

# FEDERAL ACQUISITION CIRCULAR

November 25, 2014

Number 2005-78  
Effective November 25, 2014  
Looseleaf pages

Federal Acquisition Circular (FAC) 2005-78 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 2005-78 is effective November 25, 2014 except for Items I, II, III, and IV which are effective December 26, 2014.

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**FAC 2005-78 List of Subjects**

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## FAC 2005-78 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-78 amends the Federal Acquisition Regulation (FAR) as specified below:

### **Item I- Incorporating Section K in Contracts (FAR Case 2014-001)**

This final rule revises the language at FAR subpart 4.12, Representations and Certifications, and adds a new clause at FAR 52.204-19 to standardize the incorporation by reference of representations and certifications in contracts regardless of which contract award form is used. FAR clause 52.212-4 has a new paragraph (v) to cover this issue for commercial items.

Peer reviews and procurement management reviews have found that Section K-Representations and Certifications are inconsistently or not incorporated in contract awards.

This final rule does not change or impact the existing representations and certifications submitted by small entities; this final rule should have no impact on small entities.

**Replacement pages:** THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF December 26, 2014.

### **Item II-Streamlining Claims Processing (FAR Case 2014-011)**

This final rule implements the Streamlining Claims Processing for Federal Contractor Employees Act, Pub. L. 113-50, which transferred certain authority for construction wage under-payments from the Government Accountability Office to the Department of Labor. There is no effect on small businesses.

**Replacement pages:** THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF December 26, 2014.

### **Item III- Year Format (FAR Case 2014-006)**

This final rule amends the FAR to delete obsolete regulations relating to the year 2000 compliance. There is no impact on small businesses.

**Replacement pages:** THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF December 26, 2014.

**Item IV—Higher-Level Contract Quality Requirements (FAR Case 2012-032)**

This final rule amends FAR parts 44 and 46 to (1) provide that agencies should establish procedures for determining when higher-level quality standards are to be included in a contract, (2) provide that higher-level quality standards should be given special attention during Contractor Purchasing System Reviews, and (3) adds an example of higher-level quality standards as it relates to counterfeit electronic parts. The contracting officer, in accordance with agency procedures, will choose the higher-level quality standards that will apply. These standards will be used to help minimize and mitigate counterfeit items or suspect counterfeit items in Government contracting. This rule impacts large and small businesses who provide critical items directly to the Government or to Government prime contractors.

**Replacement pages:** THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF December 26, 2014.

**Item V—Technical Amendments**

Editorial changes are made at FAR 1.106, 16.103, 22.1006, 31.109, 52.204-8, and 53.219.

**Replacement pages:** 1.1-3 thru 1.1-6; 16.1-1 and 16.1-2; 22.10-5 thru 22.10-8; 31.1-5 and 31.1-6; 52.2-12.1 and 52.2-12.2; and 53.2-3 and 53.2-4.

**Loose-leaf Only Corrections**

**15.305 [Amended]**

1. Amend section 15.305 by removing from paragraph (a)(5) "15.304(c)(3)(ii) and (c)(5)" and adding "15.304(c)(3)(ii) and (c)(4)" in its place.

**Replacement pages:** 15.3-1 and 15.3-2.

**52.301 [Amended]**

2. Amend section 52.301 in the table at 52.204-16 and 52.204-18 under the UCF column by removing "K" and "A" and adding "L" and "L", respectively.

