institutions of the United States.

“Pre-qualification designation notice” means a notice in a procurement solicitation or other publication by the Government stating that the technology to be procured either affirmatively or presumptively satisfies the technical criteria necessary to be deemed a qualified anti-terrorism technology. A pre-qualification designation notice authorizes successful offeror(s) to submit streamlined SAFETY Act applications for SAFETY Act designation and receive expedited processing of those applications.

“Qualified Anti-Terrorism Technology (QATT)” means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

“SAFETY Act certification” means a determination by Department of Homeland Security (DHS) pursuant to [6 U.S.C. 442](#), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller's specifications, and is safe for use as intended. “Block certification” refers to a technology class that DHS has determined to be an approved class of approved products for homeland security.

“SAFETY Act designation” means a determination by DHS pursuant to [6 U.S.C. 443](#), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act. “Block designation” refers to a technology class that DHS has determined to be a QATT.

(b) The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), [6 U.S.C. 441-444](#), creates certain liability limitations for claims arising out of, relating to, or resulting from an act of terrorism where QATTs have been deployed. It also confers other important benefits. SAFETY Act designation and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria.

(c)(1) DHS has issued a SAFETY Act pre-qualification designation notice for the technology to be acquired under this solicitation.

(2) This notice is attached to this solicitation and contains essential information, including—

(i) A detailed description of and specification for the technology covered by the notice;

(ii) A statement that the technology described and specified in the notice satisfies the technical criteria to be deemed a QATT and the offeror's proposed technology either may presumptively or will qualify for the issuance of a designation provided the offeror complies with terms and conditions in the notice and its application is approved;

(iii) The period of time within which DHS will take action upon submission of a SAFETY Act application submitted pursuant to the notice;

(iv) A listing of those portions of the application that must be completed and submitted by selected awardees and the time periods for such submissions;

(v) The date of expiration of the notice; and

(vi) Any other terms and conditions concerning the notice.

(3) Offerors should read this notice carefully to make sure they comply with the terms of the notice if they plan on taking advantage of SAFETY Act coverage for their technologies.

(d) A determination by DHS to designate, or not designate, a particular technology as a QATT is not a determination that the technology meets, or fails to meet, the requirements of this solicitation. All determinations by DHS are based on factors set forth in the SAFETY Act, and are made independent of, and without regard to, the specific terms, conditions, specifications, statements of work, or evaluation factors set forth in the solicitation.

(e) Neither SAFETY Act designation nor certification is in any way a requirement of this action. Whether to seek the benefits of the SAFETY Act for a proposed product or service is entirely up to the offeror. Additional information about the SAFETY Act may be found at the SAFETY Act website at <http://www.SAFETYAct.gov>.

(f) Proposals in which pricing or any other terms or conditions are offered contingent upon SAFETY Act designation or certification of the proposed product(s) or service(s) will not be considered for award.

(End of provision)

Alternate I (Nov 2007). As prescribed in [50.206\(c\)\(2\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals made contingent upon SAFETY Act designation before award. When an offer is made contingent upon SAFETY Act designation, the offeror also may submit an alternate offer without the contingency.

(2) The Government may award a contract based on a contingent offer only if the offeror demonstrates that DHS has

issued a SAFETY Act designation for the offeror's proposed technology prior to contract award.

(3) The Government reserves the right to award the contract prior to DHS resolution of the offeror's application for SAFETY Act designation.

Alternate II (Nov 2007). As prescribed in [50.206\(c\)\(3\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals presuming SAFETY Act designation before or after award.

(2) An offeror is eligible for award only if the offeror—

(i) Files a SAFETY Act designation application, limited to the scope of the applicable prequalification designation notice, within 15 days after submission of the proposal;

(ii) Pursues its SAFETY Act designation application in good faith; and

(iii) Agrees to obtain the amount of insurance DHS requires for issuing any SAFETY Act designation.

(3) If DHS has not issued a SAFETY Act designation to the successful offeror before contract award, the contracting officer will include the clause at [52.250-5](#) in the resulting contract.

52.250-5 SAFETY Act—Equitable Adjustment.

As prescribed in [50.206\(d\)](#), insert the following clause:

SAFETY ACT—EQUITABLE ADJUSTMENT (NOV 2007)

(a) *Definitions.* As used in this clause—

“Act of terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

“Qualified Anti-Terrorism Technology (QATT)” means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assess-

ments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

“SAFETY Act certification” means a determination by Department of Homeland Security (DHS) pursuant to [6 U.S.C. 442](#), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller’s specifications, and is safe for use as intended. “Block certification” refers to a technology class that DHS has determined to be an approved class of approved products for homeland security.

“SAFETY Act designation” means a determination by DHS pursuant to [6 U.S.C. 443](#), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act. “Block designation” refers to a technology class that DHS has determined to be a QATT.

(b) Prices for the items covered by the pre-qualification designation notice, block designation, or block certification in the contract were established presuming DHS will issue a SAFETY Act designation (or SAFETY Act certification) for those items.

(c) In order to qualify for an equitable adjustment in accordance with paragraph (d) of this clause the Contractor shall in good faith pursue obtaining—

(1) SAFETY Act designation (or SAFETY Act certification); and

(2) The amount of insurance DHS requires for issuing any SAFETY Act designation (or SAFETY Act certification).

(d)(1) If DHS denies the Contractor’s SAFETY Act designation (or certification) application, the Contractor may submit a request for an equitable adjustment within 30 days of DHS’s notification of denial.

(2) The Contracting Officer shall either—

(i) Make an equitable adjustment to the contract price based on evidence of the resulting increase or decrease in the Contractor’s costs and/or an equitable adjustment to other terms and conditions based on lack of SAFETY Act designation (or certification); or

(ii) At the sole option of the Government, terminate this contract for the convenience of the Government in place of an equitable adjustment.

(3) A failure of the parties to agree on the equitable adjustment will be considered to be a dispute in accordance with the “Disputes” clause of this contract.

(4) Unless first terminated, the Contractor shall continue contract performance during establishment of any equitable adjustment.

(End of clause)

52.251-1 Government Supply Sources.

As prescribed in [51.107](#), insert the following clause in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source:

GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be “Government-furnished property,” as distinguished from “Government property.” The provisions of the clause entitled “Government Property,” except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)

52.251-2 Interagency Fleet Management System Vehicles and Related Services.

As prescribed in [51.205](#), insert the following clause:

INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

(End of clause)

52.252-1 Solicitation Provisions Incorporated by Reference.

As prescribed in [52.107](#)(a), insert the following provision:

SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

 [Insert one or more Internet addresses]

(End of provision)

52.252-2 Clauses Incorporated by Reference.

As prescribed in [52.107\(b\)](#), insert the following clause:

CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

 [Insert one or more Internet addresses]

(End of clause)

52.252-3 Alterations in Solicitation.

As prescribed in [52.107\(c\)](#), insert the following provision in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN SOLICITATION (APR 1984)

Portions of this solicitation are altered as follows:

 (End of provision)

52.252-4 Alterations in Contract.

As prescribed in [52.107\(d\)](#), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

 (End of clause)

52.252-5 Authorized Deviations in Provisions.

As prescribed in [52.107\(e\)](#), insert the following provision in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert “(DEVIATION)” after the date of the provision.

AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the provision.

(b) The use in this solicitation of any _____ [insert regulation name] (48 CFR Chapter _____) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

(End of provision)

52.252-6 Authorized Deviations in Clauses.

As prescribed in [52.107\(f\)](#), insert the following clause in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert “(DEVIATION)” after the date of the clause.

AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.

(b) The use in this solicitation or contract of any _____ [insert regulation name] (48 CFR _____) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

(End of clause)

52.253-1 Computer Generated Forms.

As prescribed in FAR [53.111](#), insert the following clause:

COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content,

or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements

on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.	19.1204(c)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set Aside.	19.1407	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-28 Post-Award Small Business Program Rerepresentation.	19.308(d)	C	Yes ✓	I ✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I		A		A		A		A			A	A	A		A	A			
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A		A	
52.222-5 Davis-Bacon Act—Secondary Site of the Work.	22.407(h)	P	No	L							A	A									A		
52.222-6 Davis-Bacon Act.	22.407(a)	C	Yes	I							A	A									A		
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I							A	A											
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I							A	A											
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I							A	A											
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I							A	A											
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I							A	A											
52.222-12 Contract Termination—Debarment.	22.407(a)	C	Yes	I							A	A									A		
52.222-13 Compliance with Davis-Bacon and Related Act Regulations.	22.407(a)	C	Yes	I							A	A									A		
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I							A	A									A		
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I							A	A									A		
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I								A											
52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.	22.1505(a)	P	No	K	A	A													A		A		A
52.222-19 Child Labor—Cooperation with Authorities and Remedies.	22.1505(b)	C	Yes	I	A	A													A		A		A

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-20 Walsh-Healey Public Contracts Act.	22.610	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-21 Prohibition of Segregated Facilities.	22.810(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-22 Previous Contracts and Compliance Reports.	22.810(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.	22.810(b)	P	Yes								A	A									A		
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.	22.810(c)	P	Yes	L	A	A	A	A	A	A			A	A	A	A	A	A	A	A		A	
52.222-25 Affirmative Action Compliance.	22.810(d)	P	No	K	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A	A	
52.222-26 Equal Opportunity.	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-27 Affirmative Action Compliance Requirements for Construction.	22.810(f)	C	Yes								A	A									A		
52.222-29 Notification of Visa Denial.	22.810(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).	22.407(e)	C									A	A											
52.222-31 Davis Bacon Act—Price Adjustment (Percentage Method).	22.407(f)	C									A	A											
52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).	22.407(g)	C									A	A											
52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	22.1310(A)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.1310(a)(2) ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-36 Affirmative Action for Workers with Disabilities.	22.1408(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.1408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	22.1310(b) ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-38 Compliance with Veterans' Employment Reporting Requirements.	22.1310(c)	P	Yes	K	A	A	A	A	A	A	a	A	A	A	A	A	A	A	A	A	A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees.	22.1605	c	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-41 Service Contract Act of 1965.	22.1006(a)	C	Yes	I					A	A			A		A	A	A			A	A		
52.222-42 Statement of Equivalent Rates for Federal Hires.	22.1006(b)	C	No	I					A	A			A		A	A	A			A	A		
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	22.1006(c)(1)	C	Yes	I					A				A		A	A	A			A	A		
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.	22.1006(c)(2)	C	Yes	I					A				A		A	A	A			A	A		
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L					A	A													
52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.	22.1006(e)(1)	C	Yes	I					A	A			A								A		
52.222-49 Service Contract Act—Place of Performance Unknown.	22.1006(f)	C	Yes	I					A	A			A		A	A				A	A		
52.222-50 Combating Trafficking in Persons.	22.1705(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1705(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	22.1006(e)(2)	C	Yes	I					A	A			A								A		
52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.	22.1006(e)(3)	P	Yes	I					A	A			A								A		
52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.	22.1006(e)(4)	C	Yes	I					A	A			A								A		
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.303(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-4 Recovered Material Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
52.223-5 Pollution Prevention and Right-to-Know Information.	23.1005	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.1005(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	23.1005(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	a	A	A	A	A	A	A	A	A
52.223-6 Drug-Free Workplace.	23.505	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A	A			A		A	A		A		
52.223-9 Estimate of Percentage of Recovered Material Content for EPA Designated Products.	23.406(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate I	23.406(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.223-10 Waste Reduction Program.	23.705	C	Yes	I					A	A					A			A					
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A	A													A		A		
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					A	A			A			A			A		A		
52.223-13 Certification of Toxic Chemical Release Reporting.	23.906(a)	P	No	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.223-14 Toxic Chemical Release Reporting.	23.906(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.225-1 Buy American Act—Supplies.	25.1101(a)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A				A		A		A
52.225-2 Buy American Act Certificate.	25.1101(a)(2)	P	No	K	A	A	A	A	A	A			A	A	A				A		A		
52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.	25.1101(b)(1)(i)	C	Yes	I	A	A							A	A					A		A		A
Alternate I	25.1101(b)(1)(ii)	C	Yes	I	A	A							A	A					A		A		A
Alternate II	25.1101(b)(1)(iii)	C	Yes	I	A	A							A	A					A		A		A
52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.	25.1101(b)(2)(i)	P	No	K	A	A							A	A					A		A		
Alternate I	25.1101(b)(2)(ii)	P	No	K	A	A							A	A					A		A		
Alternate II	25.1101(b)(2)(iii)	P	No	K	A	A							A	A					A		A		
52.225-5 Trade Agreements.	25.1101(c)(1)	C	Yes	I	A	A													A		A		A
52.225-6 Trade Agreements Certificate.	25.1101(c)(2)	P	No	K	A	A													A		A		
52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.1101(d)	P	Yes	L	A	A	A	A											A		A		A
52.225-8 Duty-Free Entry.	25.1101(e)	C	Yes	I	A	A	A	A					A	A	A				A		A		A
52.225-9 Buy American Act—Construction Materials.	25.1102(a)	C	No										A	A									
52.225-10 Notice of Buy American Act Requirement—Construction Materials.	25.1102(b)(1)	P	No										A	A									
Alternate I	25.1102(b)(2)	P	No										A	A									
52.225-11 Buy American Act—Construction Materials under Trade Agreements.	25.1102(c)	C	No										A	A									
Alternate I	25.1102(c)(3)	C	No										A	A									

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52.225-12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.	25.1102(d)(1)	P	No								A	A											
Alternate I	25.1102(d)(2)	P	No								A	A											
Alternate II	25.1102(d)(3)	P	No								A	A											
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(c) ✓	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-18 Place of Manufacture.	25.1101(f)	P	No	K	R	R							A							A		A	A
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.226-2 Historically Black College or University and Minority Institution Representation.	26.304	P	No	K	A	A	A	A	A	A			A		A					A		A	
52.226-3 Disaster or Emergency Area Representation.	26.205(a) ✓	P	No	K	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.226-4 Notice of Disaster or Emergency Area Set-Aside.	26.205(b) ✓	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.	26.205(c) ✓	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.227-1 Authorization and Consent.	27.201-2(a)	C	Yes	I	A	A			A		A	A			A	A	A	A	A		O		
Alternate I	27.201-2(b)	C	Yes	I			A	A			A	A			A		A	A					
Alternate II	27.201-2(c)	C	Yes	I			A				A												
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.202-2	C	Yes	I	A	A																	
52.227-3 Patent Indemnity.	27.203-1(b) 27.203-2(a) 27.203-4(a)(2)	C	Yes	I	A	A			A	A												A	
Alternate I	27.203-2(b)	C	Yes	I	A	A			A	A												A	
Alternate II	27.203-2(b)	C	Yes	I	A	A			A	A					A							A	
Alternate III	27.203-2(c)	C	Yes	I											A							A	
52.227-4 Patent Indemnity—Construction Contracts.	27.203-5	C	Yes								A	A				A							
Alternate I	27.203-5	C	Yes								O	O				O							
52.227-5 Waiver of Indemnity.	27.203-6	C	Yes	I	A	A	A	A	A	A	A	A				A		A	A				
52.227-6 Royalty Information.	27.204-2	P	No	K	A	A	A	A	A	A	A	A				A		A	A				
Alternate I	27.204-2	P	No	K											A			A					

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		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.227-7 Patents—Notice of Government Licensee.	27.204-3(c)	P	No	K	A	A	A	A	A	A	A			A	A		A	A					
52.227-9 Refund of Royalties.	27.206-2	C	Yes	I	A		A		A		A			A	A		A	A					
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.207-2	C	Yes	I	A	A	A	A	A	A	A			A	A		A	A					
52.227-11 Patent Rights—Retention by the Contractor (Short Form).	27.303(a)	C	Yes	I			A	A			A	A					A						
Alternate I	27.303(a)(3)	C	Yes	I			A	A			A	A					A						
Alternate II	27.303(a)(3)	C	Yes	I			A	A			A	A					A						
Alternate III	27.303(a)(4)	C	Yes	I			A	A			A	A											
Alternate IV	27.303(a)(5)	C	Yes	I			A	A			A	A											
52.227-12 Patent Rights—Retention by the Contractor (Long Form).	27.303(b)	C	Yes	I			A	A			A	A					A						
Alternate I	27.303(b)(2)	C	Yes	I			A	A			A	A					A						
Alternate II	27.303(b)(2)	C	Yes	I			A	A			A	A					A						
52.227-13 Patent Rights—Acquisition by the Government.	27.303(c)	C	Yes	I			A	A			A	A					A						
Alternate I	27.303(c)(3)	C	Yes	I			A	A			A	A					A						
Alternate II	27.303(c)(3)	C	Yes	I			A	A			A	A					A						
52.227-14 Rights in Data—General.	27.409(a)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate I	27.409(b)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate II	27.409(c) & (g)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate III	27.409(d) & (g)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate IV	27.409(e)	C	Yes	I	O	O	A	A	O	O			O	O	O	O		O	O	O	O		
Alternate V	27.409(f)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(g)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.227-16 Additional Data Requirements.	27.409(h)	C	Yes	I			A	A														A	
52.227-17 Rights in Data—Special Works.	27.409(i)	C	Yes	I	A	A	A	A	A	A	O	O	A		A		O					A	
52.227-18 Rights in Data—Existing Works.	27.409(j)	C	Yes	I	A	A	A	A	A	A			A		A		A		A			A	
52.227-19 Commercial Computer Software—Restricted Rights.	27.409(k)	C	Yes	I	A				A						A							A	
52.227-20 Rights in Data—SBIR Program.	27.409(l)	C	Yes	I			A	A															
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	27.409(q)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.227-22 Major System—Minimum Rights.	27.409(r)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

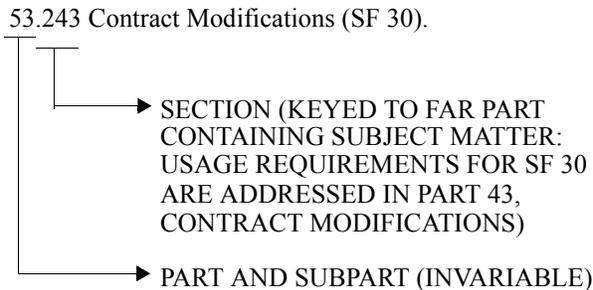
PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.247-68 Report of Shipment (REPSHIP).	47.208-2	C	Yes	I	A	A	A	A	A	A			A	A	A		A	A	A		A		
52.248-1 Value Engineering.	48.201	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A		A	
Alternate I	48.201(c)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A		A	
Alternate II	48.201(d)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A		A	
Alternate III	48.201(e)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A	A	A		A	
52.248-2 Value Engineering Program—Architect-Engineer.	48.201(f)	C	Yes														A						
52.248-3 Value Engineering—Construction.	48.202	C	Yes								A	A											
Alternate I	48.202	C	Yes								A	A											
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).	49.502(a)(1)	C	Yes	I	A		A		A				A	A		A				A	A	A	A
Alternate I	49.502(a)(2)	C	Yes	I												A							
52.249-2 Termination for Convenience of the Government (Fixed-Price).	49.502(b)(1)(i)	C	Yes	I	A		A		A				A	A						A	A		A
Alternate I	49.502(b)(1)(ii)	C	Yes	I							A												
Alternate II	49.502(b)(1)(iii)	C	Yes	I	A		A		A				A	A						A	A		A
Alternate III	49.502(b)(1)(iii)	C	Yes	I							A												
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	49.502(b)(2)	C	Yes	I												A							
Alternate I	49.502(b)(2)	C	Yes	I												A							
52.249-4 Termination for Convenience of the Government (Services) (Short Form).	49.502(c)	C	Yes	I					A													A	A
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	49.502(d)	C	Yes	I			A	A														A	
52.249-6 Termination (Cost-Reimbursement).	49.503(a)(1)	C	Yes	I		A		A		A				A	A	A		A	A	A		A	
Alternate I	49.503(a)(2)	C	Yes								A												
Alternate II	49.503(a)(3)	C	Yes	I		A		A		A				A	A	A		A	A	A		A	
Alternate III	49.503(a)(3)	C	Yes									A											
Alternate IV	49.503(a)(4)	C	Yes	I									A										
Alternate V	49.503(a)(4)	C	Yes	I									A										
52.249-7 Termination (Fixed-Price Architect-Engineer).	49.503(b)	C	Yes														A					A	

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.249-8 Default (Fixed-Price Supply and Service).	49.504(a)(1)	C	Yes	I	A			A					A						A		O	A	
Alternate I	49.504(a)(2)	C	Yes	I																A	O		
52.249-9 Default (Fixed-Price Research and Development).	49.504(b)	C	Yes	I			A														O		
52.249-10 Default (Fixed-Price Construction).	49.504(c)(1)	C	Yes							A											O		
Alternate I	49.504(c)(2)	C	Yes													A					O		
Alternate II	49.504(c)(3)	C	Yes							O											O		
Alternate III	49.504(c)(3)	C	Yes													A					O		
52.249-12 Termination (Personal Services).	49.505(a)	C	Yes	I				A	A												A		
52.249-14 Excusable Delays.	49.505(b)	C	Yes	I		A		A		A			A					A			A		
52.250-1 Indemnification under Public Law 85-804.	50.104-4 ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-2 SAFETY Act Coverage Not Applicable.	50.206(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-3 SAFETY Act Block Designation/Certification.	50.206(b)(1)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(b)(2)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	50.206(b)(3)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-4 SAFETY Act Pre-qualification Designation Notice.	50.206(c)(1)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(c)(2)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	50.206(c)(3)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-5 SAFETY Act-Equitable Adjustment.	50.206(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	
52.251-2 Interagency Fleet Management System Vehicles and Related Services.	51.205	C	Yes	I		A		A		A				A									
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in [Subpart 52.2](#), this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR [Part 14](#), Sealed Bidding, are treated in this subpart in section [53.214](#), Sealed Bidding; forms addressed in FAR [Part 43](#), Contract Modifications, are treated in this subpart in section [53.243](#), Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:



53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

[SF 1402](#) (10/83), *Certificate of Appointment*. [SF 1402](#) is prescribed for use in appointing contracting officers, as specified in [1.603-3](#).

53.202 [Reserved]

53.203 [Reserved]

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in [Subpart 4.4](#) and the clause at [52.204-2](#):

- (a) [DD Form 254](#) (Department of Defense (DoD)), *Contract Security Classification Specification*. (See [4.403](#)(c)(1).)
- (b) [DD Form 441](#) (DoD), *Security Agreement*. (See paragraph (b) of the clause at [52.204-2](#).)

53.204-2 [Reserved]

53.205 Publicizing contract actions.

53.205-1 Paid advertisements.

[SF 1449](#), prescribed in [53.212](#), shall be used to place orders for paid advertisements as specified in [5.503](#).

53.206 [Reserved]

53.207 [Reserved]

53.208 [Reserved]

53.209 Contractor qualifications.

53.209-1 Responsible prospective contractors.

The following forms are prescribed for use in conducting preaward surveys of prospective contractors, as specified in [9.106-1](#), [9.106-2](#), and [9.106-4](#):

- (a) [SF 1403](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor (General)*. [SF 1403](#) is authorized for local reproduction.
- (b) [SF 1404](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Technical*. [SF 1404](#) is authorized for local reproduction.
- (c) [SF 1405](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Production*. [SF 1405](#) is authorized for local reproduction.
- (d) [SF 1406](#) (Rev. 11/97), *Preaward Survey of Prospective Contractor—Quality Assurance*. [SF 1406](#) is authorized for local reproduction.
- (e) [SF 1407](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Financial Capability*. [SF 1407](#) is authorized for local reproduction.
- (f) [SF 1408](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Accounting System*. [SF 1408](#) is authorized for local reproduction.

53.210 [Reserved]

53.211 [Reserved]

53.212 Acquisition of commercial items.

[SF 1449](#) (Rev. 3/2005), *Solicitation/Contract/Order for Commercial Items*. [SF 1449](#) is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

53.213 Simplified acquisition procedures (SF’s 18, 30, 44, 1165, 1449, and OF’s 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under

existing contracts or agreements, and orders from required sources of supplies and services:

(a) [SF 18](#) (Rev. 6/95), *Request for Quotations*, or [SF 1449](#) (Rev. 3/2005), *Solicitation/Contract/Order for Commercial Items*. [SF 18](#) is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in [13.307](#)(b). [SF 1449](#), as prescribed in [53.212](#), or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in [13.307](#)(b).

(b) [SF 30](#) (Rev. 10/83), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), may be used for modifying purchase orders, as specified in [13.307](#)(c)(3).

(c) [SF 44](#) (Rev. 10/83), *Purchase Order Invoice Voucher*. [SF 44](#) is prescribed for use in simplified acquisition procedures, as specified in [13.306](#).

(d) [SF 1165](#) (6/83 Ed.), *Receipt for Cash-Subvoucher*. [SF 1165](#) (GAO) may be used for imprest fund purchases, as specified in [13.307](#)(e).

(e) [OF 336](#) (4/86 Ed.), *Continuation Sheet*. [OF 336](#), prescribed in [53.214](#)(h), may be used as a continuation sheet in solicitations, as specified in [13.307](#)(c)(1).

(f) [SF 1449](#), (Rev. 3/2005) *Solicitation/Contract/Order for Commercial Items* prescribed in [53.212](#), [OF 347](#) (Rev. 4/06), *Order for Supplies or Services*, and [OF 348](#) (Rev. 4/06), *Order for Supplies or Services—Schedule Continuation*. [SF 1449](#), [OF](#)'s [347](#) and [348](#) (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in [13.307](#).

(2) To establish blanket purchase agreements (BPA's), as specified in [13.303-2](#), and to make purchases under BPA's, as specified in [13.303-5](#).

(3) To issue orders under basic ordering agreements, as specified in [16.703](#)(d)(2)(i).

(4) As otherwise specified in this chapter (e.g., see [5.503](#)(a)(2), [8.406-1](#), [36.701](#)(b), and [51.102](#)(e)(3)(ii)).

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) [SF 26](#) (4/85), *Award/Contract*. [SF 26](#) is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on [SF 33](#), *Solicitation, Offer and Award*, as specified in [14.408-1](#)(d)(1). Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700."

(b) [SF 30](#), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), shall be used in amending invitations for bids, as specified in [14.208](#)(a).

(c) [SF 33](#) (Rev. 9/97), *Solicitation, Offer and Award*. [SF 33](#) is prescribed for use in soliciting bids for supplies or services

and for awarding the contracts that result from the bids, as specified in [14.201-2](#)(a)(1), unless award is accomplished by [SF 26](#).

(d) [SF 1447](#) (Rev. 3/2005), *Solicitation/Contract*. [SF 1447](#) is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see [14.201-9](#)) and may be used in place of the [SF 26](#) or [SF 33](#) with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

(e) [Reserved]

(f) [SF 1409](#) (Rev. 9/88), *Abstract of Offers*, and [SF 1410](#) (9/88), *Abstract of Offers—Continuation*. [SF 1409](#) and [SF 1410](#) are prescribed for use in recording bids, as specified in [14.403](#)(a).

(g) [OF 17](#) (Rev. 12/93), *Offer Label*. [OF 17](#) may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in [14.202-3](#)(b).

(h) [OF 336](#) (Rev. 3/86), *Continuation Sheet*. [OF 336](#) may be used as a continuation sheet in solicitations, as specified in [14.201-2](#)(b).

53.215 Contracting by negotiation.

53.215-1 Solicitation and receipt of proposals.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) [SF 26](#) (Rev. 4/85), *Award/Contract*. [SF 26](#), prescribed in [53.214](#)(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in [15.509](#).

(b) [SF 30](#) (Rev. 10/83), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), may be used for amending requests for proposals and for amending requests for information, as specified in [15.210](#)(b).

(c) [SF 33](#) (Rev. 9/97), *Solicitation, Offer and Award*. [SF 33](#), prescribed in [53.214](#)(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either [OF 307](#), [SF 33](#), or [SF 26](#), as specified in [53.214](#)(c) and [15.509](#).

(d) [OF 17](#) (Rev. 12/93), *Offer Label*. [OF 17](#) may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in [15.210](#)(c).

(e) [OF 307](#) (Rev. 9/97), *Contract Award*. [OF 307](#) may be used to award negotiated contracts as specified in [15.509](#).

(f) [OF 308](#) (Rev. 9/97), *Solicitation and Offer-Negotiated Acquisition*. [OF 308](#) may be used to support solicitation of negotiated contracts as specified in [15.210](#)(a). Award of such contracts may be made by [OF 307](#), as specified in [15.509](#).

Optional Form 347

ORDER FOR SUPPLIES OR SERVICES						PAGE	OF	PAGES	
IMPORTANT: Mark all packages and papers with contract and/or order numbers.									
1. DATE OF ORDER		2. CONTRACT NO. (If any)		6. SHIP TO:					
3. ORDER NO.		4. REQUISITION/REFERENCE NO.		a. NAME OF CONSIGNEE					
5. ISSUING OFFICE (Address correspondence to)		7. TO:		b. STREET ADDRESS					
a. NAME OF CONTRACTOR		b. COMPANY NAME		c. CITY		d. STATE	e. ZIP CODE		
c. STREET ADDRESS		d. CITY		e. STATE		f. ZIP CODE			
9. ACCOUNTING AND APPROPRIATION DATA		10. REQUISITIONING OFFICE		8. TYPE OF ORDER					
11. BUSINESS CLASSIFICATION (Check appropriate box(es))		12. F.O.B. POINT		<input type="checkbox"/> a. PURCHASE <input type="checkbox"/> b. DELIVERY -- Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.					
<input type="checkbox"/> a. SMALL <input type="checkbox"/> b. OTHER THAN SMALL <input type="checkbox"/> c. DISADVANTAGED <input type="checkbox"/> g. SERVICE-DISABLED VETERAN-OWNED <input type="checkbox"/> d. WOMEN-OWNED <input type="checkbox"/> e. HUBZone <input type="checkbox"/> f. EMERGING SMALL BUSINESS		13. PLACE OF		14. GOVERNMENT B/L NO.		15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date)		16. DISCOUNT TERMS	
a. INSPECTION		b. ACCEPTANCE							
17. SCHEDULE (See reverse for Rejections)									
ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)			
18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.					
SEE BILLING INSTRUCTIONS ON REVERSE		21. MAIL INVOICE TO:							17(h) TOT. (Cont. pages)
		a. NAME							
		b. STREET ADDRESS (or P.O. Box)							
22. UNITED STATES OF AMERICA BY (Signature)		c. CITY		d. STATE	e. ZIP CODE				17(i) GRAND TOTAL
23. NAME (Typed)		TITLE: CONTRACTING/ORDERING OFFICER							

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PREVIOUS EDITION NOT USABLE

OPTIONAL FORM 347 (REV. 4/2006)
Prescribed by GSA/FAR 48 CFR 53.213(f)

Optional Form 348

ORDER FOR SUPPLIES OR SERVICES SCHEDULE - CONTINUATION						PAGE NO.
IMPORTANT: Mark all packages and papers with contract and/or order numbers.						
DATE OF ORDER		CONTRACT NO.		ORDER NO.		
ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17h))				▶		

AUTHORIZED FOR LOCAL REPRODUCTION
 PREVIOUS EDITION NOT USABLE

OPTIONAL FORM 348 REV. (4/2006)
 Prescribed by GSA - FAR (48 CFR) 53.213(f)

FAC 2005-21 FILING INSTRUCTIONS

**NOTE: The following pages reflect FAR final rule amendments.
Please do not file until their effective date of
December 7, 2007.**

Remove Pages

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2.1-1 thru 2.1-16

3.1-5 and 3.1-6

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2.000 Scope of part.

(a) This part—

(1) Defines words and terms that are frequently used in the FAR;

(2) Provides cross-references to other definitions in the FAR of the same word or term; and

(3) Provides for the incorporation of these definitions in solicitations and contracts by reference.

(b) Other parts, subparts, and sections of this regulation (48 CFR Chapter 1) may define other words or terms and those definitions only apply to the part, subpart, or section where the word or term is defined (see the Index for locations).

Subpart 2.1—Definitions**2.101 Definitions.**

(a) A word or a term, defined in this section, has the same meaning throughout this regulation (48 CFR Chapter 1), unless—

(1) The context in which the word or term is used clearly requires a different meaning; or

(2) Another FAR part, subpart, or section provides a different definition for the particular part or portion of the part.

(b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of this regulation (48 CFR Chapter 1), the definition in—

(1) This section includes a cross-reference to the other definitions; and

(2) That part, subpart, or section applies to the word or term when used in that part, subpart, or section.

“Acquisition” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

“Acquisition planning” means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

“Adequate evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Advisory and assistance services” means those services provided under contract by nongovernmental sources to sup-

port or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see [9.505-1\(b\)](#)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

“Affiliates” means associated business concerns or individuals if, directly or indirectly—

(1) Either one controls or can control the other; or

(2) A third party controls or can control both.

“Agency head” or “head of the agency” means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.

“Alternate” means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It

adds wording to, deletes wording from, or substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see [52.105\(a\)](#)).

“Architect-engineer services,” as defined in [40 U.S.C. 1102](#), means—

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

“Assignment of claims” means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance.

“Basic research” means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

“Best value” means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.

“Bid sample” means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (*e.g.*, balance, facility of use, or pattern).

“Biobased product” means a product determined by the U.S. Department of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

“Broad agency announcement” means a general announcement of an agency’s research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government’s needs (see [6.102\(d\)\(2\)](#)).

“Bundled contract” means a contract where the requirements have been consolidated by bundling. (See the definition of bundling.)

“Bundling” means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) “Separate smaller contract” as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) “Single contract” as used in this definition, includes—

(i) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR [16.504\(c\)](#)); and

(ii) An order placed against an indefinite quantity contract under a—

(A) Federal Supply Schedule contract; or

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

(4) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

“Business Partner Network (BPN)” means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors. The BPN is located at <http://www.bpn.gov>.

“Business unit” means any segment of an organization, or an entire business organization that is not divided into segments.

“Central Contractor Registration (CCR) database” means the primary Government repository for contractor information required for the conduct of business with the Government.

“Change-of-name agreement” means a legal instrument executed by the contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

“Change order” means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor’s consent.

“Claim” means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in [33.206\(a\)](#), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

“Classified acquisition” means an acquisition in which officers must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

“Classified contract” means any contract in which the contractor or its employees must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

“Classified information” means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

- (1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or
- (ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and
- (2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

“Cognizant Federal agency” means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

“Commercial component” means any component that is a commercial item.

“Commercial computer software” means any computer software that is a commercial item.

“Commercial item” means—

- (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

- (i) Has been sold, leased, or licensed to the general public; or

- (ii) Has been offered for sale, lease, or license to the general public;

- (2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

- (3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—

- (i) Modifications of a type customarily available in the commercial marketplace; or

- (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

- (4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

- (5) Installation services, maintenance services, repair services, training services, and other services if—

- (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

- (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—

- (i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

- (ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and

sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

“Common item” means material that is common to the applicable Government contract and the contractor’s other work.

“Component” means any item supplied to the Government as part of an end item or of another component, except that for use in—

(1) [Part 25](#), see the definition in [25.003](#);

(2) [52.225-1](#) and [52.225-3](#), see the definition in [52.225-1\(a\)](#) and [52.225-3\(a\)](#); and

(3) [52.225-9](#) and [52.225-11](#), see the definition in [52.225-9\(a\)](#) and [52.225-11\(a\)](#).

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software” — (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Consent to subcontract” means the contracting officer’s written consent for the prime contractor to enter into a particular subcontract.

“Construction” means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities,

terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

“Contiguous United States (CONUS)” means the 48 contiguous States and the District of Columbia.

“Contingency operation” ([10 U.S.C. 101\(a\)\(13\)](#)) means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section [688](#), [12301\(a\)](#), [12302](#), [12304](#), [12305](#), or [12406](#) of [10 U.S.C.](#), [Chapter 15 of 10 U.S.C.](#), or any other provision of law during a war or during a national emergency declared by the President or Congress.

“Continued portion of the contract” means the portion of a contract that the contractor must continue to perform following a partial termination.

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by [31 U.S.C. 6301](#), *et seq.* For discussion of various types of contracts, see [Part 16](#).

“Contract administration office” means an office that performs—

(1) Assigned postaward functions related to the administration of contracts; and

(2) Assigned preaward functions.

“Contract clause” or “clause” means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

“Contract modification” means any written change in the terms of a contract (see [43.103](#)).

“Contracting” means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all

phases of contract administration. It does not include making grants or cooperative agreements.

“Contracting activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

“Contracting office” means an office that awards or executes a contract for supplies or services and performs post-award functions not assigned to a contract administration office (except for use in [Part 48](#), see also [48.001](#)).

“Contracting officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR Chapter 1) to administrative contracting officer or termination contracting officer does not—

- (1) Require that a duty be performed at a particular office or activity; or
- (2) Restrict in any way a contracting officer in the performance of any duty properly assigned.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere. For use in [Subpart 23.5](#), see the definition at [23.503](#).

“Cost or pricing data” ([10 U.S.C. 2306a\(h\)\(1\)](#) and [41 U.S.C. 254b](#)) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with [15.406-2](#). Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;

(5) Unit-cost trends such as those associated with labor efficiency;

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

(8) Information on management decisions that could have a significant bearing on costs.

“Cost realism” means that the costs in an offeror’s proposal—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements; and

(3) Are consistent with the various elements of the offeror’s technical proposal.

“Cost sharing” means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

“Customs territory of the United States” means the 50 States, the District of Columbia, and Puerto Rico.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see [Subpart 32.11](#)) for the same concern.

“Day” means, unless otherwise specified, a calendar day.

“Debarment” means action taken by a debarring official under [9.406](#) to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.”

“Delivery order” means an order for supplies placed against an established contract or with Government sources.

“Depreciation” means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor’s operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

“Descriptive literature” means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product’s characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

“Design-to-cost” means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

“Direct cost” means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

“Drug-free workplace” means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Earned value management system” means a project management tool that effectively integrates the project scope of work with cost, schedule and performance elements for optimum project planning and control. The qualities and operating characteristics of an earned value management system are described in American National Standards Institute /Electronics Industries Alliance (ANSI/EIA) Standard-748, Earned Value Management Systems. (See OMB Circular A-11, Part 7.)

“Effective date of termination” means the date on which the notice of termination requires the contractor to stop performance under the contract. If the contractor receives the termination notice after the date fixed for termination, then the effective date of termination means the date the contractor receives the notice.

“Electronic and information technology (EIT)” has the same meaning as “information technology” except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

“Electronic commerce” means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

“Electronic data interchange (EDI)” means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

“Electronic Funds Transfer (EFT)” means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with [31 U.S.C. 3332](#) and implementing regulations at 31 CFR Part 208, the term “electronic funds transfer” includes a Governmentwide commercial purchase card transaction.

“End product” means supplies delivered under a line item of a Government contract, except for use in [Part 25](#) and the associated clauses at [52.225-1](#), [52.225-3](#), and [52.225-5](#), see the definitions in [25.003](#), [52.225-1\(a\)](#), [52.225-3\(a\)](#), and [52.225-5\(a\)](#).

“Energy-efficient product” means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

“Energy-efficient standby power devices” means products that use—

(1) External standby power devices, or that contain an internal standby power function; and

(2) No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

“Energy-savings performance contract” means a contract that requires the contractor to—

(1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;

(2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and

(3) Guarantee future energy and cost savings to the Government.

“Environmentally preferable” means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing,

packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

“Excess personal property” means any personal property under the control of a Federal agency that the agency head determines is not required for its needs or for the discharge of its responsibilities.

“Excluded Parties List System” means an electronic database maintained and posted by the General Services Administration containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the nonprocurement common rule by agencies, Government corporations, or by the Government Accountability Office.

“Executive agency” means an executive department, a military department, or any independent establishment within the meaning of [5 U.S.C. 101](#), [102](#), and [104\(1\)](#), respectively, and any wholly owned Government corporation within the meaning of [31 U.S.C. 9101](#).

“Facilities capital cost of money” means “cost of money as an element of the cost of facilities capital” as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

“Facsimile” means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; *e.g.*, facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

“Federal agency” means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect’s direction).

“Federal Technical Data Solution (FedTeDS)” is a web application integrated with the Governmentwide Point of Entry (GPE) and the Central Contractor Registration (CCR) system for distribution of information related to contract opportunities. It is designed to enhance controls on the access and distribution of solicitation requirements or other documents when controls are necessary according to agency procedures. FedTeDS may be found on the Internet at <https://www.fedteds.gov>.

“Federally-controlled facilities” means—

(1) Federally-owned buildings or leased space, whether for single or multi-tenant occupancy, and its grounds and approaches, all or any portion of which is under the jurisdiction, custody or control of a department or agency;

(2) Federally-controlled commercial space shared with non-government tenants. For example, if a department or agency leased the 10th floor of a commercial building, the Directive applies to the 10th floor only;

(3) Government-owned, contractor-operated facilities, including laboratories engaged in national defense research and production activities; and

(4) Facilities under a management and operating contract, such as for the operation, maintenance, or support of a Government-owned or Government-controlled research, development, special production, or testing establishment.

“Federally-controlled information system” means an information system ([44 U.S.C. 3502\(8\)](#)) used or operated by a Federal agency, or a contractor or other organization on behalf of the agency ([44 U.S.C. 3544\(a\)\(1\)\(A\)](#)).

“Federally Funded Research and Development Centers (FFRDC’s)” means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—

(1) A long-term relationship is contemplated;

(2) Most or all of the facilities are owned or funded by the Government; and

(3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

“Final indirect cost rate” means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor’s fiscal year (unless the parties decide upon a different period) to which it applies. For cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

“First article” means a preproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

“First article testing” means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

“F.o.b.” means free on board. This term is used in conjunction with a physical point to determine—

(1) The responsibility and basis for payment of freight charges; and

(2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

“F.o.b. destination” means free on board at destination; *i.e.*, the seller or consignor delivers the goods on seller’s or consignor’s conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss. For use in the clause at [52.247-34](#), see the definition at [52.247-34\(a\)](#).

“F.o.b. origin” means free on board at origin; *i.e.*, the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is respon-

sible for the cost of shipping and risk of loss. For use in the clause at [52.247-29](#), see the definition at [52.247-29\(a\)](#).

“F.o.b.”... (For other types of F.o.b., see [47.303](#)).

“Forward pricing rate agreement” means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. These rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

“Forward pricing rate recommendation” means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

“Freight” means supplies, goods, and transportable property.

“Full and open competition,” when used with respect to a contract action, means that all responsible sources are permitted to compete.

“General and administrative (G&A) expense” means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

“Governmentwide acquisition contract (GWAC)” means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

- (1) By an executive agent designated by the Office of Management and Budget pursuant to [40 U.S.C. 11302\(e\)](#); or
- (2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section [40 U.S.C. 759](#), repealed by Pub. L. 104-106. The Economy Act does not apply to orders under a Governmentwide acquisition contract.

“Governmentwide point of entry (GPE)” means the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <http://www.fedbizopps.gov>.

“Head of the agency” (see “agency head”).

“Head of the contracting activity” means the official who has overall responsibility for managing the contracting activity.

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“HUBZone” means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Humanitarian or peacekeeping operation” means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing ([10 U.S.C. 2302\(8\)](#) and [41 U.S.C. 259\(d\)](#)).

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Indirect cost” means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

“Indirect cost rate” means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also “final indirect cost rate”).

“Ineligible” means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation (48 CFR Chapter 1) and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Information other than cost or pricing data” means any type of information that is not required to be certified in accordance with [15.406-2](#) and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

“Information security” means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) Availability, which means ensuring timely and reliable access to, and use of, information.

“Information technology” means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment that—

(i) Is acquired by a contractor incidental to a contract; or

(ii) Contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

“Inherently governmental function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

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(iii) Significantly affect the life, liberty, or property of private persons;

(iv) Commission, appoint, direct, or control officers or employees of the United States; or

(v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services.

“Inspection” means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

“Insurance” means a contract that provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

“Invoice” means a contractor’s bill or written request for payment under the contract for supplies delivered or services performed (see also “proper invoice”).

“Irrevocable letter of credit” means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government’s (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

“Labor surplus area” means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

“Labor surplus area concern” means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

“Latent defect” means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

“Major system” means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware,

equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$173.5 million or the eventual total expenditure for the acquisition exceeds \$814.5 million;

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$1.8 million or the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget Circular A-109, entitled “Major System Acquisitions,” whichever is greater; or

(3) The system is designated a “major system” by the head of the agency responsible for the system ([10 U.S.C. 2302](#) and [41 U.S.C. 403](#)).

“Make-or-buy program” means that part of a contractor’s written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor’s facilities and those to be subcontracted.

“Market research” means collecting and analyzing information about capabilities within the market to satisfy agency needs.

“Master solicitation” means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

“May” denotes the permissive. However, the words “no person may...” mean that no person is required, authorized, or permitted to do the act described.

“Micro-purchase” means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

“Micro-purchase threshold” means \$3,000, except it means—

(1) For acquisitions of construction subject to the Davis-Bacon Act, \$2,000;

(2) For acquisitions of services subject to the Service Contract Act, \$2,500; and

(3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as described in [13.201\(g\)\(1\)](#), except for construction subject to the Davis-Bacon Act ([41 U.S.C. 428a](#))—

(i) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

“Minority Institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act ([20 U.S.C. 1101a](#)).

“Multi-agency contract (MAC)” means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see [17.500\(b\)](#)). Multi-agency contracts include contracts for information technology established pursuant to [40 U.S.C. 11314\(a\)\(2\)](#).

“Must” (see “shall”).

“National defense” means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space.

“Neutral person” means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person must have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve ([5 U.S.C. 583](#)).

“Nondevelopmental item” means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraphs (1) or (2) solely because the item is not yet in use.

“Novation agreement” means a legal instrument—

(1) Executed by the—

- (i) Contractor (transferor);
- (ii) Successor in interest (transferee); and
- (iii) Government; and

(2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to requests for pro-

posals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers. For unsolicited proposals, see [Subpart 15.6](#).

“Online Representations and Certifications Application (ORCA)” means the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. ORCA is part of the Business Partner Network (BPN). ORCA is located at <http://orca.bpn.gov>.

“Offeror” means offeror or bidder.

“Option” means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

“Outlying areas” means—

- (1) *Commonwealths*. (i) Puerto Rico.
- (ii) The Northern Mariana Islands;
- (2) *Territories*. (i) American Samoa.
- (ii) Guam.
- (iii) U.S. Virgin Islands; and
- (3) *Minor outlying islands*. (i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

“Overtime” means time worked by a contractor’s employee in excess of the employee’s normal workweek.

“Overtime premium” means the difference between the contractor’s regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium, *i.e.*, the difference between the contractor’s regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“Partial termination” means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

“Performance-based acquisition (PBA)” means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.

“Performance Work Statement (PWS)” means a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.

“Personal property” means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

“Personal services contract” means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see [37.104](#)).

“Plant clearance officer” means an authorized representative of the contracting officer, appointed in accordance with agency procedures, responsible for screening, redistributing, and disposing of contractor inventory from a contractor’s plant or work site. The term “Contractor’s plant” includes, but is not limited to, Government-owned contractor-operated plants and Federal installations as may be required under the scope of the contract.

“Pollution prevention” means any practice that—

- (1)(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- (ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;
- (2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or
- (3) Protects natural resources by conservation.

“Power of attorney” means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also “attorney-in-fact” at [28.001](#)).

“Preaward survey” means an evaluation of a prospective contractor’s capability to perform a proposed contract.

“Preponderance of the evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Pricing” means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

“Procurement” (see “acquisition”).

“Procuring activity” means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” is synonymous with “contracting activity.”

“Projected average loss” means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

“Proper invoice” means an invoice that meets the minimum standards specified in [32.905\(b\)](#).

“Purchase order,” when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

“Qualification requirement” means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

“Qualified products list (QPL)” means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

“Receiving report” means written evidence that indicates Government acceptance of supplies delivered or services performed (see [Subpart 46.6](#)). Receiving reports must meet the requirements of [32.905\(c\)](#).

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in [Subpart 11.3](#) for paper and paper products, see the definition at [11.301](#).

“Registered in the CCR database” means that—

- (1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
- (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

“Renewable energy” means energy produced by solar, wind, geothermal, and biomass power.

“Renewable energy technology” means—

- (1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or
- (2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

“Residual value” means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible

capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

“Responsible audit agency” means the agency that is responsible for performing all required contract audit services at a business unit.

“Responsible prospective contractor” means a contractor that meets the standards in [9.104](#).

“Scrap” means personal property that has no value except its basic metallic, mineral, or organic content.

“Segment” means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

(1) Government-owned contractor-operated (GOCO) facilities; and

(2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—

(i) A majority ownership; or

(ii) Less than a majority ownership, but over which it exercises control.

“Self-insurance” means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

“Senior procurement executive” means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act ([41 U.S.C. 414\(3\)](#)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Shall” means the imperative.

“Shipment” means freight transported or to be transported.

“Shop drawings” means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

(1) The proposed fabrication and assembly of structural elements.

(2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

“Should” means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

“Signature” or “signed” means the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

“Simplified acquisition procedures” means the methods prescribed in [Part 13](#) for making purchases of supplies or services.

“Simplified acquisition threshold” means \$100,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack ([41 U.S.C. 428a](#)), the term means—

(1) \$250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

“Single, Governmentwide point of entry,” means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see [19.102](#)). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents,

license agreements, facilities, sales territory, and nature of business activity. (See [15 U.S.C. 632](#).)

“Small business subcontractor” means a concern, including affiliates, that for subcontracts valued at—

(1) \$10,000 or less, does not have more than 500 employees; and

(2) More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR Part 121 (see [19.102](#)) for the product or service it is providing on the subcontract.

“Small disadvantaged business concern” (except for [52.212-3\(c\)\(2\)](#) and [52.219-1\(b\)\(2\)](#) for general statistical purposes and [52.212-3\(c\)\(7\)\(ii\)](#), [52.219-22\(b\)\(2\)](#), and [52.219-23\(a\)](#) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR Part 124, Subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the data base maintained by the Small Business Administration (PRO-Net); or

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

“Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

“Solicitation provision or provision” means a term or condition used only in solicitations and applying only before contract award.

“Source selection information” means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “Source Selection Information—See FAR [2.101](#) and [3.104](#)” based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

“Special competency” means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

“Special test equipment” means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special test equipment, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material,

special test equipment, real property, equipment, machine tools, or similar capital items.

“State and local taxes” means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

“Statement of Objectives (SOO)” means a Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

“Substantial evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Substantially as follows” or “substantially the same as,” when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

“Supplemental agreement” means a contract modification that is accomplished by the mutual action of the parties.

“Supplies” means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

“Surety” means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

“Suspension” means action taken by a suspending official under [9.407](#) to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

“Task order” means an order for services placed against an established contract or with Government sources.

“Taxpayer Identification Number (TIN)” means the number required by the IRS to be used by the offeror in reporting

income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 403\(8\)](#)).

“Termination for convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

“Termination for default” means the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Termination inventory” means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

“Terminated portion of the contract” means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

“Unallowable cost” means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that—

(1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—

(i) Is the product of original thinking submitted confidentially by one source;

(ii) Contains new, novel, or changed concepts, approaches, or methods;

(iii) Was not submitted previously by another; and

(iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

“United States,” when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in [Subpart 22.8](#), see the definition at [22.801](#).

(2) For use in [Subpart 22.10](#), see the definition at [22.1001](#).

(3) For use in [Subpart 22.13](#), see the definition at [22.1301](#).

(4) For use in [Subpart 22.16](#), see the definition at [22.1601](#).

(5) For use in [Part 25](#), see the definition at [25.003](#).

(6) For use in [Part 27](#), see the definition at [27.001](#).

(7) For use in [Subpart 47.4](#), see the definition at [47.401](#).

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (Section 36 of the Office of Federal Procurement Policy Act, [41 U.S.C. 401](#), *et seq.*). For use in the clause at [52.248-2](#), see the definition at [52.248-2\(b\)](#).