**Replacement pages:** 52.3-5 and 52.3-6.

**FAC 2005-78 FILING INSTRUCTIONS**

**NOTE:** The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.1-3" is page 3 of subpart 1.1.

Remove Pages

1.1-3 thru 1.1-6

15.3-1 and 15.3-2

16.1-1 and 16.1-2

22.10-5 thru 22.10-8

31.1-5 and 31.1-6

52.2-12.1 and 52.2-12.2

Matrix

pp. 52.3-5 and 52.3-6

53.2-3 and 53.2-4

Insert Pages

1.1-3 thru 1.1-6

15.3-1 and 15.3-2

16.1-1 and 16.1-2

22.10-5 thru 22.10-8

31.1-5 and 31.1-6

52.2-12.1 and 52.2-12.2

Matrix

pp. 52.3-5 and 52.3-6

53.2-3 and 53.2-4

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**1.104 Applicability.**

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

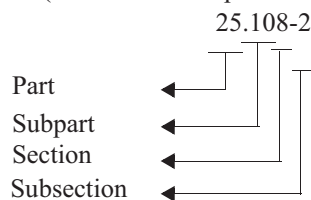
**1.105 Issuance.**

**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 ([44 U.S.C. chapter 35](#)) 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
<a href="#">3.103</a>	9000-0018
<a href="#">3.11</a>	9000-0181
<a href="#">3.4</a>	9000-0003
<a href="#">4.102</a>	9000-0033
<a href="#">4.14</a>	9000-0177
<a href="#">4.5</a>	9000-0137
<a href="#">4.605</a>	9000-0145
<a href="#">4.607</a>	9000-0145
<a href="#">4.7</a>	9000-0034
<a href="#">4.9</a>	9000-0097
<a href="#">4.17</a>	9000-0179
<a href="#">5.405</a>	9000-0036
<a href="#">7.2</a>	9000-0082
<a href="#">8.5</a>	9000-0113
<a href="#">9.1</a>	9000-0011
<a href="#">9.2</a>	9000-0020
<a href="#">14.201</a>	9000-0034
<a href="#">14.202-4</a>	9000-0040
<a href="#">14.202-5</a>	9000-0039
<a href="#">14.205</a>	9000-0037

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1.106

FEDERAL ACQUISITION REGULATION

FAR segment	OMB Control Number	FAR segment	OMB Control Number
<a href="#">14.407</a>	9000-0038	<a href="#">47.208</a>	9000-0056
<a href="#">14.5</a>	9000-0041	<a href="#">48</a>	9000-0027
<a href="#">15.2</a>	9000-0037	<a href="#">49</a>	9000-0028
<a href="#">15.209</a>	9000-0034	<a href="#">50</a>	9000-0029
<a href="#">15.4</a>	9000-0013	<a href="#">51.1</a>	9000-0031
<a href="#">15.404-1(f)</a>	9000-0080	<a href="#">51.2</a>	9000-0032
<a href="#">15.407-2</a>	9000-0078	<a href="#">52.203-2</a>	9000-0018
<a href="#">15.408</a>	9000-0115	<a href="#">52.203-7</a>	9000-0091
<a href="#">19.7</a>	9000-0006 and	<a href="#">52.203-13</a>	9000-0164
	9000-0007	<a href="#">52.203-16</a>	9000-0181
<a href="#">22.103</a>	9000-0065	<a href="#">52.204-3</a>	9000-0097
<a href="#">22.8</a>	1215-0072	<a href="#">52.204-6</a>	9000-0145
<a href="#">22.11</a>	9000-0066	<a href="#">52.204-7</a>	9000-0159
<a href="#">22.12</a>	1235-0007 and	<a href="#">52.204-10</a>	9000-0177
	1235-0025	<a href="#">52.204-12</a>	9000-0145
<a href="#">22.13</a>	1293-0005 and	<a href="#">52.204-13</a>	9000-0159
	1250-0004	<a href="#">52.204-14</a>	9000-0179
<a href="#">22.14</a>	1250-0005	<a href="#">52.204-15</a>	9000-0179
<a href="#">22.16</a>	1215-0209	<a href="#">52.204-16</a>	9000-0185
<a href="#">23.602</a>	9000-0107	<a href="#">52.204-17</a>	9000-0185
<a href="#">25.302</a>	9000-0184	<a href="#">52.204-18</a>	9000-0185
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<a href="#">27.3</a>	9000-0095	<a href="#">52.208-8</a>	9000-0113
<a href="#">27.4</a>	9000-0090	<a href="#">52.208-9</a>	9000-0113
<a href="#">28.1</a>	9000-0045	<a href="#">52.209-1(b)</a>	9000-0020
<a href="#">28.2</a>	9000-0045	<a href="#">52.209-1(c)</a>	9000-0083
<a href="#">29.304</a>	9000-0059	<a href="#">52.209-5</a>	9000-0094
<a href="#">30.6</a>	9000-0129	<a href="#">52.209-6</a>	9000-0094
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<a href="#">31.205-46(a)(3)</a>	9000-0088	<a href="#">52.209-9</a>	9000-0174
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<a href="#">32.000</a>	9000-0138	<a href="#">52.211-9</a>	9000-0043
<a href="#">32.1</a>	9000-0070 and	<a href="#">52.212-1(k)</a>	9000-0159
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<a href="#">32.4</a>	9000-0073	<a href="#">52.214-14</a>	9000-0047
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<a href="#">32.7</a>	9000-0074	<a href="#">52.214-21</a>	9000-0039
<a href="#">32.9</a>	9000-0102	<a href="#">52.214-26</a>	9000-0034
<a href="#">32.10</a>	9000-0138	<a href="#">52.214-28</a>	9000-0013
<a href="#">33</a>	9000-0035	<a href="#">52.215-2</a>	9000-0034
<a href="#">36.213-2</a>	9000-0037	<a href="#">52.215-1(c)(2)(iv)</a>	9000-0048
<a href="#">36.603</a>	9000-0157	<a href="#">52.215-1(d)</a>	9000-0044
<a href="#">41.202(c)</a>	9000-0125	<a href="#">52.215-6</a>	9000-0047
<a href="#">42.7</a>	9000-0013	<a href="#">52.215-9</a>	9000-0078
<a href="#">42.12</a>	9000-0076	<a href="#">52.215-12</a>	9000-0013
<a href="#">42.13</a>	9000-0076	<a href="#">52.215-13</a>	9000-0013
<a href="#">45</a>	9000-0075	<a href="#">52.215-14</a>	9000-0080
<a href="#">46</a>	9000-0077	<a href="#">52.215-19</a>	9000-0115
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<a href="#">52.215-23</a>	9000-0173	<a href="#">52.225-18</a>	9000-0161
<a href="#">52.216-2</a>	9000-0068	<a href="#">52.225-21</a>	9000-0141
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<a href="#">52.216-7</a>	9000-0069	<a href="#">52.227-14</a>	9000-0090
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<a href="#">52.222-2</a>	9000-0065	<a href="#">52.228-1</a>	9000-0045
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<a href="#">52.222-6</a>	1215-0140	<a href="#">52.228-12</a>	9000-0135
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<a href="#">52.222-23</a>	1215-0072	<a href="#">52.232-1</a>	9000-0070
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<a href="#">52.222-26</a>	1215-0072	<a href="#">52.232-3</a>	9000-0070
<a href="#">52.222-27</a>	1215-0072	<a href="#">52.232-4</a>	9000-0070
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<a href="#">52.222-35</a>	1250-0004	<a href="#">52.232-6</a>	9000-0070
<a href="#">52.222-36</a>	1250-0005	<a href="#">52.232-7</a>	9000-0070
<a href="#">52.222-37</a>	1293-0005	<a href="#">52.232-7</a>	9000-0070
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<a href="#">52.223-4</a>	9000-0134	<a href="#">52.232-12</a>	9000-0073
<a href="#">52.223-5</a>	9000-0147	<a href="#">52.232-13</a>	9000-0010
<a href="#">52.223-6(b)(5)</a>	9000-0101	<a href="#">52.232-14</a>	9000-0010
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<a href="#">52.225-4</a>	9000-0130	<a href="#">52.232-22</a>	9000-0074
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		<a href="#">52.232-32</a>	9000-0138
		<a href="#">52.233-1</a>	9000-0035