“Value engineering change proposal (VECP)”—

(1) Means a proposal that—

(i) Requires a change to the instant contract to implement; and

(ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—

(A) In deliverable end item quantities only;

(B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or

(C) To the contract type only.

(2) For use in the clauses at—

(i) [52.248-2](#), see the definition at [52.248-2\(b\)](#); and

(ii) [52.248-3](#), see the definition at [52.248-3\(b\)](#).

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Virgin material” means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

“Voluntary consensus standards” means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies (*e.g.*, International Organization for Standardization (ISO) and ASTM-International). See OMB Circular A-119.

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

“Writing” or “written” (see “in writing”).

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disclosure in accordance with [14.401](#), [15.207](#), applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in [2.101](#), should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the “source selection information” definition in [2.101](#) must mark the cover page and each page that the individual believes contains source selection information with the legend “*Source Selection Information—See FAR [2.101](#) and [3.104](#).*” Although the information in paragraphs (1) through (9) of the definition in [2.101](#) is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with [52.215-1](#)(e) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor’s justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in [27.404-5](#).

(e) This section does not restrict or prohibit—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government’s use of technical data in a manner consistent with the Government’s rights in the data.

(f) This section does not authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or

an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information that pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See [3.104-2](#)(b)(5) and [Subpart 24.2](#).)

3.104-5 Disqualification.

(a) *Contacts through agents or other intermediaries.* Employment contacts between the employee and the offeror, that are conducted through agents, or other intermediaries, may require disqualification under [3.104-3](#)(c)(1). These contacts may also require disqualification under other statutes and regulations. (See [3.104-2](#)(b)(2).)

(b) *Disqualification notice.* In addition to submitting the contact report required by [3.104-3](#)(c)(1), an agency official who must disqualify himself or herself pursuant to [3.104-3](#)(c)(1)(ii) must promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority if other than the contracting officer, and the agency official’s immediate supervisor. As a minimum, the notice must—

(1) Identify the procurement;

(2) Describe the nature of the agency official’s participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The official must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance with [3.104-3](#)(c)(1)(ii).

(2) After the conditions of [3.104-3](#)(c)(1)(ii)(A) or (B) have been met, the head of the contracting activity (HCA), after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the integrity of

the procurement process. In determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) Government officer or employee must also comply with the provisions of [18 U.S.C. 208](#) and 5 CFR Part 2635 regarding any resumed participation in a procurement matter. Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual is seeking employment, unless the individual receives—

(i) A waiver pursuant to [18 U.S.C. 208\(b\)\(1\)](#) or (b)(3); or

(ii) An authorization in accordance with the requirements of Subpart F of 5 CFR Part 2635.

3.104-6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see [3.104-3\(d\)](#)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official before accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the—

(1) Procurement(s), or decision(s) on matters under [3.104-3\(d\)\(1\)\(iii\)](#), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d)(1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104-7 Violations or possible violations.

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see [3.104-3](#)) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the contracting officer may proceed with the procurement.

(ii) If that individual does not concur, the individual must promptly forward the information and documentation to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer must promptly forward the information to the HCA.

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action, such as—

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information

Subpart 4.5—Electronic Commerce in Contracting

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of electronic commerce in Federal acquisition as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act ([41 U.S.C. 426](#)).

4.501 [Reserved]

4.502 Policy.

(a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (*e.g.*, “copy,” “document,” “page,” “printed,” “sealed envelope,” and “stamped”) shall not be interpreted to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the FAR (*e.g.*, transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, as required by Section 30 of the OFPP Act ([41 U.S.C. 426](#)), the head of each agency, after consulting with the Administrator of OFPP, shall ensure that sys-

tems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

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

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

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

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

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

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

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

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Subpart 4.12—Representations and Certifications

4.1200 Scope.

This subpart prescribes policies and procedures for requiring submission and maintenance of representations and certifications via the Online Representations and Certifications Application (ORCA) to—

- (a) Eliminate the administrative burden for contractors of submitting the same information to various contracting offices; and
- (b) Establish a common source for this information to procurement offices across the Government.

4.1201 Policy.

(a) Prospective contractors shall complete electronic annual representations and certifications at <http://orca.bpn.gov> in conjunction with required registration in the Central Contractor Registration (CCR) database (see FAR 4.1102).

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

(2) When the conditions in paragraph (b) of the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, apply, contractors that represented they were small businesses prior to award of a contract must update the representations and certifications in ORCA as directed by the clause. Contractors that represented they were other than small businesses prior to award of a contract may update the representations and certifications in ORCA as directed by the clause, if their size status has changed since contract award.

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

4.1202 Solicitation provision and contract clause.

Except for commercial item solicitations issued under FAR Part 12, insert in solicitations the provision at 52.204-8, Annual Representations and Certifications. When the clause

at 52.204-7, Central Contractor Registration, is included in the solicitation, do not include the following representations and certifications:

- (a) 52.203-2, Certificate of Independent Price Determination.
- (b) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
- (c) 52.204-3, Taxpayer Identification.
- (d) 52.204-5, Women-Owned Business (Other Than Small Business).
- (e) 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
- (f) 52.214-14, Place of Performance—Sealed Bidding.
- (g) 52.215-6, Place of Performance.
- (h) 52.219-1, Small Business Program Representations (Basic & Alternate I).
- (i) 52.219-2, Equal Low Bids.
- (j) 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
- (k) 52.219-21, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.
- (l) 52.219-22, Small Disadvantaged Business Status (Basic & Alternate I).
- (m) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.
- (n) 52.222-22, Previous Contracts and Compliance Reports.
- (o) 52.222-25, Affirmative Action Compliance.
- (p) 52.222-38, Compliance with Veterans’ Employment Reporting Requirements.
- (q) 52.222-48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
- (r) 52.223-1, Biobased Product Certification.
- (s) 52.223-4, Recovered Material Certification.
- (t) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).
- (u) 52.223-13, Certification of Toxic Chemical Release Reporting.
- (v) 52.225-2, Buy American Act Certificate.
- (w) 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternate I & II).
- (x) 52.225-6, Trade Agreements Certificate.
- (y) 52.226-2, Historically Black College or University and Minority Institution Representation.
- (z) 52.227-6, Royalty Information (Basic & Alternate I).
- (aa) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

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5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

5.001 Definition.

“Contract action,” as used in this part, means an action resulting in a contract, as defined in [Subpart 2.1](#), including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

5.002 Policy.

Contracting officers must publicize contract actions in order to—

- (a) Increase competition;
- (b) Broaden industry participation in meeting Government requirements; and
- (c) Assist small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

5.003 Governmentwide point of entry.

For any requirement in the FAR to publish a notice, the contracting officer must transmit the notices to the GPE.

Subpart 5.1—Dissemination of Information**5.101 Methods of disseminating information.**

(a) As required by the Small Business Act ([15 U.S.C. 637\(e\)](#)) and the Office of Federal Procurement Policy Act ([41 U.S.C. 416](#)), contracting officers must disseminate information on proposed contract actions as follows:

- (1) For proposed contract actions expected to exceed \$25,000, by synopsisizing in the GPE (see [5.201](#)).
- (2) For proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of [5.207\(c\)](#). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted instead of a notice, the contracting officer may employ various methods of satisfying the requirements of [5.207\(c\)](#). For example, the contracting

officer may meet the requirements of [5.207\(c\)](#) by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at [5.207\(a\)\(1\)](#), (a)(4) through (a)(9), or (a)(11) apply, when oral solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing the information.

(b) In addition, one or more of the following methods may be used:

- (1) Preparing periodic handouts listing proposed contracts, and displaying them as in [5.101\(a\)\(2\)](#).
- (2) Assisting local trade associations in disseminating information to their members.
- (3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.

(4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:

(i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see [5.205\(d\)](#)).

(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in the District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia ([44 U.S.C. 3701](#)).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with [44 U.S.C. 3702](#) (see [5.502\(a\)](#)).

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(5) of this section, the contracting officer must make available through the GPE solicitations synopsisized through the GPE, including specifications, technical data, and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(2) The contracting officer is encouraged, when practicable and cost-effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer must ensure that solicitations transmitted using electronic commerce are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (*e.g.*, technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the Federal Technical Data Solution (FedTeDS) unless an exception in paragraph (a)(5) of this section applies. When FedTeDS is used, it shall be used in conjunction with the GPE to meet the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE, or make other information available through FedTeDS as required in paragraph (a)(4) of this section, when—

(i) Disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information, or information subject to export controls) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access to the solicitation through the GPE;

(iii) Agency procedures specify that the use of FedTeDS does not provide sufficient controls for the information to be made available and an alternative means of distributing the information is more appropriate; or

(iv) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

(6) When an acquisition contains brand name specifications, the contracting officer shall include with the solicitation the justification or documentation required by [6.302-1\(c\)](#), [13.106-1\(b\)](#), or [13.501](#), redacted as necessary (see [6.305](#)).

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(5) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.*, CD-ROM or electronic mail) whenever practicable and cost-

effective. When solicitations are provided electronically on physical media (*e.g.*, disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a “first-come-first-served” basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see [36.211](#)); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted; and

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in [5.101\(a\)](#) and (b), provide, upon request to small business concerns, as required by [15 U.S.C. 637\(b\)](#)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office who will answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see [Subpart 4.5](#)) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under [Part 6](#).

(f) This section [5.102](#) applies to classified contracts to the extent consistent with agency security requirements (see [5.202\(a\)\(1\)](#)).

Subpart 5.2—Synopsis of Proposed Contract Actions

5.201 General.

(a) As required by the Small Business Act ([15 U.S.C. 637\(e\)](#)) and the Office of Federal Procurement Policy Act ([41 U.S.C. 416](#)), agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in [5.202](#) and the special situations in [5.205](#), the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in [5.101\(a\)\(1\)](#);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in [5.101\(a\)\(1\)](#); or

(iii) Contract action in any amount when advantageous to the Government.

(2) When transmitting notices using electronic commerce, contracting officers must ensure the notice is forwarded to the GPE.

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d) The GPE may be accessed via the Internet at <http://www.fedbizopps.gov>.

5.202 Exceptions.

The contracting officer need not submit the notice required by [5.201](#) when—

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The proposed contract action is made under the conditions described in [6.302-2](#) (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in [5.203](#);

(3) The proposed contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international

agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The proposed contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see [5.205\(f\)](#)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The proposed contract action is for utility services other than telecommunications services and only one source is available;

(6) The proposed contract action is an order placed under [Subpart 16.5](#);

(7) The proposed contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(8) The proposed contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see [2.101](#)) and publication of any notice complying with [5.207](#) would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the proposed contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see [6.302-1\(a\)\(2\)\(i\)](#));

(9) The proposed contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The proposed contract action is made under conditions described in [6.302-3](#), or [6.302-5](#) with regard to brand name commercial items for authorized resale, or [6.302-7](#), and advance notice is not appropriate or reasonable;

(11) The proposed contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of [5.207](#) with respect to the current proposed contract action;

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. This exception does not apply to proposed contract actions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see [Subpart 25.4](#));

(13) The proposed contract action—

(i) Is for an amount not expected to exceed the simplified acquisition threshold;

(ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE; and

(iii) Permits the public to respond to the solicitation electronically; or

(14) The proposed contract action is made under conditions described in [6.302-3](#) with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

(b) The head of the agency determines in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under [5.201](#), they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE (see [5.201](#)). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis and solicitation procedure (see [12.603](#)).

(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions where the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Except for the acquisition of commercial items (see [5.203\(b\)](#)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the proposed contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the

notice required in [5.201](#) for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

(f) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(g) Contracting officers may, unless they have evidence to the contrary, presume the notice was published one day after transmission to the GPE. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the proposed contract action under the authority of [5.202\(a\)\(2\)](#).

(h) In addition to other requirements set forth in this section, for acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see [Subpart 25.4](#)), the period of time between publication of the synopsis notice and receipt of offers must be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published, the contracting officer may reduce this time period to as few as 10 days.

5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see [15.201](#) and [36.213-2](#)). The contracting officer must synopsise a proposed contract action before issuing any resulting solicitation (see [5.201](#) and [5.203](#)).

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may transmit to the GPE advance notices of their interest in potential R&D programs whenever market research does not produce a sufficient number of concerns to obtain adequate competition. Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Contracting officers must consider potential sources which respond to advance notices for a subsequent solicitation. Advance notices must be entitled “Research and Development Sources Sought,” cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers must synopsise (see [5.201](#)) all subsequent solicitations for R&D contracts,

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 items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items, to the maximum extent practicable ([10 U.S.C. 2377](#) and [41 U.S.C. 251, et seq.](#)); 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. 2301\(a\)\(5\)](#) and [41 U.S.C. 253a\(a\)\(1\)](#)).

(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 for—

(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. 2301\(a\)\(5\)](#) and [41 U.S.C. 253a\(a\)\(1\)](#)).

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations ([10 U.S.C. 2377](#) and [41 U.S.C. 251, et seq.](#)); and

(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. 2305\(a\)\(1\)\(A\)](#) and [41 U.S.C. 253a\(a\)\(1\)](#)). (See [Part 6](#) and [10.002](#).)

(d) 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, specifying those cases in which a written plan shall be prepared.

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

(f) 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.

(g) Designating planners for acquisitions.

(h) Reviewing and approving acquisition plans and revisions to these plans.

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

(j) Establishing standard acquisition plan formats, if desired, suitable to agency needs; and

(k) 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.

(l) 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.

(m) 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.

(n) Ensuring that agency planners—

(1) Specify needs for printing and writing paper consistent with the minimum content standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see [11.303](#)); and

(2) Comply with the policy in [11.002](#)(d) regarding procurement of biobased products, products containing recovered materials, and environmentally preferable and energy-efficient products and services.

(o) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions that address Electronic and Information Technology Accessibility Standards (see 36 CFR Part 1194) in proposed acquisitions (see [11.002](#)(e)) and that these standards are included in requirements planning, as appropriate (see [Subpart 39.2](#)).

(p) 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](#).

(q) 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.

(r) 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.

(s) 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\(j\)](#)).

(t) 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.

(u) 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.

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, fiscal, legal, and technical personnel. 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 competition advocate.

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under [Part 19](#). The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. If the strategy involves substantial bundling, the small business specialist shall assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(2)(i) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

(A) \$7.5 million or more for the Department of Defense;

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

As used in this part—

“Reconditioned” means restored to the original normal operating condition by readjustments and material replacement.

“Remanufactured” means factory rebuilt to original specifications.

11.002 Policy.

(a) In fulfilling requirements of [10 U.S.C. 2305\(a\)\(1\)](#), [10 U.S.C. 2377](#), [41 U.S.C. 253a\(a\)](#), and [41 U.S.C. 264b](#), agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see [Part 6](#)), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 ([15 U.S.C. 205a](#), *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each

agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with [Subpart 9.5](#), potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see [7.101](#) and [7.105\(a\)\(8\)](#)).

(d)(1) When agencies acquire products and services, various statutes and executive orders (identified in [Part 23](#)) require consideration of—

(i) Energy-efficient products and services ([Subpart 23.2](#));

(ii) Products and services that utilize renewable energy technologies ([Subpart 23.2](#));

(iii) Products containing energy-efficient standby power devices ([Subpart 23.2](#));

(iv) Products containing recovered materials ([Subpart 23.4](#));

(v) Biobased products ([Subpart 23.4](#)); and

(vi) Environmentally preferable products and services ([Subpart 23.7](#)).

(2) Executive agencies shall consider maximum practicable use of products and services listed in paragraph (d)(1) of this section when—

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for products and services; and

(iii) Developing source-selection factors.

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

(f) In accordance with Section 508 of the Rehabilitation Act of 1973 ([29 U.S.C. 794d](#)), requiring activities must prepare requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see [Subpart 39.2](#))

(g) Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR [7.108\(a\)](#).

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

- (1) Documents mandated for use by law.
- (2) Performance-oriented documents (*e.g.*, a PWS or SOO). (See [2.101](#).)
- (3) Detailed design-oriented documents.
- (4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) In accordance with OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (*e.g.*, industry standards such as ISO 9000).

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM-0001; for DoD components, DoD 4120.24-M, Defense Standardization Program Policies and Procedures; and for IT standards and guidance, the Federal Information Processing Standards Publications (FIPS PUBS). The Federal Standardization Manual may be obtained from the General Services Administration (see address in [11.201](#)(d)(1)). DoD 4120.24-M may be obtained from DoD (see [11.201](#)(d)(2) or [11.201](#)(d)(3)). FIPS PUBS may be obtained from the Government Printing Office (GPO), or the Department of Commerce's National Technical Information Service (NTIS) (see address in [11.201](#)(d)(4)).

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103-355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

- (1) Have either—
 - (i) Achieved commercial market acceptance; or
 - (ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

- (1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;
- (2) Relate to an item's performance and intended use, not an offeror's capability;
- (3) Are supported by market research;
- (4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and
- (5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

- (1) Describe the circumstances justifying the use of commercial market acceptance criteria; and
- (2) Support the specific criteria being used.

11.104 Use of brand name or equal purchase descriptions.

(a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.

(b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

11.105 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to require a particular brand name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a)(1) The particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or prod-

ucts lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs;

(2)(i) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see [6.302-1](#)); or

(ii) The basis for not providing for maximum practicable competition is documented in the file (see [13.106-1\(b\)](#)) or justified (see [13.501](#)) when the acquisition is awarded using simplified acquisition procedures.

(3) The documentation or justification is posted for acquisitions over \$25,000. (See [5.102\(a\)\(6\)](#).)

(b) For multiple award schedule orders, see [8.405-6](#).

11.106 Purchase descriptions for service contracts.

In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see [Subpart 7.5](#)) are not assigned to a contractor. These purchase descriptions shall—

(a) Reserve final determination for Government officials;

(b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and

(c) Require suitable marking of all documents or reports produced by contractors.

11.107 Solicitation provision.

(a) Insert the provision at [52.211-6](#), Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

(b) Insert the provision at [52.211-7](#), Alternatives to Government-Unique Standards, in solicitations that use Government-unique standards when the agency uses the transaction-based reporting method to report its use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"). Use of the provision is optional for agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method. Agencies that manage their specifications on a contract-by-contract basis use the transaction-based method of reporting. Agencies that manage their specifications centrally use the categorical method of reporting. Agency regulations regarding specification management describe which method is used.

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Subpart 11.3—Acceptable Material

11.301 Definitions.

As used in this subpart—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

“Recovered material” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber.

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

11.302 Policy.

(a) Agencies must not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b)(1) When acquiring other than commercial items, agencies must require offerors to identify used, reconditioned, or remanufactured supplies; or unused former Government surplus property proposed for use under the contract. These sup-

plies or property may not be used in contract performance unless authorized by the contracting officer.

(2) When acquiring commercial items, the contracting officer must consider the customary practices in the industry for the item being acquired. The contracting officer may require offerors to provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property proposed for use under the contract. The request for the information must be included in the solicitation, and to the maximum extent practicable must be limited to information or standards consistent with normal commercial practices.

(c)(1) When the contracting officer needs additional information to determine whether supplies meet minimum recovered material or biobased standards stated in the solicitation, the contracting officer may require offerors to submit additional information on the recycled or biobased content or related standards. The request for the information must be included in the solicitation. When acquiring commercial items, limit the information to the maximum extent practicable to that available under normal commercial practices.

(2) For biobased products, the contracting officer may require vendors to provide information on life cycle costs and environmental and health benefits in accordance with 7 CFR 2902.8.

11.303 Special requirements for printing and writing paper.

(a) Section 505 of Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establishes minimum recovered material content standards for agency purchases of printing and writing paper. Section 505 requires that 100 percent of an agency’s purchases of printing and writing paper must meet or exceed one of the minimum content standards specified in paragraph (b) of this section.

(b) For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent postconsumer materials. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency must purchase paper containing no less than 20 percent postconsumer material.

11.304 Contract clause.

Insert the clause at [52.211-5](#), Material Requirements, in solicitations and contracts for supplies that are not commercial items.

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12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see [Part 27](#) or agency FAR supplements).

12.212 Computer software.

(a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract. For additional guidance regarding the use and negotiation of license agreements for commercial computer software, see [27.405-3](#).

12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See [30.201-1](#) for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in [30.201](#).

12.215 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

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Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Public Law 103-355 ([41 U.S.C. 264](#), note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at [52.212-1](#), Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, [SF 1449](#)). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with [12.302](#).

(2) *The provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with [Subpart 1.4](#). Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at [4.601](#)(a). Use the provision with its Alternate II in solicitations for acquisitions for which small disadvantaged business procurement mechanisms are authorized on a regional basis.

(3) *The clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. The contracting officer may tailor this clause in accordance with [12.302](#).

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—*

Commercial Items. This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5](#)(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104](#)(d). When cost information is obtained pursuant to [Part 15](#) to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored. Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at [52.212-2](#), Evaluation—Commercial Items, in solicitations for commercial items (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [Subpart 14.2](#) or [Subpart 15.3](#), as an addendum (see [12.302](#)(d)).

(d) *Use of required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in [12.302](#). For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at [16.506](#) may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in [17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of recovered material and biobased products when appropriate for the item being acquired.

(4) When setting aside under the Stafford Act ([Subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the Online Representations and Certifications Application (ORCA) Database.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring [52.212-4](#), Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [Subpart 32.11](#));
- (4) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace,

support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the [SF 1449](#) if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the [SF 1449](#); a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the [SF 1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this [Part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

- (a) [Standard Form \(SF\) 1449](#);
- (b) Continuation of any block from [SF 1449](#), such as—
 - (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage), or if set aside for emerging small businesses;
 - (2) Block 18B for remittance address;
 - (3) Block 19 for contract line item numbers;
 - (4) Block 20 for schedule of supplies/services; or
 - (5) Block 25 for accounting data;
- (c) Contract clauses—
 - (1) [52.212-4](#), Contract Terms and Conditions—Commercial Items, by reference (see [SF 1449](#) block 27a);
 - (2) Any addendum to [52.212-4](#); and
 - (3) [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes and Executive orders;
- (d) Any contract documents, exhibits or attachments; and
- (e) Solicitation provisions—
 - (1) [52.212-1](#), Instructions to Offerors—Commercial Items, by reference (see [SF 1449](#), Block 27a);
 - (2) Any addendum to [52.212-1](#);
 - (3) [52.212-2](#), Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and
 - (4) [52.212-3](#), Offeror Representations and Certifications—Commercial Items.

cable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

13.006 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

- (a) [52.203-5](#), Covenant Against Contingent Fees.
- (b) [52.203-6](#), Restrictions on Subcontractor Sales to the Government.
- (c) [52.203-7](#), Anti-Kickback Procedures.
- (d) [52.215-2](#), Audits and Records—Negotiation.
- (e) [52.222-4](#), Contract Work Hours and Safety Standards Act—Overtime Compensation.
- (f) [52.223-6](#), Drug-Free Workplace, except for individuals.
- (g) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

Subpart 13.1—Procedures

13.101 General.

- (a) In making purchases, contracting officers shall—
 - (1) Comply with the policy in [7.202](#) relating to economic purchase quantities, when practicable;
 - (2) Satisfy the procedures described in [Subpart 19.6](#) with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see [Subpart 9.1](#)); and
 - (3) Provide for the inspection of supplies or services as prescribed in [46.404](#).
- (b) In making purchases, contracting officers should—
 - (1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an “all-or-none” or “multiple award” basis provided suppliers are so advised when quotations or offers are requested;
 - (2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in [52.102](#) are satisfied;
 - (3) Make maximum effort to obtain trade and prompt payment discounts (see [14.408-3](#)). Prompt payment discounts shall not be considered in the evaluation of quotations; and
 - (4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational

authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

13.102 Source list.

(a) Contracting officers should use the Central Contractor Registration database (see [Subpart 4.11](#)) at <http://www.ccr.gov> as their primary sources of vendor information. Offices maintaining additional vendor source files or listings should identify the status of each source (when the status is made known to the contracting office) in the following categories:

- (1) Small business.
- (2) Small disadvantaged business.
- (3) Women-owned small business.
- (4) HUBZone small business.
- (5) Service-disabled veteran-owned small business.
- (6) Veteran-owned small business.

(b) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

- (a) The pricing information is current; and
- (b) The Government obtains the benefit of maximum discounts before award.

13.104 Promoting competition.

The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

- (a) The contracting officer must not—
 - (1) Solicit quotations based on personal preference; or
 - (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.
- (b) If using simplified acquisition procedures and not providing access to the notice of proposed contract action and solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to [5.101](#) and an exception under [5.202](#) is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

(a) The contracting officer must comply with the public display and synopsis requirements of [5.101](#) and [5.203](#) unless an exception in [5.202](#) applies.

(1)(i) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(ii) The GPE is used at or below the simplified acquisition threshold for providing widespread public notice of acquisition opportunities and offerors are provided a means of responding to the solicitation electronically; or

(2) An exception in [5.202](#) applies.

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1), the contracting officer may use a combined synopsis and solicitation. In these cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

(c) See [5.102\(a\)\(6\)](#) for the requirement to post a brand name justification or documentation required by [13.106-1\(b\)](#) or [13.501](#).

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**13.106-1 Soliciting competition.**

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in [13.104](#) and the following before requesting quotations or offers:

(1)(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) An electronic commerce method that employs widespread electronic public notice is not available; and

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, *e.g.*, past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (*e.g.*, urgency, exclusive licensing agreements, brand name or industrial mobilization).

(2) For sole source (including brand name) acquisitions of commercial items in excess of the simplified acquisition

threshold conducted pursuant to [Subpart 13.5](#) the requirements at 13.501(a) apply.

(3) See [5.102\(a\)\(6\)](#) for the requirement to post the brand name justification or documentation.

(c) *Soliciting orally.* (1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

(i) The acquisition does not exceed the simplified acquisition threshold;

(ii) Oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and

(iii) Notice is not required under [5.101](#).

(2) However, an oral solicitation may not be practicable for contract actions exceeding \$30,000 unless covered by an exception in [5.202](#).

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed \$30,000. The contracting officer shall issue a written solicitation for construction requirements exceeding \$2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of [Subpart 17.2](#) are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including electronic commerce) if doing so would not interfere with the efficient conduct of the acquisition.

13.106-2 Evaluation of quotations or offers.

(a) *General.* (1) The contracting officer shall evaluate quotations or offers—

(i) In an impartial manner; and

(ii) Inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(2) Quotations or offers shall be evaluated on the basis established in the solicitation.

(3) All quotations or offers shall be considered (see paragraph (b) of this subsection).

(b) *Evaluation procedures.* (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in [Parts 14](#) and [15](#) are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in [Part 14](#) or [15](#) may be used.

(2) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer because it includes telecommuting unless the contracting officer executes a written determination in accordance with FAR [7.108\(b\)](#).

(3) If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally

burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance—

(i) Does not require the creation or existence of a formal data base; and

(ii) May be based on information such as the contracting officer's knowledge of and previous experience with the supply or service being acquired, customer surveys, or other reasonable basis.

(4) For acquisitions conducted using a method that permits electronic response to the solicitation, the contracting officer may—

(i) After preliminary consideration of all quotations or offers, identify from all quotations or offers received one that is suitable to the user, such as the lowest priced brand name product, and quickly screen all lower priced quotations or offers based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers having the highest past performance rating possible represents the best value when compared to any lower priced quotation or offer.

13.106-3 Award and documentation.

(a) *Basis for award.* Before making award, the contracting officer must determine that the proposed price is fair and reasonable.

(1) Whenever possible, base price reasonableness on competitive quotations or offers.

(2) If only one response is received, include a statement of price reasonableness in the contract file. The contracting officer may base the statement on—

(i) Market research;

(ii) Comparison of the proposed price with prices found reasonable on previous purchases;

(iii) Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price;

(iv) A comparison with similar items in a related industry;

(v) The contracting officer's personal knowledge of the item being purchased;

(vi) Comparison to an independent Government estimate; or

(vii) Any other reasonable basis.

(3) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that

either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(b) *File documentation and retention.* Keep documentation to a minimum. Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see [Subpart 4.8](#)). The following illustrate the extent to which quotation or offer information should be recorded:

(1) *Oral solicitations.* The contracting office should establish and maintain records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) *Written solicitations* (see [2.101](#)). For acquisitions not exceeding the simplified acquisition threshold, limit written records of solicitations or offers to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(3) *Special situations.* Include additional statements—

(i) Explaining the absence of competition (see [13.106-1](#) for brand name purchases) if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold (does not apply to an acquisition of utility services available from only one source); or

(ii) Supporting the award decision if other than price-related factors were considered in selecting the supplier.

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through an electronic commerce method that employs widespread electronic public notice, notification to unsuccessful suppliers shall be given only if requested or required by [5.301](#).

(d) *Request for information.* If a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see [15.503\(b\)\(2\)](#)).

(e) *Taxpayer Identification Number.* If an oral solicitation is used, the contracting officer shall ensure that the copy of the award document sent to the payment office is annotated with the contractor's Taxpayer Identification Number (TIN) and type of organization (see [4.203](#)), unless this information will be obtained from some other source (*e.g.*, centralized database). The contracting officer shall disclose to the contractor that the TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)).

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Subpart 13.2—Actions At or Below the Micro-Purchase Threshold

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see [1.603-3](#)).

(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see [2.101](#)).

(c) Purchases at or below the micro-purchase threshold may be conducted using any of the methods described in [Subpart 13.3](#), provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods.

(d) Micro-purchases do not require provisions or clauses, except as provided at [4.1104](#) and [32.1110](#). This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause.

(e) The requirements in [Part 8](#) apply to purchases at or below the micro-purchase threshold.

(f) The procurement requirements in [Subparts 23.2](#), [23.4](#), and [23.7](#) apply to purchases at or below the micro-purchase threshold.

(g)(1) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the micro-purchase threshold is —

(i) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

(2) Purchases using this authority must have a clear and direct relationship to the support of a contingency operation or the defense against or recovery from nuclear, biological, chemical, or radiological attack.

13.202 Purchase guidelines.

(a) *Solicitation, evaluation of quotations, and award.*

(1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with [1.603-3\(b\)](#) considers the price to be reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with [1.603-3\(b\)](#) suspects or has information to indicate that the price may not be reasonable (*e.g.*, comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (*e.g.*, a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.

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13.305-2 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

- (a) Periodically review and determine whether there is a continuing need for each fund or third party draft account established, and that amounts of those funds or accounts are not in excess of actual needs;
- (b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and
- (c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—
 - (1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and
 - (2) Documentation of purchases using imprest funds or third party drafts, including documentation of—
 - (i) Receipt and acceptance of supplies and services by the Government;
 - (ii) Receipt of cash or third party draft payments by the suppliers; and
 - (iii) Cash advances and reimbursements.

13.305-3 Conditions for use.

Imprest funds or third party drafts may be used for purchases when—

- (a) The imprest fund transaction does not exceed \$500 or such other limits as have been approved by the agency head;
- (b) The third party draft transaction does not exceed \$2,500, unless authorized at a higher level in accordance with Treasury restrictions;
- (c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and
- (d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in [13.305-1](#).

13.305-4 Procedures.

- (a) Each purchase using imprest funds or third party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring that adequate funds are available for the purchase.
- (b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.
- (c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.
- (d) Forms prescribed at 13.307(e) may be used if a written order is considered necessary (*e.g.*, if required by the supplier

for discount, tax exemption, or other reasons). If a purchase order is used, endorse it “Payment to be made from Imprest Fund” (or “Payment to be made from Third Party Draft,” as appropriate).

(e) The individual authorized to make purchases using imprest funds or third party drafts shall—

- (1) Furnish to the imprest fund or third party draft cashier a copy of the document required under paragraph (a) of this subsection annotated to reflect—
 - (i) That an imprest fund or third party draft purchase has been made;
 - (ii) The unit prices and extensions; and
 - (iii) The supplier’s name and address; and
- (2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—
 - (i) The supplier’s name and address;
 - (ii) List and quantity of items supplied;
 - (iii) Unit prices and extensions; and
 - (iv) Cash discount, if any.

13.306 SF 44, Purchase Order—Invoice—Voucher.

The [SF 44](#), Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It also can be used as a receiving report, invoice, and public voucher.

- (a) This form may be used if all of the following conditions are satisfied:
 - (1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations. Agencies may establish higher dollar limitations for specific activities or items.
 - (2) The supplies or services are immediately available.
 - (3) One delivery and one payment will be made.
 - (4) Its use is determined to be more economical and efficient than use of other simplified acquisition procedures.
- (b) General procedural instructions governing the form’s use are printed on the form and on the inside front cover of each book of forms.
- (c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using this form.
- (d) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.307 Forms.

- (a) *Commercial items.* For use of the [SF 1449](#), Solicitation/Contract/Order for Commercial Items, see [12.204](#).
- (b) *Other than commercial items.* (1) Except when quotations are solicited electronically or orally, the [SF 1449](#); [SF 18](#),

Request for Quotations; or an agency form/automated format may be used. Each agency request for quotations form/automated format should conform with the [SF 18](#) or [SF 1449](#) to the maximum extent practicable.

(2) Both [SF 1449](#) and [OF 347](#), Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format also may be used.

(c) *Forms used for both commercial and other than commercial items.* (1) [OF 336](#), Continuation Sheet, or an agency form/automated format may be used when additional space is needed.

(2) [OF 348](#), Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be

used for negotiated purchases when additional space is needed. Agencies may print on these forms the clauses considered to be generally suitable for purchases.

(3) [SF 30](#), Amendment of Solicitation/Modification of Contract, or a purchase order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.

(d) [SF 44](#), Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form that may be used as outlined in [13.306](#).

(e) [SF 1165](#), Receipt for Cash—Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

- A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR [15.403-4](#). Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.
- (1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR [15.403-4](#) priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR [31.205-26\(e\)](#)).
- (2) *All Other.* Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR [15.403-4](#) and not otherwise exempt, in accordance with FAR [15.403-1\(b\)](#) (i.e., adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either \$11.5 million or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's cost or pricing data is required as described in this paragraph, it must be included along with your own cost or pricing data submission, as part of your own cost or pricing data. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.
- B. *Direct Labor.* Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.
- C. *Indirect Costs.* Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.
- D. *Other Costs.* List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.
- E. *Royalties.* If royalties exceed \$1,500, you must provide the following information on a separate page for each separate royalty or license fee:
- (1) Name and address of licensor.
 - (2) Date of license agreement.
 - (3) Patent numbers.
 - (4) Patent application serial numbers, or other basis on which the royalty is payable.
 - (5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable)
 - (6) Percentage or dollar rate of royalty per unit.
 - (7) Unit price of contract item.
 - (8) Number of units.
 - (9) Total dollar amount of royalties.
 - (10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see FAR [27.202](#) and [31.205-37](#)).
- F. *Facilities Capital Cost of Money.* When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB-CMF and show the calculation of the proposed amount (see FAR [31.205-10](#)).

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

III. Formats for Submission of Line Item Summaries

A. New Contracts (including letter contracts).

COST ELEMENTS (1)	PROPOSED CONTRACT ESTIMATE— TOTAL COST (2)	PROPOSED CONTRACT ESTIMATE— UNIT COST (3)	REFERENCE (4)
----------------------	--	---	------------------

Column

Instruction

- | | |
|-----|---|
| (1) | Enter appropriate cost elements. |
| (2) | Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (<i>e.g.</i> , under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. |
| (3) | Optional, unless required by the Contracting Officer. |
| (4) | Identify the attachment in which the information supporting the specific cost element may be found.
(Attach separate pages as necessary.) |

B. Change Orders, Modifications, and Claims.

COST ELEMENTS (1)	ESTIMATED COST OF ALL WORK DELETED (2)	COST OF DELETED WORK ALREADY PERFORMED (3)	NET COST TO BE DELETED (4)	COST OF WORK ADDED (5)	NET COST OF CHANGE (6)	REFERENCE (7)
----------------------	---	---	----------------------------------	------------------------------	------------------------------	------------------

Column

Instruction

- | | |
|-----|---|
| (1) | Enter appropriate cost elements. |
| (2) | Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed. |
| (3) | Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them. |
| (4) | Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4). |
| (5) | Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule. |
| (6) | Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses. |
| (7) | Identify the attachment in which the information supporting the specific cost element may be found.
(Attach separate pages as necessary.) |

18.000 Scope of part.

(a) This part identifies acquisition flexibilities that are available for emergency acquisitions. These flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process. This part includes—

- (1) Generally available flexibilities; and
- (2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in FAR [Part 3](#), Improper Business Practices and Personal Conflicts of Interest.

(c) Additional flexibilities may be authorized in an executive agency supplement to the FAR.

18.001 Definition.

“Emergency acquisition flexibilities”, as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used—

- (a) In support of a contingency operation as defined in [2.101](#);
- (b) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or
- (c) When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

The FAR includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These acquisition flexibilities do not require an emergency declaration or designation of contingency operation.

18.102 Central contractor registration.

Contracts awarded to support unusual and compelling needs or emergency acquisitions are exempt from the requirements pertaining to Central Contractor Registration. (See [4.1102](#).)

18.103 Synopses of proposed contract actions.

Contracting officers need not submit a synopsis notice when there is an unusual and compelling urgency and the Government would be seriously injured if the agency complied with the notice time periods. (See [5.202](#)(a)(2).)

18.104 Unusual and compelling urgency.

Agencies may limit the number of sources and full and open competition need not be provided for contracting actions involving urgent requirements. (See [6.302-2](#).)

18.105 Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts.

Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedule contracts (see [Subpart 8.4](#)), multi-agency BPAs (See [8.405-3](#)(a)(4)), or multi-agency, indefinite-delivery contracts (see [16.505](#)(a)(7)). These contracting methods may offer agency advance planning, pre-negotiated line items, and special terms and conditions that permit rapid response.

18.106 Acquisitions from Federal Prison Industries, Inc. (FPI).

Purchase from FPI is not mandatory and a waiver is not required if public exigency requires immediate delivery or performance (see [8.605](#)(b)).

18.107 Javits-Wagner-O’Day (JWOD) specification changes.

Contracting officers are not held to the notification required when changes in JWOD specifications or descriptions are required to meet emergency needs. (See [8.712](#)(d).)

18.108 Qualifications requirements.

Agencies may determine not to enforce qualification requirements when an emergency exists. (See [9.206-1](#).)

18.109 Priorities and allocations.

The Defense Priorities and Allocations System (DPAS) supports authorized national defense programs and was established to facilitate rapid industrial mobilization in case of a national emergency. (See [Subpart 11.6](#).)

18.110 Soliciting from a single source.

For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source under certain circumstances. (See [13.106-1](#)(b).)

18.111 Oral requests for proposals.

Oral requests for proposals are authorized under certain conditions. (See [15.203](#)(f).)

18.112 Letter contracts.

Letter contracts may be used when contract performance must begin immediately. (See [16.603](#).)

18.113 Interagency acquisitions under the Economy Act.

Interagency acquisitions are authorized under certain conditions. (See [Subpart 17.5](#).)

18.114 Contracting with the Small Business**Administration (The 8(a) Program).**

Contracts may be awarded to the Small Business Administration (SBA) for performance by eligible 8(a) firms on either a sole source or competitive basis. (See [Subpart 19.8](#).)

18.115 HUBZone sole source awards.

Contracts may be awarded to Historically Underutilized Business Zone (HUBZone) small business concerns on a sole source basis. (See [19.1306](#).)

18.116 Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.

Contracts may be awarded to Service-disabled Veteran-owned Small Business (SDVOSB) concerns on a sole source basis. (See [19.1406](#).)

18.117 Overtime approvals.

Overtime approvals may be retroactive if justified by emergency circumstances. (See [22.103-4\(i\)](#).)

18.118 Trade agreements.

The policies and procedures of FAR [25.4](#) may not apply to acquisitions not awarded under full and open competition (see [25.401\(a\)\(5\)](#)).

18.119 Use of patented technology under the North American Free Trade Agreement.

Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. (See [27.204-1](#).)

18.120 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions when a performance bond or a performance bond and payment bond is required. (See [28.101-1\(c\)](#).)

18.121 Advance payments.

Agencies may authorize advance payments to facilitate the national defense for actions taken under Public Law 85-804 (see [Subpart 50.1](#), Extraordinary Contractual Actions). These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts. (See [32.405](#).)

18.122 Assignment of claims.

The use of the no-setoff provision may be appropriate to facilitate the national defense in the event of a national emergency or natural disaster. (See [32.803\(d\)](#).)

18.123 Electronic funds transfer.

Electronic funds transfer payments may be waived for acquisitions to support unusual and compelling needs or emergency acquisitions. (See [32.1103\(e\)](#).)

18.124 Protest to GAO.

When urgent and compelling circumstances exist, agency protest override procedures allow the head of the contracting activity to determine that the contracting process may continue after GAO has received a protest. (See [33.104\(b\)](#) and (c).)

18.125 Contractor rent-free use of Government property.

Rental requirements do not apply to items of Government production and research property that are part of a general program approved by the Federal Emergency Management Agency and meet certain criteria. (See [45.301](#).)

18.126 Extraordinary contractual actions.

[Subpart 50.1](#) prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 ([50 U.S.C. 1431-1434](#)). This includes—

(a) Amending contracts without consideration (see [50.103-2\(a\)](#));

(b) Correcting or mitigating mistakes in a contract (see [50.103-2\(b\)](#)); and

(c) Formalizing informal commitments (See [50.103-2\(c\)](#)).

19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act ([15 U.S.C. 631](#), *et seq.*), applicable sections of the Armed Services Procurement Act ([10 U.S.C. 2302](#), *et seq.*), the Federal Property and Administrative Services Act ([41 U.S.C. 252](#)), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), [10 U.S.C. 2323](#), and Executive Order 12138, May 18, 1979. It covers—

- (1) The determination that a concern is eligible for participation in the programs identified in this part;
- (2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;
- (3) Setting acquisitions aside for exclusive competitive participation by small business, HUBZone small business, and service-disabled veteran-owned small business concerns;
- (4) The certificate of competency program;
- (5) The subcontracting assistance program;
- (6) The “8(a)” program, under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;
- (7) The use of women-owned small business concerns;
- (8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns;
- (9) The Small Disadvantaged Business Participation Program;
- (10) [Reserved];
- (11) The use of veteran-owned small business concerns; and
- (12) Sole source awards to HUBZone small business and service-disabled veteran-owned small business concerns.

(b) This part, except for [Subpart 19.6](#), applies only in the United States or its outlying areas. [Subpart 19.6](#) applies worldwide.

19.001 Definitions.

As used in this part—

“Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see [19.101](#)), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

“Fair market price” means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see [19.202-6](#)).

“Industry” means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>).

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

Subpart 19.1—Size Standards**19.101 Explanation of terms.**

As used in this subpart—

“Affiliates.” Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located in the United States or its outlying areas.

(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(2) *Meaning of “party or parties.”* The term “party” or “parties” includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern’s voting stock.

(ii) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern’s

voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(4) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(5) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related indus-

try or field operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships—*
(i) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consenting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(A) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(B) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(1) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(2) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.

(ii) *Joint venture—acquisition and property sale assistance.* Concerns bidding on a particular acquisition or property sale as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties. The rules governing 8(a) Program joint ventures are described in 13 CFR 124.513.

(iii) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(iv) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to

profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(v) *Size determination for teaming arrangements.*

For size determination purposes, apply the size standard tests in paragraphs (7)(i)(A) and (B) of this section when a teaming arrangement of two or more business concerns submits an offer, as appropriate.

“Annual receipts.” (1) Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffiliate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

(i) In any case of change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be restated to the accrual method. In any case, where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated on an accrual basis using the percentage of completion method.

(ii) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, “annual receipts” shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(2) Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. In calculating total receipts, the definitions and adjustments related to a change of accounting method and the completed contract method of paragraph (1) of this definition, are applicable.

“Number of employees” is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, “number of employees” means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant’s number of employees, to include the affiliate’s number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period.

19.102 Size standards.

(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR Part 121.)

(b) Small business size standards are applied by—

(1) Classifying the product or service being acquired in the industry whose definition, as found in the North American Industry Classification System (NAICS) Manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>), best describes the principal nature of the product or service being acquired;

(2) Identifying the size standard SBA established for that industry; and

(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.

(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a “nonmanufacturer”), is a small business if it has no more than 500 employees, and—

(1) Except as provided in paragraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas. The term “nonmanufacturer” includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. However, see the limitations on subcontracting at [52.219-14](#) that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

(2) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

(3) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(4) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in

a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant a class waiver so that a nonmanufacturer does not have to furnish the product of a small business. For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available on SBA’s Internet Homepage at <http://www.sba.gov/gc>. Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(5) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(6) Requests for waivers shall be sent to the—

Associate Administrator for Government Contracting
United States Small Business Administration
Mail Code 6250
409 Third Street, SW
Washington, DC 20416.

(7) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in [Part 13](#)—

(A) Is set aside for small business; and

(B) Is not anticipated to exceed \$25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

(g) The industry size standards are published by the Small Business Administration and are available via the Internet at <http://www.sba.gov/size>.

period. The contracting officer must not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the contract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years.

(2) The contracting officer may include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. At the time of option exercise, the contracting officer must incorporate a new wage determination into the contract, and must apply the specific pricing method to calculate the contract price adjustment. An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (e.g., the U.S. Army Computer-Aided Cost Estimating System or similar commercial product), which is multiplied in the contract by a factor proposed by the contractor (e.g., .95 or 1.1). At option exercise, the contracting officer incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed to in the basic contract. The contracting officer must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.

(3) The contracting officer may provide for a contract price adjustment based solely on a percentage rate determined by the contracting officer using a published economic indicator incorporated into the solicitation and resulting contract. At the exercise of each option to extend the term of the contract, the contracting officer will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the contract clause as labor costs subject to the provisions of the Davis-Bacon Act. The contracting officer must insert 50 percent as the estimated portion of the contract price that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(4) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract.

Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Act and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

22.405 [Reserved]

22.406 Administration and enforcement.

22.406-1 Policy.

(a) *General.* Contracting agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts. Contracting agencies shall maintain an effective program that shall include—

(1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints; and

(4) Prompt submission of all reports required by this subpart.

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

22.406-2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR 3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness

insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at [52.222-6](#), Davis-Bacon Act, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if a contractor pays a monthly health insurance premium of \$112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing \$112 by 125 hours, which equals \$0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with a hourly rate of pay of \$5.00 is determined by multiplying \$5.00 by 72 (9 days at 8 hours each), and dividing the result of \$360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, (*i.e.*, 1 1/2 times the basic hourly rate of pay) the contractor shall use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

22.406-3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at [52.222-6](#), Davis-Bacon Act, shall require that the contractor submit to the contracting officer, [Standard Form \(SF\) 1444](#), Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of [SF 1444](#) from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this subsection are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of [SF 1444](#)) of that action to the Administrator, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the contracting officer shall submit a report (including a copy of [SF 1444](#)) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)(1) Within 30 days of receipt of the report, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the contracting officer shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at [52.222-6](#) and that workers in the affected classification receive no less than the minimum rate indicated from the

**PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY,
RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND
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23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government’s program for ensuring a drug-free workplace and for protecting and improving the quality of the environment by—

- (a) Controlling pollution;
- (b) Managing energy and water use in Government facilities efficiently;
- (c) Using renewable energy and renewable energy technologies;

(d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable products, products that use recovered materials, and biobased products; and

(e) Requiring contractors to identify hazardous materials.

23.001 Definition.

“Toxic chemical,” as used in this part, means a chemical or chemical category listed in 40 CFR 372.65.

Subpart 23.1—[Reserved]

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Subpart 23.4—Use of Recovered Materials and Biobased Products

23.400 Scope of subpart.

(a) The procedures in this subpart apply to all agency acquisitions of an Environmental Protection Agency (EPA) or United States Department of Agriculture (USDA)-designated item, if—

(1) The price of the designated item exceeds \$10,000; or

(2) The aggregate amount paid for designated items, or for functionally equivalent designated items, in the preceding fiscal year was \$10,000 or more.

(b) While micro-purchases are included in determining the aggregate amount paid under paragraph (a)(2) of this section, it is not recommended that an agency track micro-purchases when—

(1) The agency anticipates the aggregate amount paid will exceed \$10,000; or

(2) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

23.401 Definitions.

As used in this subpart—

(a) “EPA-designated item” means a product that is or can be made with recovered material—

(1) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(2) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

(b) “USDA-designated item” means a generic grouping of products that are or can be made with biobased materials—

(1) That is listed by USDA in a procurement guideline (7 CFR part 2902, subpart B); and

(2) For which USDA has provided purchasing recommendations.

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), [42 U.S.C. 6962](#).

(b) The Farm Security and Rural Investment Act of 2002 (FSRIA), [7 U.S.C. 8102](#).

(c) Executive Order 13101 of September 14, 1998, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.

(d) The Energy Policy Act of 2005, Public Law 109-58.

23.403 Policy.

Government policy on the use of products containing recovered materials and biobased products considers cost, availability of competition, and performance. Agencies shall assure the use of products containing recovered materials and biobased products to the maximum extent practicable without

jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price. Such products shall meet the reasonable performance standards of the agency and be acquired competitively, in a cost-effective manner. Except as provided at FAR [23.404\(b\)](#), virgin material shall not be required by the solicitation (see [11.302](#)).

23.404 Agency affirmative procurement programs.

(a) An agency must establish an affirmative procurement program for EPA and USDA-designated items if the agency’s purchases of designated items exceed the threshold set forth in [23.400](#).

(1) Agencies have a period of 1 year to revise their procurement program(s) after the designation of any new item by EPA or USDA.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agency affirmative procurement programs must include—

(i) A recovered materials and biobased products preference program;

(ii) An agency promotion program;

(iii) For EPA-designated items only, a program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts. Both the recovered material content and biobased programs require preaward certification that the products meet EPA or USDA recommendations. A second certification is required at contract completion for recovered material content; and

(iv) Annual review and monitoring of the effectiveness of the program.

(b) “Exemptions”. (1) Agency affirmative procurement programs must require that 100 percent of purchases of EPA or USDA-designated items contain recovered material or biobased content, respectively, unless the item cannot be acquired—

(i) Competitively within a reasonable time frame;

(ii) Meeting reasonable performance standards; or

(iii) At a reasonable price.

(2) EPA and USDA may provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants (see 7 CFR 2902.10 *et seq.*) are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(d) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials or biobased products. When using either, the contract should specify—

(1) For products containing recovered materials, that the product is composed of the—

(i) Highest percent of recovered materials practicable; or

(ii) Minimum content standards in accordance with EPA's Recovered Materials Advisory Notices; and

(2) For biobased products, that the product is composed of—

(i) The highest percentage of biobased material practicable; or

(ii) USDA's recommended minimum contents standards.

(e) Agencies shall treat as eligible for the preference for biobased products, products from “designated countries,” as defined in [25.003](#), provided that those products—

(1) Meet the criteria for the definition of biobased product, except that the products need not meet the requirement that renewable agricultural materials (including plant, animal, and marine materials) or forestry materials in such product must be domestic; and

(2) Otherwise meet all requirements for participation in the preference program.

23.405 Procedures.

(a) *Designated items and procurement guidelines.*

(1) *Recovered Materials.* Contracting officers should refer to EPA's list of EPA-designated items (available via the Internet at <http://www.epa.gov/cpg/>) and to their agencies' affirmative procurement program when purchasing products that contain recovered material, or services that could include the use of products that contain recovered material.

(2) *Biobased products.* Contracting officers should refer to USDA's list of USDA-designated items (available through

the Internet at <http://www.usda.gov/biopreferred>) and to their agencies affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(b) *Procurement exemptions.* (1) Once an item has been designated by either EPA or USDA, agencies shall purchase conforming products unless an exemption applies (see [23.404\(b\)](#)).

(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in the contract file.