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<a href="#">52.236-5</a>	9000-0062	<a href="#">52.248-1</a>	9000-0027
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<a href="#">52.236-19</a>	9000-0064	<a href="#">52.249-2</a>	9000-0028
<a href="#">52.241-1</a>	9000-0126	<a href="#">52.249-3</a>	9000-0028
<a href="#">52.241-3</a>	9000-0122	<a href="#">52.249-5</a>	9000-0028
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<a href="#">52.241-13</a>	9000-0124	<a href="#">52.249-11</a>	9000-0028
<a href="#">52.243-1</a>	9000-0026	<a href="#">52.250-1</a>	9000-0029
<a href="#">52.243-2</a>	9000-0026	SF 24	9000-0045
<a href="#">52.243-3</a>	9000-0026	SF 25	9000-0045
<a href="#">52.243-4</a>	9000-0026	SF 25A	9000-0045
<a href="#">52.243-6</a>	9000-0026	SF 28	9000-0001
<a href="#">52.243-7</a>	9000-0026	SF 34	9000-0045
<a href="#">52.245-1</a>	9000-0075	SF 35	9000-0045
<a href="#">52.245-9</a>	9000-0075	SF 273	9000-0045
<a href="#">52.246-2</a>	9000-0077	SF 274	9000-0045
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<a href="#">52.246-4</a>	9000-0077	SF 330	9000-0157
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<a href="#">52.246-6</a>	9000-0077	SF 1404	9000-0011
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<a href="#">52.247-40</a>	9000-0061	SF 1445	9000-0089
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<a href="#">52.247-64</a>	9000-0061		
<a href="#">52.247-68</a>	9000-0056		

### 1.107 Certifications.

In accordance with [41 U.S.C. 1304](#), 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 Administra-

## Subpart 15.3—Source Selection

### 15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

### 15.301 [Reserved]

### 15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

### 15.303 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;

(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation ([10 U.S.C. 2305\(b\)\(4\)\(C\)](#) and [41 U.S.C. 3703\(c\)](#));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government ([10 U.S.C. 2305\(b\)\(4\)\(C\)](#) and [41 U.S.C. 3703\(c\)](#)).

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control exchanges with offerors in accordance with [15.306](#); and

(3) Award the contract(s).

### 15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(ii\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(B\)](#)) (also see [part 36](#) for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(i\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(A\)](#)); and

(3)(i) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.

(ii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans ([15 U.S.C. 637\(d\)\(4\)\(G\)\(ii\)](#)).

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.

(4) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor ([15 U.S.C. 637\(d\)\(4\)\(G\)\(i\)](#)).

(5) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer that includes telecommuting unless the contracting officer executes a written determination in accordance with FAR [7.108\(b\)](#).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation ([10 U.S.C. 2305\(a\)\(2\)\(A\)\(i\)](#) and [41 U.S.C. 3306\(b\)\(1\)\(A\)](#)) (see [15.204-5\(c\)](#)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(iii\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(C\)](#)).



**15.305 Proposal evaluation.**

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see [15.403-1\(c\)\(1\)\(i\)\(B\)](#)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. (See [37.115](#) for uncompensated overtime evaluation.) The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination required under [subpart 9.1](#).

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The source selection authority shall determine the relevance of similar past performance information.

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see [subpart 19.7](#)).

(3) *Technical evaluation.* When tradeoffs are performed (see [15.101-1](#)), the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information.* Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.

(5) *Small business subcontracting evaluation.* Solicitations must be structured to give offers from small business concerns the highest rating for the evaluation factors in [15.304\(c\)\(3\)\(ii\)](#) and (c)(4).

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see [37.203\(d\)](#).

**15.306 Exchanges with offerors after receipt of proposals.**

(a) *Clarifications and award without discussions.*

(1) Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at [52.215-1](#)) ([10 U.S.C. 2305\(b\)\(4\)\(A\)\(ii\)](#)) and [41 U.S.C. 3703\(a\)\(2\)](#)).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications—

**16.000 Scope of part.**

This part describes types of contracts that may be used in acquisitions. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

**16.001 Definitions.**

As used in this part—

*Award-Fee Board* means the team of individuals identified in the award-fee plan who have been designated to assist the Fee-Determining Official in making award-fee determinations.

*Fee-Determining Official (FDO)* means the designated Agency official(s) who reviews the recommendations of the Award-Fee Board in determining the amount of award fee to be earned by the contractor for each evaluation period.

*Rollover of unearned award fee* means the process of transferring unearned award fee, which the contractor had an opportunity to earn, from one evaluation period to a subsequent evaluation period, thus allowing the contractor an additional opportunity to earn that previously unearned award fee.

**Subpart 16.1—Selecting Contract Types****16.101 General.**

(a) A wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to—

- (1) The degree and timing of the responsibility assumed by the contractor for the costs of performance; and
- (2) The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

(b) The contract types are grouped into two broad categories: fixed-price contracts (see [Subpart 16.2](#)) and cost-reimbursement contracts (see [Subpart 16.3](#)). The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (see [Subpart 16.4](#)), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

**16.102 Policies.**

(a) Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

(b) Contracts negotiated under [Part 15](#) may be of any type or combination of types that will promote the Government's interest, except as restricted in this part (see [10 U.S.C. 2306\(a\)](#) and [41 U.S.C. 3901](#)). Contract types not described in this regulation shall not be used, except as a deviation under [Subpart 1.4](#).

(c) The cost-plus-a-percentage-of-cost system of contracting shall not be used (see [10 U.S.C. 2306\(a\)](#) and [41 U.S.C. 3905\(a\)](#)). Prime contracts (including letter contracts) other than firm-fixed-price contracts shall, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts (see clauses prescribed in [Subpart 44.2](#) for cost-reimbursement contracts and [Subparts 16.2](#) and [16.4](#) for fixed-price contracts).