(c) *Program priorities.* When both the USDA-designated item and the EPA-designated item will be used for the same purposes, and both meet the agency's needs, the agency shall purchase the EPA-designated item.

23.406 Solicitation provisions and contract clauses.

(a) Insert the provision at [52.223-1](#), Biobased Product Certification, in solicitations that—

(1) Require the delivery or specify the use of USDA-designated items; or

(2) Include the clause at [52.223-2](#).

(b) Insert the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of USDA-designated items at <http://www.usda.gov/biopreferred> or 7 CFR Part 2902.

(c) Insert the provision at [52.223-4](#), Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated items.

(d) Insert the clause at [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Products, in solicitations and contracts exceeding \$100,000 that are for, or specify the use of, EPA-designated products containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

Subpart 23.7—Contracting for Environmentally Preferable Products and Services

23.700 Scope.

This subpart prescribes policies for acquiring environmentally preferable products and services.

23.701 [Reserved]

23.702 Authorities.

(a) Resource Conservation and Recovery Act (RCRA) ([42 U.S.C. 6901](#), *et seq.*).

(b) National Energy Conservation Policy Act ([42 U.S.C. 8262g](#)).

(c) Pollution Prevention Act of 1990 ([42 U.S.C. 13101](#), *et seq.*).

(d) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

(e) Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

(f) Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

(g) Farm Security and Rural Investment Act of 2002 (FSRIA) ([7 U.S.C. 8102](#)).

23.703 Policy.

Agencies must—

(a) Implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services; and

(b) Employ acquisition strategies that affirmatively implement the following environmental objectives:

(1) Maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).

(2) Promote energy-efficiency and water conservation.

(3) Eliminate or reduce the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promote the use of nonhazardous and recovered materials.

(5) Realize life-cycle cost savings.

(6) Promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

(7) Promote the use of biobased products.

(8) Purchase only plastic ring carriers that are degradable ([7 USC 8102\(c\)\(1\)](#), 40 CFR part 238).

23.704 Application to Government-owned or -leased facilities.

Executive Order 13101, Section 701, requires that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order. Compliance includes developing programs to promote and implement cost-effective waste reduction and affirmative procurement programs required by [42 U.S.C. 6962](#) for all products designated in EPA's Comprehensive Procurement Guideline (40 CFR Part 247).

23.705 Contract clause.

Insert the clause at [52.223-10](#), Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

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PART 27—PATENTS, DATA, AND COPYRIGHTS

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Subpart 27.5—Foreign License and Technical Assistance Agreements

- 27.501 General.

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27.000 Scope of part.

This part prescribes the policies, procedures, solicitation provisions, and contract clauses pertaining to patents, data, and copyrights.

27.001 Definition.

“United States,” as used in this part, means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, and the Northern Mariana Islands.

Subpart 27.1—General**27.101 Applicability.**

This part applies to all agencies. However, agencies are authorized to adopt alternative policies, procedures, solicitation provisions, and contract clauses to the extent necessary to meet the specific requirements of laws, executive orders, treaties, or international agreements. Any agency adopting alternative policies, procedures, solicitation provisions, and contract clauses should include them in the agency’s published regulations.

27.102 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made under Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent. The Government may authorize and consent to the use of inventions in the performance of certain contracts, even though the inventions may be covered by U.S. patents.

(c) Generally, contractors providing commercial items should indemnify the Government against liability for the infringement of U.S. patents.

(d) The Government recognizes rights in data developed at private expense, and limits its demands for delivery of that data. When such data is delivered, the Government will acquire only those rights essential to its needs.

(e) Generally, the Government requires that contractors obtain permission from copyright owners before including copyrighted works, owned by others, in data to be delivered to the Government.

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Subpart 27.2—Patents and Copyrights

27.200 Scope of subpart.

This subpart prescribes policies and procedures with respect to—

- (a) Patent and copyright infringement liability;
- (b) Royalties;
- (c) Security requirements for patent applications containing classified subject matter; and
- (d) Patented technology under trade agreements.

27.201 Patent and copyright infringement liability.

27.201-1 General.

(a) Pursuant to [28 U.S.C. 1498](#), the exclusive remedy for patent or copyright infringement by or on behalf of the Government is a suit for monetary damages against the Government in the Court of Federal Claims. There is no injunctive relief available, and there is no direct cause of action against a contractor that is infringing a patent or copyright with the authorization or consent of the Government (*e.g.*, while performing a contract).

(b) The Government may expressly authorize and consent to a contractor's use or manufacture of inventions covered by U.S. patents by inserting the clause at [52.227-1](#), Authorization and Consent.

(c) Because of the exclusive remedies granted in [28 U.S.C. 1498](#), the Government requires notice and assistance from its contractors regarding any claims for patent or copyright infringement by inserting the clause at [52.227-2](#), Notice and Assistance, Regarding Patent and Copyright Infringement.

(d) The Government may require a contractor to reimburse it for liability for patent infringement arising out of a contract for commercial items by inserting the clause at FAR [52.227-3](#), Patent Indemnity.

27.201-2 Contract clauses.

(a)(1) Insert the clause at [52.227-1](#), Authorization and Consent, in solicitations and contracts except that use of the clause is—

- (i) Optional when using simplified acquisition procedures; and
- (ii) Prohibited when both complete performance and delivery are outside the United States.

(2) Use the clause with its Alternate I in all R&D solicitations and contracts for which the primary purpose is R&D work, except that this alternate shall not be used in construction and architect-engineer contracts unless the contract calls exclusively for R&D work.

(3) Use the clause with its Alternate II in solicitations and contracts for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body.

(b) Insert the clause at [52.227-2](#), Notice and Assistance Regarding Patent and Copyright Infringement, in all solicitations and contracts that include the clause at [52.227-1](#), Authorization and Consent.

(c)(1) Insert the clause at [52.227-3](#), Patent Indemnity, in solicitations and contracts that may result in the delivery of commercial items, unless—

- (i) [Part 12](#) procedures are used;
- (ii) The simplified acquisition procedures of [Part 13](#) are used;
- (iii) Both complete performance and delivery are outside the United States; or
- (iv) The contracting officer determines after consultation with legal counsel that omission of the clause would be consistent with commercial practice.

(2) Use the clause with either its Alternate I (identification of excluded items) or II (identification of included items) if—

- (i) The contract also requires delivery of items that are not commercial items; or
- (ii) The contracting officer determines after consultation with legal counsel that limitation of applicability of the clause would be consistent with commercial practice.

(3) Use the clause with its Alternate III if the solicitation or contract is for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body.

(d)(1) Insert the clause at [52.227-4](#), Patent Indemnity—Construction Contracts, in solicitations and contracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements. Do not insert the clause in contracts solely for architect-engineer services.

(2) If the contracting officer determines that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the clause with its Alternate I. Note that this exclusion is for items, as distinguished from identified patents (see paragraph (e) of this subsection).

(e) It may be in the Government's interest to exempt specific U.S. patents from the patent indemnity clause. Exclusion from indemnity of identified patents, as distinguished from items, is the prerogative of the agency head. Upon written approval of the agency head, the contracting officer may insert the clause at [52.227-5](#), Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause.

(f) If a patent indemnity clause is not prescribed, the contracting officer may include one in the solicitation and contract if it is in the Government's interest to do so.

(g) The contracting officer shall not include in any solicitation or contract any clause whereby the Government agrees to indemnify a contractor for patent infringement.

27.202 Royalties.

27.202-1 Reporting of royalties.

(a) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with Government patent rights the solicitation provision at [52.227-6](#) requires prospective contractors to furnish royalty information. The contracting officer shall take appropriate action to reduce or eliminate excessive or improper royalties.

(b) If the response to a solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information to the office having cognizance of patent matters for the contracting activity. The cognizant office shall promptly advise the contracting officer of appropriate action.

(c) The contracting officer, when considering the approval of a subcontract, shall require royalty information if it is required under the prime contract. The contracting officer shall forward the information to the office having cognizance of patent matters. However, the contracting officer need not delay consent while awaiting advice from the cognizant office.

(d) The contracting officer shall forward any royalty reports to the office having cognizance of patent matters for the contracting activity.

27.202-2 Notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of an existing license agreement and the contracting officer believes that the licensed patent will be applicable to a prospective contract, the Government should furnish the prospective offerors with—

- (1) Notice of the license;
- (2) The number of the patent; and
- (3) The royalty rate cited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is the patent owner or a licensee under the patent. This information is necessary so that the Government may either—

- (1) Evaluate an offeror's price by adding an amount equal to the royalty; or
- (2) Negotiate a price reduction with an offeror when the offeror is licensed under the same patent at a lower royalty rate.

27.202-3 Adjustment of royalties.

(a) If at any time the contracting officer believes that any royalties paid, or to be paid, under a contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, the contracting officer shall promptly report the facts to the office having cognizance of patent matters for the contracting activity concerned.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the Government against payment of royalties—

- (1) With respect to which the Government has a royalty-free license;
- (2) At a rate in excess of the rate at which the Government is licensed; or
- (3) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer in coordination with the cognizant office shall demand a refund pursuant to any refund of royalties clause in the contract (see [27.202-4](#)) or negotiate for a reduction of royalties.

(d) For guidance in evaluating information furnished pursuant to [27.202-1](#), see [31.205-37](#). See also [31.109](#) regarding advance understandings on particular cost items, including royalties.

27.202-4 Refund of royalties.

The clause at [52.227-9](#), Refund of Royalties, establishes procedures to pay the contractor royalties under the contract and recover royalties not paid by the contractor when the royalties were included in the contractor's fixed price.

27.202-5 Solicitation provisions and contract clause.

(a)(1) Insert a solicitation provision substantially the same as the provision at [52.227-6](#), Royalty Information, in—

- (i) Any solicitation that may result in a negotiated contract for which royalty information is desired and for which cost or pricing data are obtained under [15.403](#); or
- (ii) Sealed bid solicitations only if the need for such information is approved at a level above the contracting officer as being necessary for proper protection of the Government's interests.

(2) If the solicitation is for communication services and facilities by a common carrier, use the provision with its Alternate I.

(b) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, insert in the solicitation a provision substantially the same as the provision at [52.227-7](#), Patents—Notice of Government Licensee. If the clause at [52.227-6](#) is not included in the solicitation, the contracting officer may require offerors to provide information sufficient to provide this notice to the other offerors.

(c) Insert the clause at [52.227-9](#), Refund of Royalties, in negotiated fixed-price solicitations and contracts when royal-

ties may be paid under the contract. If a fixed-price incentive contract is contemplated, change “price” to “target cost and target profit” wherever it appears in the clause. The clause may be used in cost-reimbursement contracts where agency approval of royalties is necessary to protect the Government’s interests.

27.203 Security requirements for patent applications containing classified subject matter.

27.203-1 General.

(a) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of [18 U.S.C. 792](#), *et seq.* (Chapter 37—Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(b) Upon receipt of a patent application under paragraph (a) or (b) of the clause at [52.227-10](#), Filing of Patent Applications—Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. If the application contains classified subject matter, the contracting officer shall inform the contractor how to transmit the application to the United States Patent Office in accordance with procedures provided by legal counsel. If the material is classified “Secret” or higher, the contracting officer shall make every effort to notify the contractor within 30 days of the Government’s determination, pursuant to paragraph (a) of the clause.

(c) Upon receipt of information furnished by the contractor under paragraph (d) of the clause at [52.227-10](#), the contracting officer shall promptly submit that information to legal counsel in order that the steps necessary to ensure the security of the application will be taken.

(d) The contracting officer shall act promptly on requests for approval of foreign filing under paragraph (c) of the clause at [52.227-10](#) in order to avoid the loss of valuable patent rights of the Government or the contractor.

27.203-2 Contract clause.

Insert the clause at [52.227-10](#), Filing of Patent Applications—Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature of the work reasonably might result in a patent application containing classified subject matter.

27.204 Patented technology under trade agreements.

27.204-1 Use of patented technology under the North American Free Trade Agreement.

(a) The requirements of this section apply to the use of technology covered by a valid patent when the patent holder

is from a country that is a party to the North American Free Trade Agreement (NAFTA).

(b) Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or for public noncommercial use.

(c) Section 6 of Executive Order 12889, “Implementation of the North American Free Trade Act,” of December 27, 1993, waives the requirement to obtain advance authorization for an invention used or manufactured by or for the Federal Government. However, the patent owner shall be notified in advance whenever the agency or its contractor knows or has reasonable grounds to know, without making a patent search, that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license. In cases of national emergency or other circumstances of extreme urgency, this notification need not be made in advance, but shall be made as soon as reasonably practicable.

(d) The contracting officer, in consultation with the office having cognizance of patent matters, shall ensure compliance with the notice requirements of NAFTA Article 1709(10) and Executive Order 12889. A contract award should not be suspended pending notification to the patent owner.

(e) Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately-owned patent.

(f) When addressing issues regarding compensation for the use of patented technology, Government personnel should be advised that NAFTA uses the term “adequate remuneration.” Executive Order 12889 equates “remuneration” to “reasonable and entire compensation” as used in [28 U.S.C. 1498](#), the statute that gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the Government.

(g) When questions arise regarding the notice requirements or other matters relating to this section, the contracting officer should consult with legal counsel.

27.204-2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization, including use by the Government.

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Subpart 27.3—Patent Rights under Government Contracts

27.300 Scope of subpart.

This subpart prescribes policies, procedures, solicitation provisions, and contract clauses pertaining to inventions made in the performance of work under a Government contract or subcontract for experimental, developmental, or research work. Agency policies, procedures, solicitation provisions, and contract clauses may be specified in agency supplemental regulations as permitted by law, including 37 CFR 401.1.

27.301 Definitions.

As used in this subpart—

“Invention” means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act ([7 U.S.C. 2321](#), *et seq.*)

“Made” means—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 ([26 U.S.C. 501\(c\)](#)) and exempt from taxation under section 501(a) of the Internal Revenue Code ([26 U.S.C. 501\(a\)](#)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the contractor made in the performance of work under a Government contract.

27.302 Policy.

(a) *Introduction.* In accordance with chapter 18 of title 35, U.S.C. (as implemented by 37 CFR part 401), Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology dated April 10, 1987, it is the policy and objective of the Government to—

(1) Use the patent system to promote the use of inventions arising from federally supported research or development;

(2) Encourage maximum participation of industry in federally supported research and development efforts;

(3) Ensure that these inventions are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery;

(4) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor;

(5) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and

(6) Minimize the costs of administering patent policies.

(b) *Contractor right to elect title.* (1) Generally, pursuant to [35 U.S.C. 202](#) and the Presidential Memorandum and Executive order cited in paragraph (a) of this section, each contractor may, after required disclosure to the Government, elect to retain title to any subject invention.

(2) A contract may require the contractor to assign to the Government title to any subject invention—

(i) When the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government (see [27.303\(e\)\(1\)\(i\)](#));

(ii) In exceptional circumstances, when an agency determines that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of chapter 18 of title 35, U.S.C. and the Presidential Memorandum;

(iii) When a Government authority, that is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities, determines that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities;

(iv) When the contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy (DOE) primarily dedicated to the Department’s naval nuclear propulsion or weapons related programs and all funding agreement limitations under [35 U.S.C. 202\(a\)\(iv\)](#) for agreements with small business concerns and nonprofit organizations are limited to inventions occurring under the above two programs; or

(v) Pursuant to statute or in accordance with agency regulations.

(3) When the Government has the right to acquire title to a subject invention, the contractor may, nevertheless, request greater rights to a subject invention (see [27.304-1\(c\)](#)).

(4) Consistent with 37 CFR part 401, when a contract with a small business concern or nonprofit organization requires assignment of title to the Government based on the

exceptional circumstances enumerated in paragraph (b)(2)(ii) or (iii) of this section for reasons of national security, the contract shall still provide the contractor with the right to elect ownership to any subject invention that—

(i) Is not classified by the agency; or

(ii) Is not limited from dissemination by the DOE within 6 months from the date it is reported to the agency.

(5) Contracts in support of DOE's naval nuclear propulsion program are exempted from this paragraph (b).

(6) When a contract involves a series of separate task orders, an agency may structure the contract to apply the exceptions at paragraph (b)(2)(ii) or (iii) of this section to individual task orders.

(c) *Government license.* The Government shall have at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world. The Government may require additional rights in order to comply with treaties or other international agreements. In such case, these rights shall be made a part of the contract (see [27.303](#)).

(d) *Government right to receive title.* (1) In addition to the right to obtain title to subject inventions pursuant to paragraph (b)(2)(i) through (v) of this section, the Government has the right to receive title to an invention—

(i) If the contractor has not disclosed the invention within the time specified in the clause; or

(ii) In any country where the contractor—

(A) Does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the clause;

(B) Has not filed a patent or plant variety protection application within the time specified in the clause;

(C) Decides not to continue prosecution of a patent or plant variety protection application, pay maintenance fees, or defend in a reexamination or opposition proceeding on the patent; or

(D) No longer desires to retain title.

(2) For the purposes of this paragraph, filing in a European Patent Office Region or under the Patent Cooperation Treaty constitutes election in the countries selected in the application(s).

(e) *Utilization reports.* The Government has the right to require periodic reporting on how any subject invention is being used by the contractor or its licensees or assignees. In accordance with [35 U.S.C. 202\(c\)\(5\)](#) and 37 CFR part 401, agencies shall not disclose such utilization reports to persons outside the Government without permission of the contractor. Contractors should mark as confidential/proprietary any utilization report to help prevent inadvertent release outside the Government.

(f) *March-in rights.* (1) Pursuant to [35 U.S.C. 203](#), agencies have certain march-in rights that require the contractor, an

assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to responsible applicants, upon terms that are reasonable under the circumstances. If the contractor, assignee or exclusive licensee of a subject invention refuses to grant such a license, the agency can grant the license itself. March-in rights may be exercised only if the agency determines that this action is necessary—

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in the field(s) of use;

(ii) To alleviate health or safety needs that are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and these requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) of this section has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to paragraph (g) of this section.

(2) The agency shall not exercise its march-in rights unless the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken. The agency shall provide the contractor an opportunity to dispute or appeal the proposed action, in accordance with [27.304-1](#)(g).

(g) *Preference for United States industry.* In accordance with [35 U.S.C. 204](#), no contractor that receives title to any subject invention and no assignee of the contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless that person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for this agreement may be waived by the agency upon a showing by the contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *Special conditions for nonprofit organizations' preference for small business concerns.* (1) Nonprofit organization contractors are expected to use reasonable efforts to attract small business licensees (see paragraph (i)(4) of the clause at [52.227-11](#), Patent Rights—Ownership by the Contractor). What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market.

(2) Small business concerns that believe a nonprofit organization is not meeting its obligations under the clause may report the matter to the Secretary of Commerce. To the extent deemed appropriate, the Secretary of Commerce will undertake informal investigation of the matter, and may discuss or negotiate with the nonprofit organization ways to improve its efforts to meet its obligations under the clause. However, in no event will the Secretary of Commerce intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. These investigations, discussions, and negotiations involving the Secretary of Commerce will be in coordination with other interested agencies, including the Small Business Administration. In the case of a contract for the operation of a Government-owned, contractor-operated research or production facility, the Secretary of Commerce will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

(i) *Minimum rights to contractor.* (1) When the Government acquires title to a subject invention, the contractor is normally granted a revocable, nonexclusive, paid-up license to that subject invention throughout the world. The contractor's license extends to any of its domestic subsidiaries and affiliates within the corporate structure of which the contractor is a part and includes the right to grant sublicenses to the extent the contractor was legally obligated to do so at the time of contract award. The contracting officer shall approve or disapprove, in writing, any contractor request to transfer its licenses. No approval is necessary when the transfer is to the successor of that part of the contractor's business to which the subject invention pertains.

(2) In response to a third party's proper application for an exclusive license, the contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention. The application shall be submitted in accordance with the applicable provisions in 37 CFR part 404 and agency licensing regulations. The contractor's license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. (See the procedures at [27.304-1\(f\)](#).)

(j) *Confidentiality of inventions.* Publishing information concerning an invention before a patent application is filed on a subject invention may create a bar to a valid patent. To avoid this bar, agencies may withhold information from the public that discloses any invention in which the Government owns or may own a right, title, or interest (including a nonexclusive

license) (see [35 U.S.C. 205](#) and 37 CFR part 401). Agencies may only withhold information concerning inventions for a reasonable time in order for a patent application to be filed. Once filed in any patent office, agencies are not required to release copies of any document that is a part of a patent application for those subject inventions. (See also [27.305-4](#).)

27.303 Contract clauses.

(a)(1) Insert a patent rights clause in all solicitations and contracts for experimental, developmental, or research work as prescribed in this section.

(2) This section also applies to solicitations or contracts for construction work or architect-engineer services that include—

- (i) Experimental, developmental, or research work;
- (ii) Test and evaluation studies; or
- (iii) The design of a Government facility that may involve novel structures, machines, products, materials, processes, or equipment (including construction equipment).

(3) The contracting officer shall not include a patent rights clause in solicitations or contracts for construction work or architect-engineer services that call for or can be expected to involve only “standard types of construction” “Standard types of construction” are those involving previously developed equipment, methods, and processes and in which the distinctive features include only—

- (i) Variations in size, shape, or capacity of conventional structures; or
- (ii) Purely artistic or aesthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, whether or not they qualify for design patent protection.

(b)(1) Unless an alternative patent rights clause is used in accordance with paragraph (c), (d), or (e) of this section, insert the clause at [52.227-11](#), Patent Rights—Ownership by the Contractor.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify [52.227-11\(e\)](#) or otherwise supplement the clause to require the contractor to do one or more of the following:

- (i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.
- (ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.
- (iii) Provide the filing date, serial number, title, patent number and issue date for any patent application filed on any subject invention in any country or, upon request, copies of any patent application so identified.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Government employee is a co-inventor.

(3) Use the clause with its Alternate I if the Government must grant a foreign government a sublicense in subject inventions pursuant to a specified treaty or executive agreement. The contracting officer may modify Alternate I, if the agency head determines, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement. When necessary to effectuate a treaty or agreement, Alternate I may be appropriately modified.

(4) Use the clause with its Alternate II in contracts that may be affected by existing or future treaties or agreements.

(5) Use the clause with its Alternate III in contracts with nonprofit organizations for the operation of a Government-owned facility.

(6) If the contract is for the operation of a Government-owned facility, the contracting officer may use the clause with its Alternate IV.

(7) If the contract is for the performance of services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by [15 U.S.C. 3710a](#), the contracting officer may use the clause with its Alternate V. Since this provision is considered an exercise of an agency's "exceptional circumstances" authority, the contracting officer must comply with 37 CFR 401.3(e) and 401.4.

(c) Insert a patent rights clause in accordance with the procedures at [27.304-2](#) if the solicitation or contract is being placed on behalf of another Government agency.

(d) Insert a patent rights clause in accordance with agency procedures if the solicitation or contract is for DoD, DOE, or NASA, and the contractor is other than a small business concern or nonprofit organization.

(e)(1) Except as provided in paragraph (e)(2) of this section, and after compliance with the applicable procedures in [27.304-1\(b\)](#), the contracting officer may insert the clause at [52.227-13](#), Patent Rights—Ownership by the Government, or a clause prescribed by agency supplemental regulations, if—

(i) The contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government;

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of chapter 18 of title 35 of the United States Code;

(iii) A Government authority that is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities, determines that restriction or

elimination of the right to retain any subject invention is necessary to protect the security of such activities; or

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of DOE primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) If an agency exercises the exceptions at paragraph (e)(1)(ii) or (iii) of this section in a contract with a small business concern or a nonprofit organization, the contracting officer shall use the clause at [52.227-11](#) with only those modifications necessary to address the exceptional circumstances and shall include in the modified clause greater rights determinations procedures equivalent to those at [52.227-13\(b\)\(2\)](#).

(3) When using the clause at [52.227-13](#), Patent Rights—Ownership by the Government, the contracting officer may supplement the clause to require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Provide the filing date, serial number, title, patent number, and issue date for any patent application filed on any subject invention in any country or, upon specific request, copies of any patent application so identified; and

(iv) Submit periodic reports on the utilization of a subject invention.

(4) Use the clause at [52.227-13](#) with its Alternate I if—

(i) The Government must grant a foreign government a sublicense in subject inventions pursuant to a treaty or executive agreement; or

(ii) The agency head determines, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement. If other rights are necessary to effectuate any treaty or agreement, Alternate I may be appropriately modified.

(5) Use the clause at [52.227-13](#) with its Alternate II in the contract when necessary to effectuate an existing or future treaty or agreement.

27.304 Procedures.

27.304-1 General.

(a) *Status as small business concern or nonprofit organization.* If an agency has reason to question the size or nonprofit status of the prospective contractor, the agency may require the prospective contractor to furnish evidence of its

nonprofit status or may file a size protest in accordance with FAR [19.302](#).

(b) *Exceptions.* (1) Before using any of the exceptions under [27.303](#)(e)(1) in a contract with a small business concern or a nonprofit organization and before using the exception of [27.303](#)(e)(1)(ii) for any contractor, the agency shall follow the applicable procedures at 37 CFR 401.

(2) A small business concern or nonprofit organization is entitled to an administrative review of the use of the exceptions at [27.303](#)(e)(1)(i) through (e)(1)(iv) in accordance with agency procedures and 37 CFR part 401.

(c) *Greater rights determinations.* Whenever the contract contains the clause at [52.227-13](#), Patent Rights—Ownership by the Government, or a patent rights clause modified pursuant to [27.303](#)(e)(2), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in the clause. The contracting officer may grant requests for greater rights if the contracting officer determines that the interests of the United States and the general public will be better served. In making these determinations, the contracting officer shall consider at least the following objectives (see 37 CFR 401.3(b) and 401.15):

(1) Promoting the utilization of inventions arising from federally supported research and development.

(2) Ensuring that inventions are used in a manner to promote full and open competition and free enterprise without unduly encumbering future research and discovery.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(d) *Retention of rights by inventor.* If the contractor elects not to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraphs (d) (except paragraph (d)(1)(i)), (e)(4), (f), (g), and (h) of the clause at [52.227-11](#), Patent Rights—Ownership by the Contractor.

(e) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a co-inventor of an invention made under a contract with a small business concern or nonprofit organization, the agency employing the co-inventor may license or assign whatever rights it may acquire in the subject invention from its employee to the contractor, subject at least to the conditions of [35 U.S.C. 202-204](#).

(f) *Revocation or modification of contractor's minimum rights.* Before revoking or modifying the contractor's license in accordance with [27.302](#)(i)(2), the contracting officer shall

furnish the contractor a written notice of intention to revoke or modify the license. The agency shall allow the contractor at least 30 days (or another time as may be authorized for good cause by the contracting officer) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency licensing regulations, any decisions concerning the revocation or modification.

(g) *Exercise of march-in rights.* When exercising march-in rights, agencies shall follow the procedures set forth in 37 CFR 401.6.

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, paragraph (i) of the clause at [52.227-11](#) provides that certain contractor actions require agency approval.

27.304-2 Contracts placed by or for other Government agencies.

The following procedures apply unless an interagency agreement provides otherwise:

(a) When a Government agency requests another Government agency to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify the patent rights clause to be used. The clause should be selected and modified, if necessary, in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (*e.g.*, because of statutory requirements, a deviation, or exceptional circumstances), the awarding agency shall use that clause rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the requesting agency, then include the requesting agency clause and no other patent rights clause in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable, then the contracting officer shall assure that the requesting agency clause applies only to that severable portion of the work and that the work for the awarding agency is subject to the appropriate patent rights clause.

(3) If the request states that a requesting agency clause is not required in any resulting contract, the awarding agency shall use the appropriate patent rights clause, if any.

(b) Any action requiring an agency determination, report, or deviation involved in the use of the requesting agency's clause is the responsibility of the requesting agency unless the agencies agree otherwise. However, the awarding agency may not alter the requesting agency's clause without prior approval of the requesting agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any

invention disclosures or other reporting requirements of the specified clauses. Normally, the requesting agency is responsible for the administration of any subject inventions. This responsibility shall be established in advance of awarding any contracts.

27.304-3 Subcontracts.

(a) The policies and procedures in this subpart apply to all subcontracts at any tier.

(b) Whenever a prime contractor or a subcontractor considers including a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the clause, the contracting officer, in consultation with counsel, shall resolve the matter.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

27.304-4 Appeals.

(a) The designated agency official shall provide the contractor with a written statement of the basis, including any relevant facts, for taking any of the following actions:

(1) A refusal to grant an extension to the invention disclosure period under paragraph (c)(4) of the clause at [52.227-11](#);

(2) A demand for a conveyance of title to the Government under [27.302](#)(d)(1)(i) and (ii);

(3) A refusal to grant a waiver under [27.302](#)(g), Preference for United States industry; or

(4) A refusal to approve an assignment under [27.304-1](#)(h).

(b) Each agency may establish and publish procedures under which any of these actions may be appealed. These appeal procedures should include administrative due process procedures and standards for fact-finding. The resolution of any appeal shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of [35 U.S.C. 200-206](#) and [210](#).

(c) To the extent that any of the actions described in paragraph (a) of this section are subject to appeal under the Contract Disputes Act, the procedures under that Act will satisfy the requirements of paragraph (b).

27.305 Administration of patent rights clauses.

27.305-1 Goals.

(a) Contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in subject inventions are established;

(3) When patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of subject inventions is achieved.

(b) If a subject invention is made under a contract funded by more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

27.305-2 Administration by the Government.

(a) Agencies should establish and maintain appropriate follow-up procedures to protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts that include a clause referenced in [27.304-2](#) should be coordinated with the appropriate agency.

(b)(1) The contracting officer administering the contract (or other representative specifically designated in the contract for this purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause.

(i) For other than confirmatory instruments, if the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information. If the failure persists, the contracting officer shall take appropriate action to secure compliance.

(ii) If the contractor does not furnish confirmatory instruments within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed, the contracting officer shall request the contractor to supply the required documents.

(2) The contracting officer shall promptly furnish all invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses to legal counsel.

(c) Contracting activities should establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily toward con-

tracts that are more likely to result in subject inventions significant in number or quality. These contracts include contracts of a research, developmental, or experimental nature; contracts of a large dollar amount; and any other contracts when there is reason to believe the contractor may not be complying with its contractual obligations. Other contracts may be reviewed using a spot-check method, as feasible. Appropriate follow-up procedures and activities may include the investigation or review of selected contracts or contractors by those qualified in patent and technical matters to detect failures to comply with contract obligations.

(d) Follow-up activities should include, where appropriate, use of Government patent personnel—

(1) To interview agency technical personnel to identify novel developments made in contracts;

(2) To review technical reports submitted by contractors with cognizant agency technical personnel;

(3) To check the Official Gazette of the United States Patent and Trademark Office and other sources for patents issued to the contractor in fields related to its Government contracts; and

(4) To have cognizant Government personnel interview contractor personnel regarding work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

(e) If a contractor or subcontractor does not have a clear understanding of its obligations under the clause, or its procedures for complying with the clause are deficient, the contracting officer should explain to the contractor its obligations. The withholding of payments provision (if any) of the patent rights clause may be invoked if the contractor fails to meet the obligations required by the patents rights clause. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see [4.801\(c\)\(3\)](#)).

27.305-3 Securing invention rights acquired by the Government.

(a) Agencies are responsible for implementing procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and interest in an invention by contract, the chain of title from the inventor to the Government shall be clearly established. This is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) Agencies may, by supplemental instructions, develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patents applications. These instruments should be recorded in the U.S. Patent and Trademark Office (see Executive Order 9424, Establishing in the United States Patent Office a Register of Government Interests in Patents and Applications for Patents, (February 18, 1944).

27.305-4 Protection of invention disclosures.

(a) The Government will, to the extent authorized by [35 U.S.C. 205](#), withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of [52.227-11](#) or [52.227-13](#) for a reasonable time in order for patent applications to be filed. The Government will follow the policy in [27.302\(j\)](#) regarding protection of confidentiality.

(b) The Government should also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a subject invention. This information includes any data delivered pursuant to contract requirements provided that the contractor notifies the agency as to the identity of the data and the subject invention to which it relates at the time of delivery of the data. This notification shall be provided to both the contracting officer and to any patent representative to which the invention is reported, if other than the contracting officer.

(c) For more information on protection of invention disclosures, also see 37 CFR 401.13.

27.306 Licensing background patent rights to third parties.

(a) A contract with a small business concern or nonprofit organization shall not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless the agency head has approved and signed a written justification in accordance with paragraph (b) of this section. The agency head may not delegate this authority and may exercise the authority only if it is determined that the—

(1) Use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract; and

(2) Action is necessary to achieve the practical application of the subject invention or work object.

(b) Any determination will be on the record after an opportunity for a hearing, and the agency shall notify the contractor of the determination by certified or registered mail. The notification shall include a statement that the contractor must bring any action for judicial review of the determination within 60 days after the notification.

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Subpart 27.4—Rights in Data and Copyrights

27.400 Scope of subpart.

This subpart sets forth policies and procedures regarding rights in data and copyrights, and acquisition of data. The policy statement in [27.402](#) applies to all executive agencies. The remainder of the subpart applies to all executive agencies except the Department of Defense.

27.401 Definitions.

As used in this subpart—

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights” means the rights of the Government in limited rights data as set forth in a Limited Rights Notice.

“Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications. (Agencies may, however, adopt the following alternate definition: Limited rights data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged (see [27.404-2\(b\)](#)).

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights” means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice.

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

27.402 Policy.

(a) To carry out their missions and programs, agencies acquire or obtain access to many kinds of data produced during or used in the performance of their contracts. Agencies require data to—

- (1) Obtain competition among suppliers;
- (2) Fulfill certain responsibilities for disseminating and publishing the results of their activities;
- (3) Ensure appropriate utilization of the results of research, development, and demonstration activities including the dissemination of technical information to foster subsequent technological developments;
- (4) Meet other programmatic and statutory requirements; and
- (5) Meet specialized acquisition needs and ensure logistics support.

(b) Contractors may have proprietary interests in data. In order to prevent the compromise of these interests, agencies shall protect proprietary data from unauthorized use and disclosure. The protection of such data is also necessary to encourage qualified contractors to participate in and apply innovative concepts to Government programs. In light of these considerations, agencies shall balance the Government’s needs and the contractor’s legitimate proprietary interests.

27.403 Data rights—General.

All contracts that require data to be produced, furnished, acquired, or used in meeting contract performance requirements, must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, reproduction, and disclosure of that data. Data rights clauses do not specify the type, quantity or quality of data that is to be delivered, but only the respective rights of the Government and the contractor regarding the use, disclosure, or reproduction of the data. Accordingly, the contract shall specify the data to be delivered.

27.404 Basic rights in data clause.

This section describes the operation of the clause at [52.227-14](#), Rights in Data—General, and also the use of the provision at [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

27.404-1 Unlimited rights data.

The Government acquires unlimited rights in the following data except for copyrighted works as provided in [27.404-3](#):

- (a) Data first produced in the performance of a contract (except to the extent the data constitute minor modifications to data that are limited rights data or restricted computer software).
- (b) Form, fit, and function data delivered under contract.

(c) Data (except as may be included with restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under a contract.

(d) All other data delivered under the contract other than limited rights data or restricted computer software (see [27.404-2](#)).

27.404-2 Limited rights data and restricted computer software.

(a) *General.* The basic clause at [52.227-14](#), Rights in Data—General, enables the contractor to protect qualifying limited rights data and restricted computer software by withholding the data from the Government and instead delivering form, fit, and function data.

(b) *Alternate definition of limited rights data.* For contracts that do not require the development, use, or delivery of items, components, or processes that are intended to be acquired by or for the Government, an agency may adopt the alternate definition of limited rights data set forth in Alternate I to the clause at [52.227-14](#). The alternate definition does not require that the data pertain to items, components, or processes developed at private expense; but rather that the data were developed at private expense and embody a trade secret or are commercial or financial and confidential or privileged.

(c) *Protection of limited rights data specified for delivery.*

(1) The clause at [52.227-14](#) with its Alternate II enables the Government to require delivery of limited rights data rather than allow the contractor to withhold the data. To obtain delivery, the contract may identify and specify data to be delivered, or the contracting officer may require, by written request during contract performance, the delivery of data that has been withheld or identified to be withheld under paragraph (g)(1) of the clause. In addition, the contract may specifically identify data that are not to be delivered under Alternate II or which, if delivered, will be delivered with limited rights. The limited rights obtained by the Government are set forth in the Limited Rights Notice contained in paragraph (g)(3) of Alternate II. Agencies shall not, without permission of the contractor, use limited rights data for purposes of manufacture or disclose the data outside the Government except as set forth in the Notice. Any disclosure by the Government shall be subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes that may be adopted by an agency in its supplement and added to the Limited Rights Notice of paragraph (g)(3) of Alternate II of the clause:

(i) Use (except for manufacture) by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part.

(iv) Emergency repair or overhaul work.

(v) Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation, or for emergency repair or overhaul work by the foreign government.

(2) The provision at [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software, helps the contracting officer to determine whether the clause at [52.227-14](#) should be used with its Alternate II. This provision requests that an offeror state whether limited rights data are likely to be delivered. Where limited rights data are expected to be delivered, use Alternate II. Where negotiations are based on an unsolicited proposal, the need for Alternate II of the clause at [52.227-14](#) should be addressed during negotiations or discussions, and if Alternate II was not included initially it may be added by modification, if needed, during contract performance.

(3) If data that would otherwise qualify as limited rights data is delivered as a computer database, the data shall be treated as limited rights data, rather than restricted computer software, for the purposes of paragraph (g) of the clause at [52.227-14](#).

(d) *Protection of restricted computer software specified for delivery.* (1) Alternate III of the clause at [52.227-14](#), enables the Government to require delivery of restricted computer software rather than allow the contractor to withhold such restricted computer software. To obtain delivery of restricted computer software the contracting officer shall—

(i) Identify and specify the deliverable computer software in the contract; or

(ii) Require by written request during contract performance, the delivery of computer software that has been withheld or identified to be withheld under paragraph (g)(1) of the clause.

(2) In considering whether to use Alternate III, contracting officers should note that, unlike other data, computer software is also an end item in itself. Thus, the contracting officer shall use Alternate III if delivery of restricted computer software is required to meet agency needs.

(3) Unless otherwise agreed (see paragraph (d)(4) of this subsection), the restricted rights obtained by the Government are set forth in the Restricted Rights Notice contained in paragraph (g)(4) (Alternate III). Such restricted computer software will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be—

(i) Used or copied for use with the computers for which it was acquired, including use at any Government installation to which the computers may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(v) Disclosed to and reproduced for use by support service contractors or their subcontractors, in accordance with paragraphs (3)(i) through (iv) of this section; and

(vi) Used or copied for use with a replacement computer.

(4) The restricted rights set forth in paragraph (d)(3) of this subsection are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause at [52.227-14](#). However, the contracting officer may specify different rights in the contract, consistent with the purposes and needs for which the software is to be acquired. For example, the contracting officer should consider any networking needs or any requirements for use of the computer software from remote terminals. Also, in addressing such needs, the scope of the restricted rights may be different for the documentation accompanying the computer software than for the programs and databases. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause at [52.227-14](#) shall be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract, and the notice modified accordingly.

(5) The provision at [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software, helps the contracting officer determine whether to use the clause at [52.227-14](#) with its Alternate III. This provision requests that an offeror state whether restricted computer software is likely to be delivered under the contract. In addition, the need for Alternate III should be addressed during negotiations or discussions with an offeror, particularly where negotiations are based on an unsolicited proposal. However, if Alternate III is not used initially, it may be added by modification, if needed, during contract performance.

27.404-3 Copyrighted works.

(a) *Data first produced in the performance of a contract.*

(1) Generally, the contractor must obtain permission of the contracting officer prior to asserting rights in any copyrighted work containing data first produced in the performance of a contract. However, contractors are normally authorized, without prior approval of the contracting officer, to assert copyright in technical or scientific articles based on or containing

such data that is published in academic, technical or professional journals, symposia proceedings and similar works.

(2) The contractor must make a written request for permission to assert its copyright in works containing data first produced under the contract. In its request, the contractor should identify the data involved or furnish copies of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which the permission is requested. Generally, a contracting officer should grant the contractor's request when copyright protection will enhance the appropriate dissemination or use of the data unless the—

(i) Data consist of a report that represents the official views of the agency or that the agency is required by statute to prepare;

(ii) Data are intended primarily for internal use by the Government;

(iii) Data are of the type that the agency itself distributes to the public under an agency program;

(iv) Government determines that limitation on distribution of the data is in the national interest; or

(v) Government determines that the data should be disseminated without restriction.

(3) Alternate IV of the clause at [52.227-14](#) provides a substitute paragraph (c)(1) granting permission for contractors to assert copyright in any data first produced in the performance of the contract without the need for any further requests. Except for contracts for management or operation of Government facilities and contracts and subcontracts in support of programs being conducted at those facilities or where international agreements require otherwise, Alternate IV shall be used in all contracts for basic or applied research to be performed solely by colleges and universities. Alternate IV shall not be used in contracts with colleges and universities if a purpose of the contract is for development of computer software for distribution to the public (including use in solicitations) by or on behalf of the Government. In addition, Alternate IV may be used in other contracts if an agency determines that it is not necessary for a contractor to request further permission to assert copyright in data first produced in performance of the contract. The contracting officer may exclude any data, or items or categories of data, from the provisions of Alternate IV by expressly so providing in the contract or by adding a paragraph (d)(4) to the clause, consistent with [27.404-4\(b\)](#).

(4) Pursuant to paragraph (c)(1) of the clause at [52.227-14](#), the contractor grants the Government a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all data (other than computer software) first produced in the performance of a contract. For computer software, the scope of the Government's license includes all of the above rights except the right to distribute to the public.

Agencies may also obtain a license of different scope if the contracting officer determines, after consulting with legal counsel, such a license will substantially enhance the dissemination of any data first produced under the contract or if such a license is required to comply with international agreements. If an agency obtains a different license, the contractor shall clearly state the scope of that license in a conspicuous place on the medium on which the data is recorded. For example, if the data is delivered as a report, the terms of the license shall be stated on the cover, or first page, of the report.

(5) The clause requires the contractor to affix the applicable copyright notices of [17 U.S.C. 401](#) or [402](#), and acknowledgment of Government sponsorship, (including the contract number) to data when it asserts copyright in data. Failure to do so could result in such data being treated as unlimited rights data (see [27.404-5\(b\)](#)).

(b) *Data not first produced in the performance of a contract.* (1) Contractors shall not deliver any data that is not first produced under the contract without either—

(i) Acquiring for or granting to the Government a copyright license for the data; or

(ii) Obtaining permission from the contracting officer to do otherwise.

(2) The copyright license the Government acquires for such data will normally be of the same scope as discussed in paragraph (a)(4) of this subsection, and is set forth in paragraph (c)(2) of the clause at [52.227-14](#). However, agencies may obtain a license of different scope if the agency determines, after consultation with its legal counsel, that such different license will not be inconsistent with the purpose of acquiring the data. If a license of a different scope is acquired, it must be so stated in the contract and clearly set forth in a conspicuous place on the data when delivered to the Government. If the contractor delivers computer software not first produced under the contract, the contractor shall grant the Government the license set forth in paragraph (g)(4) of Alternate III if included in the clause at [52.227-14](#), or a license agreed to in a collateral agreement made part of the contract.

27.404-4 Contractor's release, publication, and use of data.

(a) In contracts for basic or applied research with universities or colleges, agencies shall not place any restrictions on the conduct of or reporting on the results of unclassified basic or applied research, except as provided in applicable U.S. statutes. However, agencies may restrict the release or disclosure of computer software that is or is intended to be developed to the point of practical application (including for agency distribution under established programs). This is not considered a restriction on the reporting of the results of basic or applied research. Agencies may also preclude a contractor from asserting copyright in any computer software for purposes of

established agency distribution programs, or where required to accomplish the purpose for which the software is acquired.

(b) Except for the results of basic or applied research under contracts with universities or colleges, agencies may, to the extent provided in their FAR supplements, place limitations or restrictions on the contractor's exercise of its rights in data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party. Any of these restrictions shall be expressly included in the contract.

27.404-5 Unauthorized, omitted, or incorrect markings.

(a) *Unauthorized marking of data.* (1) The Government has, in accordance with paragraph (e) of the clause at [52.227-14](#), the right to either return data containing unauthorized markings or to cancel or ignore the markings.

(2) Agencies shall not cancel or ignore markings without making written inquiry of the contractor and affording the contractor at least 60 days to provide a written justification substantiating the propriety of the markings.

(i) If the contractor fails to respond or fails to provide a written justification substantiating the propriety of the markings within the time afforded, the Government may cancel or ignore the markings.

(ii) If the contractor provides a written justification substantiating the propriety of the markings, the contracting officer shall consider the justification.

(A) If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing.

(B) If the contracting officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the contractor will be furnished a written determination which becomes the final agency decision regarding the appropriateness of the markings and the markings will be cancelled or ignored and the data will no longer be made subject to disclosure prohibitions, unless the contractor files suit within 90 days in a court of competent jurisdiction. The markings will not be cancelled or ignored until final resolution of the matter, either by the contracting officer's determination becoming the final agency decision or by final disposition of the matter by court decision if suit is filed.

(3) The foregoing procedures may be modified in accordance with agency regulations implementing the Freedom of Information Act ([5 U.S.C. 552](#)) if necessary to respond to a request. In addition, the contractor may bring a claim, in accordance with the Disputes clause of the contract, that may arise as the result of the Government's action to remove or ignore any markings on data, unless the action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

(b) *Omitted or incorrect notices.* (1) Data delivered under a contract containing the clause without a limited rights notice or restricted rights notice, and without a copyright notice, will be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of the data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may, within 6 months (or a longer period approved by the contracting officer for good cause shown), request permission of the contracting officer to have the omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense. The contracting officer may permit adding appropriate notices if the contractor—

- (i) Identifies the data for which a notice is to be added;
- (ii) Demonstrates that the omission of the proposed notice was inadvertent;
- (iii) Establishes that use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also—

- (i) Permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
- (ii) Correct any incorrect notices.

27.404-6 Inspection of data at the contractor's facility.

Contracting officers may obtain the right to inspect data at the contractor's facility by use of the clause at [52.227-14](#) with its Alternate V, which adds paragraph (j) to provide that right. Agencies may also adopt Alternate V for general use. The data subject to inspection may be data withheld or withholdable under paragraph (g)(1) of the clause. Inspection may be made by the contracting officer or designee (including nongovernmental personnel under the same conditions as the contracting officer) for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of the Alternate. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

27.405 Other data rights provisions.

27.405-1 Special works.

(a) The clause at [52.227-17](#), Rights in Data—Special Works, is for use in contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's own use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

- (1) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;
- (2) Histories of the respective agencies, departments, services, or units thereof;
- (3) Surveys of Government establishments;
- (4) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;
- (5) The compilation of reports, books, studies, surveys, or similar documents that do not involve research, development, or experimental work;
- (6) The collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;
- (7) Investigatory reports;
- (8) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities or agency regulatory or enforcement activities; or
- (9) The development of computer software programs, where the program—
 - (i) May give a commercial advantage; or
 - (ii) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on acquisitions.

(b) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(c) Paragraph (c)(1)(ii) of the clause, which enables the Government to obtain assignment of copyright in any data first produced in the performance of the contract, may be

deleted if the contracting officer determines that such assignment is not needed to further the objectives of the contract.

(d) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that are subject to the clause, may be deleted or limited in scope where the contracting officer determines that, because of the nature of the particular data involved, such liability will not arise.

(e) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the Government's own use (such as for production and distribution to the public of the works by other than a Federal agency) agencies are authorized to modify the clause for use in contracts, with rights in data provisions that meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

27.405-2 Existing works.

The clause at [52.227-18](#), Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing works such as, motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are means of exhibition or transmission, time, type of audience, and geographical location. However, if the contract requires that works of the type indicated in this paragraph are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), then see [27.405-1](#).

27.405-3 Commercial computer software.

(a) When contracting other than from GSA's Multiple Award Schedule contracts for the acquisition of commercial computer software, no specific contract clause prescribed in this subpart need be used, but the contract shall specifically address the Government's rights to use, disclose, modify, distribute, and reproduce the software. Section [12.212](#) sets forth the guidance for the acquisition of commercial computer software and states that commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent the license is consistent with Federal law and otherwise satisfies the Government's needs. The clause at [52.227-19](#), Commercial Computer Software License, may be used when there is any confusion as to whether the Government's needs are satisfied or whether a customary commercial license is con-

sistent with Federal law. Additional or lesser rights may be negotiated using the guidance concerning restricted rights as set forth in [27.404-2\(d\)](#), or the clause at [52.227-19](#). If greater rights than the minimum rights identified in the clause at [52.227-19](#) are needed, or lesser rights are to be acquired, they shall be negotiated and set forth in the contract. This includes any additions to, or limitations on, the rights set forth in paragraph (b) of the clause at [52.227-19](#) when used. Examples of greater rights may be those necessary for networking purposes or use of the software from remote terminals communicating with a host computer where the software is located. If the computer software is to be acquired with unlimited rights, the contract shall also so state. In addition, the contract shall adequately describe the computer programs and/or databases, the media on which it is recorded, and all the necessary documentation.

(b) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, the contracting officer shall ensure that the agreement is consistent with paragraph (a)(1) of this subsection. The contracting officer should exercise caution in accepting a vendor's terms and conditions, since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement. If the clause at [52.227-19](#) is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, reproduce or disclose the computer software are reconciled by that clause.

(c) If a prime contractor under a contract containing the clause at [52.227-14](#), Rights in Data—General, with paragraph (g)(4) (Alternate III) in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to or for use on behalf of the Government, the contracting officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of paragraph (g)(4) in a collateral agreement incorporated in and made part of the contract.

27.405-4 Other existing data.

(a) Except for existing works pursuant to [27.405-2](#) or commercial computer software pursuant to [27.405-3](#), no clause contained in this subpart is required to be included in—

(1) Contracts solely for the acquisition of books, periodicals, and other printed items in the exact form in which these items are to be obtained unless reproduction rights are to be acquired; or

(2) Other contracts that require only existing data (other than limited rights data) to be delivered and the data are available without disclosure prohibitions, unless reproduction rights to the data are to be obtained.

(b) If the reproduction rights to the data are to be obtained in any contract of the type described in paragraph (b)(1) (i) or (ii) of this section, the rights shall be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line data base services in the same form as they are normally available to the general public.

27.406 Acquisition of data.

27.406-1 General.

(a) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(b) The contracting officer shall specify in the contract all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data. Further, and to the extent feasible, in major system acquisitions, the contracting officer shall set out data requirements as separate contract line items. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, agencies may, consistent with paragraph (a) of this subsection, develop their own contract schedule provisions. Agency procedures may, among other things, provide for listing, specifying, identifying source, assuring delivery, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(c) Data delivery requirements should normally not require that a contractor provide the Government, as a condition of the procurement, unlimited rights in data that qualify as limited rights data or restricted computer software. Rather, form, fit, and function data may be furnished with unlimited rights instead of the qualifying data, or the qualifying data may be furnished with limited rights or restricted rights if needed (see [27.404-2\(c\)](#) and (d)). If greater rights are needed, they should be clearly set forth in the solicitation and the contractor fairly compensated for the greater rights.

27.406-2 Additional data requirements.