(d) No contract may be awarded before the execution of any determination and findings (D&F's) required by this part. Minimum requirements for the content of D&F's required by this part are specified in [1.704](#).

**16.103 Negotiating contract type.**

(a) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(b) A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

(c) In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

(d)(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures.

(i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the addi-

tional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss—

(A) How the Government identified the additional risks (*e.g.*, pre-award survey, or past performance information);

(B) The nature of the additional risks (*e.g.*, inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(C) How the Government will manage and mitigate the risks.

(iii) Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (*e.g.*, resources needed and the additional risks to the Government if adequate resources are not provided).

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include—

(A) An analysis of why the use of other than a firm-fixed-price contract (*e.g.*, cost reimbursement, time and materials, labor hour) is appropriate;

(B) Rationale that detail the particular facts and circumstances (*e.g.*, complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

(D) A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are—

(i) Fixed-price acquisitions made under simplified acquisition procedures;

(ii) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(iii) Awards on the set-aside portion of sealed bid partial set-asides for small business.

#### 16.104 Factors in selecting contract types.

There are many factors that the contracting officer should consider in selecting and negotiating the contract type. They include the following:

(a) *Price competition.* Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

(b) *Price analysis.* Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See [15.404-1\(b\)](#).)

(c) *Cost analysis.* In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for nego-

tiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

(d) *Type and complexity of the requirement.* Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

(e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

(f) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives tailored to performance outcomes to ensure timely contract performance.

(g) *Period of performance or length of production run.* In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment or price redetermination clauses.

(h) *Contractor's technical capability and financial responsibility.*

(i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical—

(1) When the contract type requires price revision while performance is in progress; or

(2) When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. See [42.302\(a\)\(12\)](#).

(j) *Concurrent contracts.* If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.

(k) *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

(l) *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

#### 16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at [52.216-1](#), Type of Contract, in a solicitation unless it is for—

(a) A fixed-price acquisition made under simplified acquisition procedures; or

(b) Information or planning purposes.



**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 Service Contract Labor Standards statute (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 [22.1003-4\(c\)\(1\)](#) 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 [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000, rather than to the Service Contract Labor Standards statute. 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 equip-

ment 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 Labor Standards statute. 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 [22.1003-4\(c\)\(1\)](#) 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 Service Contract Labor Standards statute.**

If the contracting officer questions the applicability of the Service Contract Labor Standards statute 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 Service Contract Labor Standards statute, the Secretary of Labor is authorized and directed to enforce the provisions of the Service Contract Labor Standards statute, 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 Service Contract Labor Standards statute (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 Labor Standards, in solicitations and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the Service Contract Labor Standards statute 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) The contracting officer shall not insert the clause at [52.222-41](#) (or any of the associated Service Contract Labor Standards statute clauses as prescribed in this section for possible use when [52.222-41](#) applies) in the resultant contract if—

- (i) The solicitation includes the provision at—
  - (A) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards statute to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification;
  - (B) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards statute to Contracts for Certain Services—Certification; or
  - (C) Either of the comparable certifications is checked as applicable in the provision at [52.204-8\(c\)\(2\)\(iii\)](#) or (iv) or [52.212-3\(k\)](#); and

(ii) The contracting officer has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection [22.1003-4](#), that the Service Contract Labor Standards statute does not apply to the contract. (In such case, insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) 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 Service Contract Labor Standards statute 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 Labor Standards—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, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Labor Standards, 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 Labor Standards—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 Labor Standards—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Labor Standards, 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 Labor Standards—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 Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification, in solicitations that—

(i) Include the clause at [52.222-41](#), Service Contract Labor Standards; and

(ii) The contract may be exempt from the Service Contract Labor Standards statute 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 Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements—

(i) In solicitations that include the provision at [52.222-48](#), or the comparable provision is checked as applicable in the clause at [52.204-8\(c\)\(2\)\(iii\)](#) or [52.212-3\(k\)\(1\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(c\)\(3\)](#), that the Service Contract Labor Standards statute does not apply.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, the contracting officer shall insert the provision at [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification, in solicitations that—

(A) Include the clause at [52.222-41](#), Service Contract Labor Standards, and

(B) The contract may be exempt from the Service Contract Labor Standards statute in accordance with [22.1003-4\(d\)](#).

(ii) When resoliciting in accordance with [22.1003-4\(d\)\(3\)\(iii\)](#), amend the solicitation by removing the provision at [52.222-52](#) from the solicitation.

(4) The contracting officer shall insert the clause at [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements—

(i) In solicitations that include the provision at [52.222-52](#), or the comparable provision is checked as applicable in [52.204-8\(c\)\(2\)\(iv\)](#) or [52.212-3\(k\)\(2\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(d\)\(3\)](#), that the Service Contract Labor Standards statute does not apply.

(f) The contracting officer shall insert the clause at [52.222-49](#), Service Contract Labor Standards-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 [41 U.S.C. 6707\(c\)](#) 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 Successorship with incumbent contractor collective bargaining agreement.**

(a) Early in the acquisition cycle, the contracting officer shall determine whether [41 U.S.C. 6707\(c\)](#) affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract covered by the Service Contract Labor Standards statute and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) [41 U.S.C. 6707\(c\)](#) 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 [41 U.S.C. 6707\(c\)](#) is subject to the following limitations:

(1) [41 U.S.C. 6707\(c\)](#) 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 [41 U.S.C. 6707\(c\)](#) 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 [41 U.S.C. 6707\(c\)](#) 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 Labor Standards, 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 Service Contract Labor Standards statute to a collective bargaining agreement should be directed to the agency labor advisor.

(e)(1) [41 U.S.C. 6707\(c\)](#) 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 pre-

home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(2) "Construction equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see [31.109\(c\)](#)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which

are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision.

(ii) Reasonable costs of renting construction equipment are allowable (but see paragraph (C) of this subsection).

(A) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with [31.205-36\(b\)\(3\)](#).

(3) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

### 31.106 [Reserved]

### 31.107 Contracts with State, local, and federally recognized Indian tribal governments.

(a) [Subpart 31.6](#) provides principles and standards for determining costs applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal governments, except contracts with—

(1) Publicly financed educational institutions subject to [Subpart 31.3](#); or

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(b) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

**31.108 Contracts with nonprofit organizations.**

[Subpart 31.7](#) provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions, State and local governments, and those nonprofit organizations exempted under OMB Circular No. A-122.

**31.109 Advance agreements.**

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#) of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#), contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies at [31.201-6\(c\)](#). However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#) of that cost.

(b) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.

(c) The contracting officer is not authorized by this [31.109](#) to agree to a treatment of costs inconsistent with this part. For example, an advance agreement may not provide that, notwithstanding [31.205-20](#), interest is allowable.

(d) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.

(e) The cognizant administrative contracting officer (ACO), or other contracting officer established in [Part 42](#), shall negotiate advance agreements except that an advance agreement affecting only one contract, or class of contracts from a single contracting office, shall be negotiated by a contracting officer in the contracting office, or an ACO when delegated by the contracting officer. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the contracting officer before executing the advance agreement.

(f) Before negotiating an advance agreement, the Government negotiator shall—

(1) Determine if other contracting offices inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(2) Inform any such office or agency of the matters under consideration for negotiation; and

(3) As appropriate, invite the office or agency and the responsible audit agency to participate in prenegotiation discussions and/or in the subsequent negotiations.

(g) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in [15.406-3](#), as applicable.

(h) Examples for which advance agreements may be particularly important are—

(1) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;

(2) Use charges for fully depreciated assets;

(3) Deferred maintenance costs;

(4) Precontract costs;

(5) Independent research and development and bid and proposal costs;

(6) Royalties and other costs for use of patents;

(7) Selling and distribution costs;

(8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;

(9) Costs of idle facilities and idle capacity;

(10) Severance pay to employees on support service contracts;

(11) Plant reconversion;

(12) Professional services (*e.g.*, legal, accounting, and engineering);

(13) General and administrative costs (*e.g.*, corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see [31.203\(h\)](#));

(14) Costs of construction plant and equipment (see [31.105\(d\)](#));

(15) Costs of public relations and advertising; and

(16) Statistical sampling methods (see [31.201-6\(c\)\(4\)](#)).

**31.110 Indirect cost rate certification and penalties on unallowable costs.**

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes. See [42.703-2](#) for administrative procedures regarding the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See [42.709](#) for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription.



fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the provision at [52.204-7](#), System for Award Management.

(iv) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

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

(B) Exceed the simplified acquisition threshold;

and

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

(v) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, 2010, or 2012.