(a) In some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at contract award. The clause at [52.227-16](#), Additional Data Requirements, may be used to enable the subsequent ordering by the contracting officer of additional data first produced or specifically used in the performance of these contracts as the

actual requirements become known. The clause shall normally be used in solicitations and contracts involving experimental, developmental, research or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. If the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(b) Data may be ordered under the clause at [52.227-16](#) at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contracting officer may relieve the contractor of the retention requirements for specified data items at any time during the retention period required by the clause. The contracting officer may permit the contractor to identify and specify in the contract data not to be ordered for delivery under the clause if the data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the clause by deleting the term "or specifically used" in paragraph (a) of the clause if delivery of the data is not necessary to meet the Government's requirements for data. Any data ordered under this clause will be subject to the clause at [52.227-14](#), Rights in Data—General, (or other equivalent clause setting forth the respective rights of the Government and the contractor) in the contract. Data authorized to be withheld under such clause will not be required to be delivered under the clause at [52.227-16](#), except as provided in Alternate II or Alternate III, if included (see [27.404-2\(c\)](#) and (d)).

(c) Absent an established program for dissemination of computer software, agencies should not order additional computer software under the clause at [52.227-16](#), for the sole purpose of disseminating or marketing the software to the public. In ordering software for internal purposes, the contracting officer shall consider, consistent with the Government's needs, not ordering particular source codes, algorithms, processes, formulas, or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

27.406-3 Major system acquisition.

(a) The clause at [52.227-21](#), Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, implements [41 U.S.C. 418a\(d\)](#). When using the clause at [52.227-21](#), the section of the contract specifying data delivery requirements (see [27.406-1\(b\)](#)) shall expressly identify those

line items of technical data to which the clause applies. Upon delivery of the technical data, the contracting officer shall review the technical data and the contractor's declaration relating to it to assure that the data are complete, accurate, and comply with contract requirements. If the data are not complete, accurate, or compliant, the contracting officer should request the contractor to correct the deficiencies, and may withhold payment. Final payment shall not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(b) In a contract for, or in support of, a major system awarded by a civilian agency other than NASA or the U.S. Coast Guard, the following applies:

(1) The contracting officer shall require the delivery of any technical data relating to the major system or supplies for the major system, that are to be developed exclusively with Federal funds if the delivery of the technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at [52.227-22](#), Major System—Minimum Rights, is used in addition to the clause at [52.227-14](#), Rights in Data—General, and other required clauses, to ensure that the Government acquires at least those rights required by Pub. L. 98-577 in technical data developed exclusively with Federal funds.

(2) Technical data, relating to a major system or supplies for a major system, procured or to be procured by the Government and also relating to the design, development, or manufacture of products or processes offered or to be offered for sale to the public (except for such data as may be necessary for the Government to operate or maintain the product, or use the process if obtained by the Government as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

27.407 Rights to technical data in successful proposals.

The clause at [52.227-23](#), Rights to Proposal Data (Technical), allows the Government to acquire unlimited rights to technical data in successful proposals. Pursuant to the clause, the prospective contractor is afforded the opportunity to specifically identify pages containing technical data to be excluded from the grant of unlimited rights. This exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in [Subpart 15.2](#) or [15.6](#) (or agency supplements) relating to proposal information (*e.g.*, will be used for evaluation purposes only). If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to acquiring the data

with limited rights, if they so qualify, in accordance with [27.404-2\(c\)](#).

27.408 Cosponsored research and development activities.

(a) In contracts involving cosponsored research and development that require the contractor to make substantial contributions of funds or resources (*e.g.*, by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of, or acquire less than unlimited rights to, any data developed and delivered under the contract. Agencies may regulate the use of this authority in their supplements. Lesser rights shall, at a minimum, assure use of the data for agreed-to Governmental purposes (including procurement rights as appropriate), and address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to requiring the contractor to directly license others if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in [27.402](#). As a guide, a clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (*i.e.*, Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. A clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, this type of clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies that will be available, in any event, to the public for its direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding for the contract) and so identified in the contract, any resulting data may be treated under this clause as limited rights data or restricted computer software in accordance with [27.404-2\(c\)](#) or (d), as applicable; or if this treatment is inconsistent with the purpose of the contract, rights to the data may, if so negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.

27.409 Solicitation provisions and contract clauses.

(a) Generally, a contract should contain only one data rights clause. However, where more than one is needed, the contract should distinguish the portion of contract performance to which each pertains.

(b)(1) Insert the clause at [52.227-14](#), Rights in Data—General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in [27.405-1](#), although in these cases insert the clause at [52.227-14](#), Rights in Data—General, and make it applicable to data other than special works, as appropriate (see paragraph (e) of this section);

(ii) For the acquisition of existing data, commercial computer software, or other existing data, as described in [27.405-2](#) through [27.405-4](#) (see paragraphs (f) and (g) of this section);

(iii) A small business innovation research contract (see paragraph (h) of this section);

(iv) To be performed outside the United States (see paragraph (i)(1) of this section);

(v) For architect-engineer services or construction work (see paragraph (i)(2) of this section);

(vi) For the management, operation, design, or construction of a Government-owned facility to perform research, development, or production work (see paragraph (i)(3) of this section); or

(vii) A contract involving cosponsored research and development in which a clause providing for less than unlimited right has been authorized (see [27.408](#)).

(2) If an agency determines, in accordance with [27.404-2](#)(b), to adopt the alternate definition of “Limited Rights Data” in paragraph (a) of the clause, use the clause with its Alternate I.

(3) If a contracting officer determines, in accordance with [27.404-2](#)(c) that it is necessary to obtain limited rights data, use the clause with its Alternate II. The contracting officer shall complete paragraph (g)(3) to include the purposes, if any, for which limited rights data are to be disclosed outside the Government.

(4) In accordance with [27.404-2](#)(d), if a contracting officer determines it is necessary to obtain restricted computer software, use the clause with its Alternate III. Any greater or lesser rights regarding the use, reproduction, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of paragraph (g)(4) of the clause shall be specified in the contract and the notice modified accordingly.

(5) Use the clause with its Alternate IV in contracts for basic or applied research (other than those for the management or operation of Government facilities, and contracts and subcontracts in support of programs being conducted at those

facilities or where international agreements require otherwise) to be performed solely by universities and colleges. The clause may be used with its Alternate IV in other contracts if in accordance with [27.404-3](#)(a), an agency determines to grant permission for the contractor to assert claim to copyright subsisting in all data first produced without further request being made by the contractor. When Alternate IV is used, the contract may exclude items or categories of data from the permission granted, either by express provisions in the contract or by the addition of a paragraph (d)(4) to the clause (see [27.404-4](#)).

(6) In accordance with [27.404-6](#), if the Government needs the right to inspect certain data at a contractor’s facility, use the clause with its Alternate V.

(c) In accordance with [27.404-2](#)(c)(2) and [27.404-2](#)(d)(5), if the contracting officer desires to have an offeror state in response to a solicitation whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, insert the provision at [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at [52.227-14](#), Rights in Data—General. The contractor’s response may provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III.

(d) Insert the clause at [52.227-16](#), Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract (see [27.406-2](#)). This clause may also be used in other contracts when considered appropriate. For example, if the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(e) In accordance with [27.405-1](#), insert the clause at [52.227-17](#), Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government’s internal use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in [27.405-1](#).

(1) Insert the clause if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced by the contractor for other than contract performance.

(3) Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(4) The clause may be modified in accordance with paragraphs (c) through (e) of [27.405-1](#).

(f) Insert the clause at [52.227-18](#), Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in [27.405-2](#). The contract may set forth limitations consistent with the purposes for which the work is being acquired. While no specific clause of this subpart is required to be included in contracts solely for the acquisition, without disclosure prohibitions, of books, publications, and similar items in the exact form in which the items exist prior to the request for purchase (*i.e.*, the off-the-shelf purchase of such items), or in other contracts where only existing data available without disclosure prohibitions is to be furnished, if reproduction rights are to be acquired, the contract shall include terms addressing such rights. (See [27.405-4](#).)

(g) In accordance with [27.405-3](#), when contracting (other than from GSA's Multiple Award Schedule contracts) for the acquisition of commercial computer software, the contracting officer may insert the clause at [52.227-19](#), Commercial Computer Software License, in the solicitation and contract. In any event, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with [27.405-3](#).

(h) If the contract is a Small Business Innovation Research (SBIR) contract, insert the clause at [52.227-20](#), Rights in Data—SBIR Program in all Phase I, Phase II, and Phase III contracts awarded under the Small Business Innovation Research Program established pursuant to [15 U.S.C. 638](#).

The SBIR protection period may be extended in accordance with the Small Business Administration's "Small Business Innovation Research Program Policy Directive" (September 24, 2002).

(i) Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of [27.402](#) in contracts—

(1) To be performed outside the United States;

(2) For architect-engineer services and construction work (*e.g.*, the clause at [52.227-17](#), Rights in Data—Special Works); or

(3) For management, operation, design, or construction of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(j) In accordance with [27.406-3](#)(a), insert the clause at [52.227-21](#), Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, in contracts for major systems acquisitions or for support of major systems acquisitions. This requirement includes contracts for detailed design, development, or production of a major system and contracts for any individual part, component, subassembly, assembly, or subsystem integral to the major system, and other property that may be replaced during the service life of the system, including spare parts. When used, this clause requires that the technical data to which it applies be specified in the contract (see [27.406-3](#)(a)).

(k) In accordance with [27.406-3](#)(b), in the case of civilian agencies other than NASA and the U.S. Coast Guard, insert the clause at [52.227-22](#), Major System—Minimum Rights, in contracts for major systems or contracts in support of major systems.

(l) In accordance with [27.407](#), if a contracting officer desires to acquire unlimited rights in technical data contained in a successful proposal upon which a contract award is based, insert the clause at [52.227-23](#), Rights to Proposal Data (Technical). Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, the contracting officer shall follow [27.404](#) to assure that the rights are appropriately addressed.

**Subpart 27.5—Foreign License and
Technical Assistance Agreements**

agreements involving intellectual property, including avoid-
ing unnecessary royalty charges.

27.501 General.

Agencies shall provide necessary policy and procedures
regarding foreign technical assistance agreements and license

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tract, except as provided in paragraphs (c)(2) and (3) of this section.

(2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the agency has notified the GAO of the finding in paragraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the agency receives notice of a protest filed with the GAO after the dates contained in paragraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protester and other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protester, or other interested party who has responded to the notice in paragraph (a)(2) of this section. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and the agency report within 5 days of the hearing.

(f) *GAO decision time.* GAO issues its recommendation on a protest within 100 days from the date of filing of the protest with the GAO, or within 65 days under the express option. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO not later than 5 days after the expiration of the 60-day period. The report shall explain the

reasons why the GAO's recommendation, exclusive of costs, has not been followed by the agency.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant, and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) The protester shall file its claim for costs with the contracting agency within 60 days after receipt of the GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(3) The agency shall attempt to reach an agreement on the amount of costs to be paid. If the agency and the protester are unable to agree on the amount to be paid, the GAO may, upon request of the protester, recommend to the agency the amount of costs that the agency should pay.

(4) Within 60 days after the GAO recommends the amount of costs the agency should pay the protester, the agency shall notify the GAO of the action taken by the agency in response to the recommendation.

(5) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see [2.101](#), "Small business concern"), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to [5 U.S.C. 3109](#) and 5 CFR 304.105; or

(ii) For attorneys' fees that exceed \$150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.

(6) Before paying a recommended award of costs, agency personnel should consult legal counsel. Section [33.104\(h\)](#) applies to all recommended awards of costs that have not yet been paid.

(7) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.

(8) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent

misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of [Subpart 32.6](#), the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

33.105 [Reserved]

33.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at [52.233-2](#), Service of Protest, in solicitations for contracts expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at [52.233-3](#), Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate I.

(60) Cause release of shipments from contractor’s plants according to the shipping instructions. When applicable, the order of assigned priority shall be followed; shipments within the same priority shall be determined by date of the instruction.

(61) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. Review all amended shipping instructions on a periodic, consolidated basis to ensure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the contracting officer for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

(62) Negotiate and/or execute supplemental agreements, as required, making changes in packaging subcontractors or contract shipping points.

(63) Cancel unilateral purchase orders when notified of nonacceptance by the contractor. The CAO shall notify the contracting officer when the purchase order is canceled.

(64) Negotiate and execute one-time supplemental agreements providing for the extension of contract delivery schedules up to 90 days on contracts with an assigned Criticality Designator of C (see [42.1105](#)). Notification that the contract delivery schedule is being extended shall be provided to the contracting office. Subsequent extensions on any individual contract shall be authorized only upon concurrence of the contracting office.

(65) Accomplish administrative closeout procedures (see [4.804-5](#)).

(66) Determine that the contractor has a drug-free workplace program and drug-free awareness program (see [Subpart 23.5](#)).

(67) Support the program, product, and project offices regarding program reviews, program status, program performance and actual or anticipated program problems.

(68) Monitor the contractor’s environmental practices for adverse impact on contract performance or contract cost, and for compliance with environmental requirements specified in the contract. ACO responsibilities include—

(i) Requesting environmental technical assistance, if needed;

(ii) Monitoring contractor compliance with specifications or other contractual requirements requiring the delivery or use of environmentally preferable products, energy-efficient products, products containing recovered materials, and biobased products. This must occur as part of the quality assurance procedures set forth in [Part 46](#); and

(iii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance (see [Subpart 23.4](#)).

(69) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding payments, when on-site review is required.

(70) Deobligate excess funds after final price determination.

(b) The CAO shall perform the following functions only when and to the extent specifically authorized by the contracting office:

(1) Negotiate or negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes clause. Before completing negotiations, coordinate any delivery schedule change with the contracting office.

(2) Negotiate prices and execute priced exhibits for unpriced orders issued by the contracting officer under basic ordering agreements.

(3) Negotiate or negotiate and execute supplemental agreements changing contract delivery schedules.

(4) Negotiate or negotiate and execute supplemental agreements providing for the deobligation of unexpended dollar balances considered excess to known contract requirements.

(5) Issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from these instructions.

(6) Negotiate changes to interim billing prices.

(7) Negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause (see [Subpart 16.2](#)).

(8) Issue change orders and negotiate and execute resulting supplemental agreements under contracts for ship construction, conversion, and repair.

(9) Execute supplemental agreements on firm-fixed-price supply contracts to reduce required contract line item quantities and deobligate excess funds when notified by the contractor of an inconsequential delivery shortage, and it is determined that such action is in the best interests of the Government, notwithstanding the default provisions of the contract. Such action will be taken only upon the written request of the contractor and, in no event, shall the total downward contract price adjustment resulting from an inconsequential delivery shortage exceed \$250.00 or 5 percent of the contract price, whichever is less.

(10) Execute supplemental agreements to permit a change in place of inspection at origin specified in firm-fixed-price supply contracts awarded to nonmanufacturers, as deemed necessary to protect the Government’s interests.

(11) Prepare evaluations of contractor performance in accordance with [Subpart 42.15](#).

(c) Any additional contract administration functions not listed in [42.302\(a\)](#) and (b), or not otherwise delegated, remain the responsibility of the contracting office.

45.000 Scope of part.

This part prescribes policies and procedures for providing Government property to contractors, contractors' management and use of Government property, and reporting, redistributing, and disposing of contractor inventory. It does not apply to property under any statutory leasing authority, (except as to non-Government use of property under [45.301\(f\)](#)); to property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments; to disposal of real property; or to software and intellectual property.

Subpart 45.1—General**45.101 Definitions.**

As used in this part—

“Acquisition cost” means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

“Cannibalize” means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

“Contractor-acquired property” means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.

“Contractor inventory” means—

(1) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, *e.g.*, as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

Contractor's managerial personnel means the contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the contractor's business;

(2) All or substantially all of the contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

“Discrepancies incident to shipment” means any differences (*e.g.*, count or condition) between the items documented to have been shipped and items actually received.

“Equipment” means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

“Government-furnished property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished property and contractor-acquired property.

“Material” means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling, and special test equipment.

“Nonseverable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Plant equipment” means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the contracting officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a contractor.

“Provide” means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

“Real property” means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

“Sensitive property” means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons,

ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

45.102 Policy.

(a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts.

(b) Contracting officers shall provide property to contractors only when it is clearly demonstrated—

(1) To be in the Government’s best interest;

(2) That the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal;

(3) That providing the property does not substantially increase the Government’s assumption of risk; and

(4) That Government requirements cannot otherwise be met.

(c) The contractor’s inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.

(d) “Exception”. Property provided to contractors for repair or overhaul is not subject to the requirements of paragraph (b) of this section.

45.103 General.

(a) Agencies shall—

(1) Allow and encourage contractors to use voluntary consensus standards (see FAR [11.101\(b\)](#)) and industry-leading practices and standards to manage Government property in their possession;

(2) Eliminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property;

(3) Ensure maximum practical reutilization of contractor inventory for government purposes;

(4) Require contractors to use Government property already in their possession to the maximum extent practical in performing Government contracts;

(5) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis; and

(6) Require contractors to justify retaining Government property not needed for contract performance and to declare property as excess when no longer needed for contract performance.

(b) Agencies will not generally require contractors to establish property management systems that are separate from a contractor’s established procedures, practices, and systems used to account for and manage contractor-owned property.

45.104 Responsibility and liability for Government property.

(a) Generally, contractors are not held liable for loss, damage, destruction, or theft of Government property under the following types of contracts:

(1) Cost-reimbursement contracts.

(2) Time-and-material contracts.

(3) Labor-hour contracts.

(4) Fixed-price contracts awarded on the basis of submission of cost or pricing data.

(b) The contracting officer may revoke the Government’s assumption of risk when the property administrator determines that the contractor’s property management practices are inadequate and/or present an undue risk to the Government.

(c) A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

45.105 Contractors’ property management system compliance.

(a) The agency responsible for contract administration shall conduct an analysis of the contractor’s property management policies, procedures, practices, and systems. This analysis shall be accomplished as frequently as conditions warrant, in accordance with agency procedures.

(b) The property administrator shall notify the contractor in writing when the contractor’s property management system does not comply with contractual requirements, and shall request prompt correction of deficiencies and shall provide a schedule for their completion. If the contractor does not correct the deficiencies in accordance with the schedule, the contracting officer shall notify the contractor, in writing, that failure to take the required corrective action(s) may result in—

(1) Revocation of the Government’s assumption of risk for loss, damage, destruction, or theft; and/or

(2) The exercise of other rights or remedies available to the contracting officer.

(c) If the contractor fails to take the required corrective action(s) in response to the notification provided by the contracting officer in accordance with paragraph (b) of this section, the contracting officer shall notify the contractor in writing of any Government decision to apply the remedies described in paragraphs (b)(1) and (b)(2) of this section.

(d) When the property administrator determines that a reported case of loss, damage, destruction or theft of Government property constitutes a risk assumed by the Government, the property administrator shall notify the contractor in writing that they are granted relief of responsibility in accordance with FAR clause [52.245-1\(f\)\(1\)\(vii\)](#). Where the property administrator determines that the risk of loss is not assumed by the Government, the property administrator shall forward

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 - 52.216-16 Incentive Price Revision—Firm Target.
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52.223-1 Biobased Product Certification.

As prescribed in [23.406](#)(a), insert the following provision:

BIOBASED PRODUCT CERTIFICATION (DEC 2007)

As required by the Farm Security and Rural Investment Act of 2002 and the Energy Policy Act of 2005 ([7 U.S.C. 8102\(c\)\(3\)](#)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 2902, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

As prescribed in [23.406](#)(b), insert the following clause:

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

- (1) The product cannot be acquired—
 - (i) Competitively within a time frame providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 2902.10 *et seq.*). For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

- (i) Spacecraft system and launch support equipment.
- (ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.usda.gov/biopreferred>.

(End of clause)

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in [23.303](#), insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) “Hazardous material,” as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material	Identification No.
<i>(If none, insert “None”)</i>	
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government’s rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

- (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate I (July 1995). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

52.223-4 Recovered Material Certification.

As prescribed in [23.406\(c\)](#), insert the following provision:

RECOVERED MATERIAL CERTIFICATION (OCT 1997)

As required by the Resource Conservation and Recovery Act of 1976 ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(i\)](#)), the offeror certifies, by signing this offer, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

(End of provision)

52.223-5 Pollution Prevention and Right-to-Know Information.

As prescribed in [23.1005](#), insert the following clause:

POLLUTION PREVENTION AND RIGHT-TO-KNOW
INFORMATION (AUG 2003)

(a) *Definitions.* As used in this clause—

“Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) ([42 U.S.C. 11001-11050](#)) and the Pollution Prevention Act of 1990 (PPA) ([42 U.S.C. 13101-13109](#)).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

(End of clause)

Alternate I (Aug 2003). As prescribed in [23.1005\(b\)](#), add the following paragraph (c)(7) to the basic clause:

(c)(7) The environmental management system as described in Section 401 of E.O. 13148.

Alternate II (Aug 2003). As prescribed in [23.1005\(c\)](#), add the following paragraph (c)(7) to the basic clause. If Alternate I is also prescribed, renumber paragraph (c)(7) as paragraph (c)(8).

(c)(7) The facility compliance audits as described in Section 402 of E.O. 13148.

52.223-6 Drug-Free Workplace.

As prescribed in [23.505](#), insert the following clause:

DRUG-FREE WORKPLACE (MAY 2001)

(a) *Definitions.* As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any

judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor’s policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

This page intentionally left blank.

(ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

(End of clause)

52.223-7 Notice of Radioactive Materials.

As prescribed in 23.602, insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, _____* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the *Code of Federal Regulations*, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials,

the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

52.223-8 [Reserved]

52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

As prescribed in 23.406(d), insert the following clause:

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2000)

(a) *Definitions.* As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to _____
 [Contracting Officer complete in accordance with agency procedures].

(End of clause)

Alternate I (Aug 2000). As prescribed in [23.406\(d\)](#), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

(b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)):

CERTIFICATION

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

 [Signature of the Officer or Employee]

 [Typed Name of the Officer or Employee]

 [Title]

 [Name of Company, Firm, or Organization]

 [Date]

(End of certification)

52.223-10 Waste Reduction Program.

As prescribed in [23.705](#), insert the following clause:

WASTE REDUCTION PROGRAM (AUG 2000)

(a) *Definitions.* As used in this clause—

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act ([42 U.S.C. 6962, et seq.](#)) and implementing regulations (40 CFR Part 247).

(End of clause)

52.223-11 Ozone-Depleting Substances.

As prescribed in [23.804\(a\)](#), insert the following clause:

OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) *Definition.* “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by [42 U.S.C. 7671j](#) (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(End of clause)

52.223-12 Refrigeration Equipment and Air Conditioners.

As prescribed in [23.804\(b\)](#), insert the following clause:

REFRIGERATION EQUIPMENT AND AIR CONDITIONERS
 (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act ([42 U.S.C. 7671g](#) and [7671h](#)) as each or both apply to this contract.

(End of clause)

52.227-1 Authorization and Consent.

As prescribed in [27.201-2\(a\)\(1\)](#), insert the following clause:

AUTHORIZATION AND CONSENT (DEC 2007)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

Alternate I (Apr 1984). As prescribed in [27.201-2\(a\)\(2\)](#), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

Alternate II (Apr 1984). As prescribed in [27.201-2\(a\)\(3\)](#), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are *not* established by a government regulatory body, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with specifications or written provisions forming a part

of this contract or with specific written instructions given by the Contracting Officer directing the manner of performance.

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed in [27.201-2\(b\)](#), insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor’s possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

(End of clause)

52.227-3 Patent Indemnity.

As prescribed in [27.201-2\(c\)\(1\)](#), insert the following clause:

PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under [35 U.S.C. 181](#)) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials

or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

Alternate I (Apr 1984). As prescribed in [27.201-2\(c\)\(2\)](#), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall not apply to the following items:

[Contracting Officer list and/or identify the items to be excluded from this indemnity.]

Alternate II (Apr 1984). As prescribed in [27.201-2\(c\)\(2\)](#), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall cover the following items:

[List and/or identify the items to be included under this indemnity.]

Alternate III (July 1995). As prescribed in [27.201-2\(c\)\(3\)](#), add the following paragraph (c) to the basic clause:

() As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities—

- (1) That are or have been sold or offered for sale by the Contractor to the public,
- (2) That can be provided over commercially available equipment, or
- (3) That involve relatively minor modifications.

52.227-4 Patent Indemnity—Construction Contracts.

As prescribed in [27.201-2\(d\)\(1\)](#), insert the following clause:

PATENT INDEMNITY—CONSTRUCTION CONTRACTS
(DEC 2007)

Except as otherwise provided, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under [35 U.S.C. 181](#)) arising out of performing this contract or out of the use or disposal

by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

Alternate I (Dec 2007). As prescribed in [27.201-2\(d\)\(2\)](#), designate the first paragraph of the basic clause as paragraph (a) and add the following paragraph (b) to the basic clause:

(b) This patent indemnification shall not apply to the following items:

[Contracting Officer list the items to be excluded.]

52.227-5 Waiver of Indemnity.

As prescribed in [27.201-2\(e\)](#), insert the following clause:

WAIVER OF INDEMNITY (APR 1984)

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

[Contracting Officer identify the patents by number or by other means if more appropriate.]

(End of clause)

52.227-6 Royalty Information.

As prescribed in [27.202-5\(a\)\(1\)](#), insert the following provision:

ROYALTY INFORMATION (APR 1984)

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

- (1) Name and address of licensor.
- (2) Date of license agreement.
- (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.
- (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.
- (5) Percentage or dollar rate of royalty per unit.
- (6) Unit price of contract item.
- (7) Number of units.
- (8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license

agreement and an identification of applicable claims of specific patents.

(End of provision)

Alternate I (Apr 1984). As prescribed in [27.202-5\(a\)\(2\)](#), substitute the following for the introductory portion of paragraph (a) of the basic provision:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

52.227-7 Patents—Notice of Government Licensee.

As prescribed at [27.202-5\(b\)](#), insert the following provision:

PATENTS—NOTICE OF GOVERNMENT LICENSEE
(APR 1984)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is ____ [*Contracting Officer fill in*], and the royalty rate is ____ [*Contracting Officer fill in*]. If the offeror is the owner of, or a licensee under, the patent, indicate below:

Owner Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

52.227-8 [Reserved]

52.227-9 Refund of Royalties.

As prescribed in [27.202-5\(c\)](#), insert the following clause:

REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term “royalties” as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent

that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

52.227-10 Filing of Patent Applications—Classified Subject Matter.

As prescribed at [27.203-2](#), insert the following clause:

FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (DEC 2007)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified “Secret” or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of [35 U.S.C. 181-188](#), or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified “Confidential,” the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

(End of clause)

52.227-11 Patent Rights—Ownership by the Contractor.

As prescribed in [27.303\(b\)\(1\)](#), insert the following clause:

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (DEC 2007)

(a) As used in this clause—

“Invention” means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act ([7 U.S.C. 2321](#), *et seq.*)

“Made” means—

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 ([26 U.S.C. 501\(c\)](#)) and exempt from taxation under section 501(a) of the Internal Revenue Code ([26 U.S.C. 501\(a\)](#)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to

the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor’s rights.* (1) *Ownership.* The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License.* (i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor’s license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Contractor’s business to which the invention pertains.

(ii) The Contractor’s license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR [27.302\(i\)\(2\)](#) and [27.304-1\(f\)](#).

(c) *Contractor’s obligations.* (1) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (*i.e.*, sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year

after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(d) *Government's rights*—(1) *Ownership*. The Contractor shall assign to the agency, on written request, title to any subject invention—

(i) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.

(ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country.

(iii) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License*. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest*.

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

(2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention."

(f) *Reporting on utilization of subject inventions*. The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by [35 U.S.C. 202\(c\)\(5\)](#), the agency will not disclose that information to persons outside the Government without the Contractor's permission.

(g) *Preference for United States industry*. Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject inven-

tion or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

(h) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to [35 U.S.C. 203 and 210\(c\)](#), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it shall—

(1) Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, *provided*, that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with [35 U.S.C. 202\(e\)](#) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; *provided*, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor.

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) *Communications.* [*Complete according to agency instructions.*]

(k) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

(2) The Contractor shall include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required by FAR [Subpart 27.3](#).

(3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(4) In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

(End of clause)

Alternate I (Jun 1989). As prescribed in [27.303\(b\)\(3\)](#), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements: _____ *
[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (Dec 2007). As prescribed in [27.303\(b\)\(4\)](#), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of the contract and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under the treaties or international agreements with respect to subject inventions made after the date of the amendment.

Alternate III (Jun 1989). As prescribed in [27.303\(b\)\(5\)](#), substitute the following paragraph (i)(3) in place of paragraph (i)(3) of the basic clause:

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to 5 percent of the budget of the facility for that fiscal year, shall be used by the Contractor for the scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds 5 percent, 75 percent of the excess above 5 percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by Contractor employees on location at the facility.

Alternate IV (Jun 1989). As prescribed in [27.303\(b\)\(6\)](#), include the following paragraph (e)(5) in paragraph (e) of the basic clause:

(5) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

Alternate V (Dec 2007). As prescribed in [27.303\(b\)\(7\)](#), include the following paragraph (d)(3) in paragraph (d) of the basic clause:

(d)(3) *CRADA licensing.* If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and Contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by [15 U.S.C. 3710a](#), the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

52.227-12 [Reserved]

52.227-13 Patent Rights—Ownership by the Government.

As prescribed at [27.303\(e\)](#), insert the following clause:

PATENT RIGHTS—OWNERSHIP BY THE GOVERNMENT (DEC 2007)

(a) *Definitions.* As used in this clause—

“Invention” means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code or any variety of plant that is or may be protectable under the Plant Variety Protection Act ([7 U.S.C. 2321](#), *et seq.*)

“Made” means—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Practical application” means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the Contractor made in the performance of work under this contract.

(b) *Ownership.* (1) *Assignment to the Government.* The Contractor shall assign to the Government title throughout the world to each subject invention, except to the extent that rights are retained under paragraphs (b)(2) and (d) of this clause.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license provided in paragraph (d) of this clause. The request for a greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the subject invention pursuant to paragraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause, and to the reservations and conditions deemed to be appropriate by the agency.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the agency an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) Regarding each subject invention to which the Contractor retains ownership, the Contractor agrees as follows:

(i) The Government will have a nonexclusive, non-transferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(ii) The agency has the right to require licensing pursuant to [35 U.S.C. 203 and 210\(c\)](#) and in accordance with the procedures set forth in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of the contract award.

(iii) Upon request, the Contractor shall submit periodic reports no more frequently than annually on the utilization, or efforts to obtain utilization, of a subject invention by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and any other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, or its licensees, or assignees to be privileged and confidential and is so marked, the agency, to the extent permitted by law, will not disclose such information to persons outside the Government.

(iv) When licensing a subject invention, the Contractor shall—

(A) Ensure that no royalties are charged on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government;

(B) Refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government;

(C) Provide for this refund in any instrument transferring rights in the subject invention to any party.

(v) When transferring rights in a subject invention, the Contractor shall provide for the Government's rights set forth in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(2) Nothing contained in paragraph (c) of this clause shall be deemed to grant to the Government rights in any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, paid-up license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to any of its domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only

with the written approval of the agency except when transferred to the successor of that part of the Contractor's business to which the subject invention pertains.

(2) The Contractor's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR [27.302\(i\)\(2\)](#) and [27.304-1\(f\)](#).

(3) When the Government elects not to apply for a patent in any foreign country, the Contractor retains rights in that foreign country to apply for a patent, subject to the Government's rights in paragraph (c)(1) of this clause.

(e) *Invention identification, disclosures, and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to educate its employees in order to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters. The procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show the procedures for identifying and disclosing subject inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures for evaluation and for a determination as to their effectiveness.

(2) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale (*i.e.*, sale or offer for sale), public use, or publication of the subject invention known to the Contractor. The disclosure shall identify the contract under which the subject invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale, or public use of the subject invention and whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or a longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and stating that all subject inventions have been disclosed (or that there are none) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were none, and listing all subcontracts at any tier containing a patent rights clause or stating that there were none.

(4) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (e)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(5) Subject to FAR [27.302](#)(i), the Contractor agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by paragraphs (e)(1) and (e)(4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) The Contractor shall disclose to the Contracting Officer, for the determination of ownership rights, any unreported invention that the Contracting Officer believes may be a subject invention.

(3) Any examination of records under paragraph (f) of this clause will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment.* (This paragraph does not apply to subcontracts.) (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Office's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (i)(4) of this clause.

(2) The Contracting Officer will withhold the reserve or balance until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Contracting Officer will not make final payment under this contract before the Contractor delivers to the Contracting Officer, as required by this clause, all disclosures of subject inventions, an acceptable final report, and all due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized. The Contracting Officer will not withhold any amount under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment shall not be construed as a waiver of any Government rights.

(h) *Preference for United States industry.* Unless provided otherwise, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the agency upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

(i) *Subcontracts.* (1) The Contractor shall include the substance of the patent rights clause required by FAR [Subpart 27.3](#) in all subcontracts for experimental, developmental, or research work. The prescribed patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept the clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In subcontracts at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by the patent rights clause constitute a contract between the subcontractor and the agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(End of clause)

Alternate I (Jun 1989). As prescribed in [27.303\(e\)](#) (4), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: _____*
[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (Dec 2007). As prescribed in [27.303\(e\)](#)(5), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of this contract, and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under treaties or international agreements with respect to subject inventions made after the date of the amendment.

52.227-14 Rights in Data—General.

As prescribed in [27.409\(b\)](#)(1), insert the following clause with any appropriate alternates:

RIGHTS IN DATA—GENERAL (DEC 2007)

(a) *Definitions.* As used in this clause—

“Computer database” or “database means” a collection of recorded information in a form capable of, and for the purpose

of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—(1) *Means* (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 403\(8\)](#)).

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia pro-

ceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are

marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to [41 U.S.C. 253d](#), the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act ([5 U.S.C. 552](#)) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise

as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.* (1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to the Government

under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (Dec 2007). As prescribed in [27.409\(b\)\(2\)](#), substitute the following definition for “limited rights data” in paragraph (a) of the basic clause:

“Limited rights data” means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (Dec 2007). As prescribed in [27.409\(b\)\(3\)](#), insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following “Limited Rights Notice” to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (DEC 2007)

(a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [*Agencies may list additional purposes as set forth in [27.404-2\(c\)\(1\)](#) or if none, so state.*]

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (Dec 2007). As prescribed in [27.409\(b\)\(4\)](#), insert the following paragraph (g)(4) in the basic clause:

(g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following “Restricted Rights Notice” to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (Dec 2007)

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

Restricted Rights Notice Short Form (Jun 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract, if appropriate) with _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of [17 U.S.C. 401](#), it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (Dec 2007). As prescribed in [27.409\(b\)\(5\)](#), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) *Copyright*—(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (Dec 2007). As prescribed in [27.409\(b\)\(6\)](#), add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor’s facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor’s assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in [27.409\(c\)](#), insert the following provision:

REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (DEC 2007)

(a) This solicitation sets forth the Government’s known delivery requirements for data (as defined in the clause at [52.227-14](#), Rights in Data—General). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at [52.227-16](#), if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at [52.227-14](#) included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data instead. The latter clause also may be used with its Alternates II and/

or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor’s facility.

(b) By completing the remainder of this paragraph, the offeror represents that it has reviewed the requirements for the delivery of technical data or computer software and states [*off-error check appropriate block*]—

[] (1) None of the data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software; or

[] (2) Data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software and are identified as follows:

(c) Any identification of limited rights data or restricted computer software in the offeror’s response is not determinative of the status of the data should a contract be awarded to the offeror.

(End of provision)

52.227-16 Additional Data Requirements.

As prescribed in [27.409\(d\)](#), insert the following clause:

ADDITIONAL DATA REQUIREMENTS (JUNE 1987)

(a) In addition to the data (as defined in the clause at [52.227-14](#), Rights in Data—General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

52.227-17 Rights in Data—Special Works.

As prescribed in [27.409\(e\)](#), insert the following clause:

RIGHTS IN DATA—SPECIAL WORKS (DEC 2007)

(a) *Definitions.* As used in this clause—

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright—* (1) *Data first produced in the performance of this contract.* (i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of [17 U.S.C. 401 or 402](#) and acknowledgment of Government sponsorship (including contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the

assignment of, the copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and that contain the copyright notice of [17 U.S.C. 401 or 402](#), unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor’s consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

52.227-18 Rights in Data—Existing Works.

As prescribed in [27.409\(f\)](#), insert the following clause:

RIGHTS IN DATA—EXISTING WORKS (DEC 2007)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, deliv-

ery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

52.227-19 Commercial Computer Software License.

As prescribed in [27.409\(g\)](#), insert the following clause:

COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007)

(a) Notwithstanding any contrary provisions contained in the Contractor's standard commercial license or lease agreement, the Contractor agrees that the Government will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with Federal laws and the Federal Acquisition Regulation.

(b)(1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.

(2) The commercial computer software may be—

(i) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this contract; and

(vi) Used or copied for use with a replacement computer.

(3) If the commercial computer software is otherwise available without disclosure restrictions, the Contractor licenses it to the Government without disclosure restrictions.

(c) The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

NOTICE-Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No. _____.

(End of clause)

52.227-20 Rights in Data—SBIR Program.

As prescribed in [27.409\(h\)](#), insert the following clause:

RIGHTS IN DATA—SBIR PROGRAM (DEC 2007)

(a) *Definitions.* As used in this clause—

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—(1) Means. (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights data” means data (other than computer software) developed at private expense that embody trade

secrets or are commercial or financial and confidential or privileged.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“SBIR data” means data first produced by a Contractor that is a small business concern in performance of a small business innovation research contract issued under the authority of [15 U.S.C. 638](#), which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

“SBIR rights” means the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (d) of this clause.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See [41 U.S.C. 403\(8\)](#).)

“Unlimited rights” means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;

(iii) Substantiate use of, add, or correct SBIR rights or copyright notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (f) of this clause.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* (i) Except as otherwise specifically provided in this contract, the Contractor may assert copyright subsisting in any data first produced in the performance of this contract.

(ii) When asserting copyright, the Contractor shall affix the applicable copyright notice of [17 U.S.C. 401 or 402](#) and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract unless the Contractor (i) identifies such data and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(3) *Removal of copyright notices.* The Government will not remove any copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Rights to SBIR data.* (1) The Contractor is authorized to affix the following “SBIR Rights Notice” to SBIR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

SBIR RIGHTS NOTICE (DEC 2007)

These SBIR data are furnished with SBIR rights under Contract No. _____ (and subcontract _____, if appropriate). For a period of 4 years, unless extended in accordance with FAR [27.409\(h\)](#), after acceptance of all items to be delivered under this contract, the Government will use these data for Government purposes only, and they shall not be disclosed outside the

Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, these data may be disclosed for use by support Contractors. After the protection period, the Government has a paid-up license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice shall be affixed to any reproductions of these data, in whole or in part.

(END OF NOTICE)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause shall be deemed to have been furnished with unlimited rights. The Government assumes no liability for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If the data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense, if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(f) *Protection of limited rights data and restricted computer software.* The Contractor may withhold from delivery qualifying limited rights data and restricted computer software that are not identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall identify the data being withheld, and furnish form, fit, and function data instead.

(g) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly

notify the Contracting Officer of the refusal and not proceed with the subcontract award without further authorization in writing from the Contracting Officer.

(h) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

As prescribed in [27.409\(j\)](#), insert the following clause:

TECHNICAL DATA DECLARATION, REVISION, AND
WITHHOLDING OF PAYMENT—MAJOR SYSTEMS
(DEC 2007)

(a) *Scope of declaration.* The Contractor shall provide, in accordance with [41 U.S.C. 418a \(d\)\(7\)](#), the following declaration with respect to all technical data that relate to a major system and that are delivered or required to be delivered under this contract or that are delivered within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth in the contract. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(END OF DECLARATION)

(2) The Government may, at any time during the period covered by this clause, direct correction of any deficiencies that are not in compliance with contract requirements. The corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also shall, at the request of the Contracting Officer, revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor

may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may withhold payment as a reserve up to an amount not exceeding \$100,000 or 5 percent of the amount of this contract, whichever is less, if the Contractor fails to—

- (i) Make timely delivery of the technical data;
- (ii) Provide the declaration required by paragraph (b)(1) of this clause;
- (iii) Make the corrections required by paragraph (b)(2) of this clause; or
- (iv) Make revisions requested under paragraph (c) of this clause.

(2) The Contracting Officer may withhold the reserve until the Contractor has complied with the direction or requests of the Contracting Officer or determines that the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The withholding of any reserve under this clause, or the subsequent payment of the reserve, shall not be construed as a waiver of any Government rights.

(End of clause)

52.227-22 Major System—Minimum Rights.

As prescribed in [27.409\(k\)](#), insert the following clause:

MAJOR SYSTEM—MINIMUM RIGHTS (JUNE 1987)

Notwithstanding any other provision of this contract, the Government shall have unlimited rights in any technical data, other than computer software, developed in the performance of this contract and relating to a major system or supplies for a major system procured or to be procured by the Government, to the extent that delivery of such technical data is required as an element of performance under this contract. The rights of the Government under this clause are in addition to and not in lieu of its rights under the other provisions of this contract.

(End of clause)

52.227-23 Rights to Proposal Data (Technical).

As prescribed in [27.409\(l\)](#), insert the following clause:

RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data—General” clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

(End of clause)

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PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees.	22.1605	c	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.222-41 Service Contract Act of 1965.	22.1006(a)	C	Yes	I				A	A			A		A	A	A				A	A		
52.222-42 Statement of Equivalent Rates for Federal Hires.	22.1006(b)	C	No	I				A	A			A		A	A	A				A	A		
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	22.1006(c)(1)	C	Yes	I				A				A		A	A	A				A	A		
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.	22.1006(c)(2)	C	Yes	I				A				A		A	A	A				A	A		
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L				A	A														
52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.	22.1006(e)(1)	C	Yes	I				A	A			A									A		
52.222-49 Service Contract Act—Place of Performance Unknown.	22.1006(f)	C	Yes	I				A	A			A		A	A					A	A		
52.222-50 Combating Trafficking in Persons.	22.1705(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1705(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	22.1006(e)(2)	C	Yes	I				A	A			A									A		
52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.	22.1006(e)(3)	P	Yes	I				A	A			A									A		
52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.	22.1006(e)(4)	C	Yes	I				A	A			A									A		
52.223-1 Biobased Product Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.	23.406(b)	C	Yes	I				A	A	A	A	A		A	A		A	A	A	A			
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.303(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-4 Recovered Material Certification.	23.406(c) ✓	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A

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52.223-5 Pollution Prevention and Right-to-Know Information.	23.1005	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	23.1005(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate II	23.1005(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-6 Drug-Free Workplace.	23.505	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A			A		A	A		A			
52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	23.406(d) ✓	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate I	23.406(d) ✓	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.223-10 Waste Reduction Program.	23.705	C	Yes	I					A	A					A			A					
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A	A													A		A		
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					A	A			A		A				A		A		
52.223-13 Certification of Toxic Chemical Release Reporting.	23.906(a)	P	No	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.223-14 Toxic Chemical Release Reporting.	23.906(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.225-1 Buy American Act—Supplies.	25.1101(a)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A				A		A		A
52.225-2 Buy American Act Certificate.	25.1101(a)(2)	P	No	K	A	A	A	A	A	A			A	A	A				A		A		
52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.	25.1101(b)(1)(i)	C	Yes	I	A	A							A	A					A		A		A
Alternate I	25.1101(b)(1)(ii)	C	Yes	I	A	A							A	A					A		A		A
Alternate II	25.1101(b)(1)(iii)	C	Yes	I	A	A							A	A					A		A		A
52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.	25.1101(b)(2)(i)	P	No	K	A	A							A	A					A		A		
Alternate I	25.1101(b)(2)(ii)	P	No	K	A	A							A	A					A		A		
Alternate II	25.1101(b)(2)(iii)	P	No	K	A	A							A	A					A		A		
52.225-5 Trade Agreements.	25.1101(c)(1)	C	Yes	I	A	A													A		A		A
52.225-6 Trade Agreements Certificate.	25.1101(c)(2)	P	No	K	A	A													A		A		
52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.1101(d)	P	Yes	L	A	A	A	A											A		A		A
52.225-8 Duty-Free Entry.	25.1101(e)	C	Yes	I	A	A	A	A					A	A	A				A		A		A
52.225-9 Buy American Act—Construction Materials.	25.1102(a)	C	No										A	A									
52.225-10 Notice of Buy American Act Requirement—Construction Materials.	25.1102(b)(1)	P	No										A	A									
Alternate I	25.1102(b)(2)	P	No										A	A									

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52.225-11 Buy American Act—Construction Materials under Trade Agreements.	25.1102(c)	C	No								A	A											
Alternate I	25.1102(c)(3)	C	No								A	A											
52.225-12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.	25.1102(d)(1)	P	No								A	A											
Alternate I	25.1102(d)(2)	P	No								A	A											
Alternate II	25.1102(d)(3)	P	No								A	A											
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(c)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-18 Place of Manufacture.	25.1101(f)	P	No	K	R	R							A						A		A		A
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.226-2 Historically Black College or University and Minority Institution Representation.	26.304	P	No	K	A	A	A	A	A				A		A				A		A		
52.226-3 Disaster or Emergency Area Representation.	26.205(a)	P	No	K	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.226-4 Notice of Disaster or Emergency Area Set-Aside.	26.205(b)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.	26.205(c)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.227-1 Authorization and Consent.	27.201-2(a)(1) ✓	C	Yes	I	A	A			A		A	A			A	A	A	A	A		O		
Alternate I	27.201-2(a)(2) ✓	C	Yes	I			A	A			A	A			A		A	A					
Alternate II	27.201-2(a)(3) ✓	C	Yes	I			A				A												
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.201-2(b) ✓	C	Yes	I	A	A																	
52.227-3 Patent Indemnity.	27.201-2(c)(1) ✓	C	Yes	I	A	A			A	A										A			
Alternate I	27.201-2(c)(2) ✓	C	Yes	I	A	A			A	A										A			
Alternate II	27.201-2(c)(2) ✓	C	Yes	I	A	A			A	A					A					A			
Alternate III	27.201-2(c)(3) ✓	C	Yes	I											A						A		
52.227-4 Patent Indemnity—Construction Contracts.	27.201-2(d)(1) ✓	C	Yes								A	A				A							
Alternate I	27.201-2(d)(2) ✓	C	Yes								O	O				O							
52.227-5 Waiver of Indemnity.	27.201-2(e) ✓	C	Yes	I	A	A	A	A	A	A	A	A				A		A	A				

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52.227-6 Royalty Information.	27.202-5(a)(1) ✓	P	No	K	A	A	A	A	A	A	A	A				A		A	A				
Alternate I	27.202-5(a)(2) ✓	P	No	K											A			A					
52.227-7 Patents—Notice of Government Licensee.	27.202-5(b) ✓	P	No	K	A	A	A	A	A	A	A	A			A	A		A	A				
52.227-9 Refund of Royalties.	27.202-5(c) ✓	C	Yes	I	A		A		A		A				A	A		A	A				
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.203-2 ✓	C	Yes	I	A	A	A	A	A	A	A	A			A	A		A	A				
52.227-11 Patent Rights—Ownership by the Contractor.	27.303(b)(1) ✓	C	Yes	I			A	A			A	A					A						
Alternate I	27.303(b)(3) ✓	C	Yes	I			A	A			A	A					A						
Alternate II	27.303(b)(4) ✓	C	Yes	I			A	A			A	A					A						
Alternate III	27.303(b)(5) ✓	C	Yes	I			A	A			A	A											
Alternate IV	27.303(b)(6) ✓	C	Yes	I			A	A			A	A											
Alternate V	27.303(b)(7) ✓	C	Yes	I			A	A			A	A											
52.227-13 Patent Rights—Ownership by the Government.	27.303(e)	C	Yes	I			A	A			A	A					A						
Alternate I	27.303(e)(4) ✓	C	Yes	I			A	A			A	A					A						
Alternate II	27.303(e)(5) ✓	C	Yes	I			A	A			A	A					A						
52.227-14 Rights in Data—General.	27.409(b)(1) ✓	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate I	27.409(b)(2) ✓	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate II	27.409(b)(3) ✓	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate III	27.409(b)(4) ✓	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate IV	27.409(b)(5) ✓	C	Yes	I	O	O	A	A	O	O			O	O	O	O		O	O	O	O		
Alternate V	27.409(b)(6) ✓	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	^a (c) ✓	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.227-16 Additional Data Requirements.	27.409(d) ✓	C	Yes	I			A	A														A	
52.227-17 Rights in Data—Special Works.	27.409(e) ✓	C	Yes	I	A	A	A	A	A	A	O	O	A		A		O				A		
52.227-18 Rights in Data—Existing Works.	27.409(f) ✓	C	Yes	I	A	A	A	A	A	A			A		A		A		A		A		
52.227-19 Commercial Computer Software License.	27.409(g)	C	Yes	I	A				A						A							A	
52.227-20 Rights in Data—SBIR Program.	27.409(h) ✓	C	Yes	I			A	A															
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	27.409(j) ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.227-22 Major System—Minimum Rights.	27.409(k) ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		

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52.227-23 Rights to Proposal Data (Technical).	27.409 (l) ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-1 Bid Guarantee.	28.101-2	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-3 Workers' Compensation Insurance (Defense Base Act).	28.309 (a)	C	Yes	I					A	A	A	A	A				A						
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309 (b)	C	Yes	I					A	A	A	A	A				A						
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	A		A		A		A	A		A	A	A	A		A				
52.228-7 Insurance—Liability to Third Persons.	28.311-1	C	Yes	I		A		A		A					A			A	A				
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I									R									A	
52.228-9 Cargo Insurance.	28.313 (a)	C	Yes	I																	A	A	
52.228-10 Vehicular and General Public Liability Insurance.	28.313 (b)	C	Yes	I																	A		
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4 (b)	C	Yes	I							A	A	A			A							
52.228-13 Alternative Payment Protections.	28.102-3 (b)	C	Yes	I							A	A	A			A							
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-15 Performance and Payment Bonds—Construction.	28.102-3 (a)	C	Yes	I							A	A				A							
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A		A	A	A	A		A	
Alternate I	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A		A	A	A	A		A	
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																		A	
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I							A	A											
Alternate I	29.401-2	C	Yes	I					A	A													
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).	29.401-3	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1 (a)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1 (b)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A	A		
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2 (a)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A			

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52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A			
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.	29.401-4(b)	C	Yes	I		A		A		A		A	A	A	A	A	A	A	A	A			
52.230-1 Cost Accounting Standards Notices and Certification.	30.201-3	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
Alternate I	30.201-3(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.230-2 Cost Accounting Standards.	30.201-4(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.230-3 Disclosure and Consistency of Cost Accounting Practices.	30.201-4(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.230-4 Consistency in Cost Accounting Practices.	30.201-4(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.230-5 Cost Accounting Standards—Educational Institution.	30.201-4(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.230-6 Administration of Cost Accounting Standards.	30.201-4(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.	30.201-3(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R				R						A						A	A	
52.232-2 Payments under Fixed-Price Research and Development Contracts.	32.111(a)(2)	C	Yes	I			R																
52.232-3 Payments under Personal Service Contracts.	32.111(a)(3)	c	Yes	I					a	a													
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.	32.111(a)(4)	C	Yes	I																	R	A	
52.232-5 Payments under Fixed-Price Construction Contracts.	32.111(a)(5)	C	Yes								R												
52.232-6 Payment under Communication Service Contracts with Common Carriers.	32.111(a)(6)	C	Yes	I										A								A	
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.	32.111(a)(7)	C	Yes	I									A										
Alternate I	32.111(b)	C	Yes	I									A										
52.232-8 Discounts for Prompt Payment.	32.111(b)(1)	C	Yes	I	A				A				A	A								A	
52.232-9 Limitation on Withholding of Payments.	32.111(b)(2)	C	Yes	I	A	A	A	A	A	A			A	A									
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.	32.111(c)(1)	C	Yes														A						
52.232-11 Extras.	32.111(c)(2)	C	Yes	I	A				A					A							A	A	A