(vi) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vii) [52.214-14](#), Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(viii) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(ix) [52.219-1](#), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(x) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xi) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xii) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xiii) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiv) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xv) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xvi) [52.225-2](#), Buy American Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xvii) [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$79,507, the provision with its Alternate II applies.

(D) If the acquisition value is \$79,507 or more but is less than \$100,000, the provision with its Alternate III applies.

(xviii) [52.225-6](#), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](#).

(xix) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification. This provision applies to all solicitations.

(xx) [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxi) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

\_\_\_ (i) [52.204-17](#), Ownership or Control of Offeror.

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

\_\_\_ (iii) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment- Certification.

\_\_\_ (iv) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

\_\_\_ (v) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

\_\_\_ (vi) [52.227-6](#), Royalty Information.

\_\_\_ (A) Basic.

\_\_\_ (B) Alternate I.

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

(d) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through <https://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within 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 the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. 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.

FAR CLAUSE #	TITLE	DATE	CHANGE
_____	_____	_____	_____

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 SAM.

(End of provision)

**52.204-9 Personal Identity Verification of Contractor Personnel.**

As prescribed in [4.1303](#), insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

(1) When no longer needed for contract performance.

(2) Upon completion of the Contractor employee’s employment.

(3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor’s employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

(End of clause)

**52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.**

As prescribed in [4.1403](#)(a), insert the following clause:

REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2013)

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

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

“Months of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s



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
<a href="#">52.204-16</a> Commercial and Government Entity Code Reporting.	<a href="#">4.1804(a)</a>	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.204-17</a> Ownership or Control of Offeror.	<a href="#">4.1804(b)</a>	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.204-18</a> Commercial and Government Entity Code Maintenance.	<a href="#">4.1804(c)</a>	C	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.207-1</a> Notice of Standard Competition.	<a href="#">7.305(a)</a>	P	Yes	L	A		A		A		A			A	A	A				A			
<a href="#">52.207-2</a> Notice of Streamlined Competition.	<a href="#">7.305(b)</a>	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A	
<a href="#">52.207-3</a> Right of First Refusal of Employment.	<a href="#">7.305(c)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A	
<a href="#">52.207-4</a> Economic Purchase Quantity—Supplies.	<a href="#">7.203</a>	P	No	K	A	A													A		A		
<a href="#">52.207-5</a> Option to Purchase Equipment.	<a href="#">7.404</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<a href="#">52.208-4</a> Vehicle Lease Payments.	<a href="#">8.1104(a)</a>	C	Yes	I										A								A	
<a href="#">52.208-5</a> Condition of Leased Vehicles.	<a href="#">8.1104(b)</a>	C	Yes	I										A								A	
<a href="#">52.208-6</a> Marking of Leased Vehicles.	<a href="#">8.1104(c)</a>	C	Yes	I										A								A	
<a href="#">52.208-7</a> Tagging of Leased Vehicles.	<a href="#">8.1104(d)</a>	C	Yes	I										A								A	
<a href="#">52.208-8</a> Required Sources for Helium and Helium Usage Data.	<a href="#">8.505</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.208-9</a> Contractor Use of Mandatory Sources of Supply or Services.	<a href="#">8.005</a>	C	Yes	I	A	A														A		A	
<a href="#">52.209-1</a> Qualification Requirements.	<a href="#">9.206-2</a>	C	No	I	A	A			A	A				A						A		A	
<a href="#">52.209-2</a> Prohibition on Contracting with Inverted Domestic Corporations—Representation.	<a href="#">9.108-5(a)</a>	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.209-3</a> First Article Approval—Contractor Testing.	<a href="#">9.308-1(a)(1)</a> and <a href="#">(b)(1)</a>	C	Yes	I	A	O								A						A		A	
Alternate I	<a href="#">9.308-1(a)(2)</a> and <a href="#">(b)(2)</a>	C	Yes	I	A	O								A						A		A	
Alternate II	<a href="#">9.308-2(a)(3)</a> and <a href="#">(b)(3)</a>	C	Yes	I	A	O								A						A		A	
<a href="#">52.209-4</a> First Article Approval—Government Testing.	<a href="#">9.308-2(a)(1)</a> and <a href="#">(b)(1)</a>	C	Yes	I	A	O								A						A		A	
Alternate I	<a href="#">9.308-2(a)(1)</a> and <a href="#">(b)(2)</a>	C	Yes	I	A	O								A						A		A	
Alternate II	<a href="#">9.308-2(a)(1)</a> and <a href="#">(b)(3)</a>	C	Yes	I	A	O								A						A		A	
<a href="#">52.209-5</a> Certification Regarding Responsibility Matters.	<a href="#">9.104-7(a)</a>	P	No	K	A	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
<a href="#">52.209-6</a> Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	<a href="#">9.409</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<a href="#">52.209-7</a> Information Regarding Responsibility Matters.	<a href="#">9.104-7(b)</a>	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.209-9</a> Updates of Publicly Available Information Regarding Responsibility Matters.	<a href="#">9.104-7(c)(1)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.209-10</a> Prohibition on Contracting with Inverted Domestic Corporations.	<a href="#">9.108-5(b)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.210-1</a> Market Research.	<a href="#">10.003</a>	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<a href="#">52.211-1</a> Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.	<a href="#">11.204(a)</a>	P	No	L	A	A	A	A	A	A			A	A			A	A		A			
<a href="#">52.211-2</a> Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).	<a href="#">11.204(b)</a>	P	No	L	A	A	A	A	A	A			A	A			A	A		A			
<a href="#">52.211-3</a> Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	<a href="#">11.204(c)</a>	P	No	L	A	A	A	A	A	A			A	A			A	A		A			
<a href="#">52.211-4</a> Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	<a href="#">11.204(d)</a>	P	No	L	A	A	A	A	A	A			A	A			A	A	A	A			
<a href="#">52.211-5</a> Material Requirements.	<a href="#">11.304</a>	C	Yes	I	R	R															A		
<a href="#">52.211-6</a> Brand Name or Equal.	<a href="#">11.107(a)</a>	P	Yes	L	A	A						A							A		A		
<a href="#">52.211-7</a> Alternatives to Government-Unique Standards.	<a href="#">11.107(b)</a>	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.211-8</a> Time of Delivery.	<a href="#">11.404(a)(2)</a>	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	<a href="#">11.404(a)(2)</a>	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	<a href="#">11.404(a)(2)</a>	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	<a href="#">11.404(a)(2)</a>	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O

(g) [OF 309](#) (Rev. 9/97), *Amendment of Solicitation*. [OF 309](#) may be used to amend solicitations of negotiated contracts, as specified in [15.210](#)(b).

**53.216 Types of contracts.**

**53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).**

[OF 347](#), Order for Supplies or Services. [OF 347](#), prescribed in [53.213](#)(f) (or an approved agency form), may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in [16.703](#)(d)(2)(i).

**53.217 [Reserved]**

**53.218 [Reserved]**

**53.219 Small business programs.**

The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in [Part 19](#); [SF 294](#), (Rev. 8/2014) Subcontracting Report for Individual Contracts. [SF 294](#) is authorized for local reproduction.

**53.220 [Reserved]**

**53.221 [Reserved]**

**53.222 Application of labor laws to Government acquisitions (SF’s 308, 1093, 1413, 1444, 1445, 1446, WH-347).**

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) [Reserved]

(b) [Reserved]

(c) [SF 308](#) (DOL) (Rev. 2/2013), *Request for Wage Determination and Response to Request*. (See [22.404-3](#)(a) and (b).)

(d) [SF 1093](#) (Rev. 2/2013), *Schedule of Withholdings Under the Construction Wage Rate Requirements Statute (40 U.S.C. Chapter 31, Subchapter IV, section 3144) and/or the Contract Work Hours and Safety Standards Statute (40 U.S.C. Chapter 37, section 3703)*. (See [22.406-9](#)(c)(1).)

(e) [SF 1413](#) (Rev. 4/2013), *Statement and Acknowledgment*. [SF 1413](#) is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in [22.406-5](#).

(f) Form [SF 1444](#) (Rev. 4/2013), *Request for Authorization of Additional Classification and Rate*. (See [22.406-3](#)(a) and [22.1019](#).)

(g) [SF 1445](#) (Rev. 12/96), *Labor Standards Interview*. (See [22.406-7](#)(b).)

(h) [SF 1446](#) (Rev. 4/2013.), *Labor Standards Investigation Summary Sheet*. (See [22.406-8](#)(d).)

(i) *Form WH-347* (DOL), *Payroll (For Contractor’s Optional Use)*. (See [22.406-6](#)(a).)

**53.223 [Reserved]**

**53.224 [Reserved]**

**53.225 [Reserved]**

**53.226 [Reserved]**

**53.227 [Reserved]**

**53.228 Bonds and insurance.**

The following standard forms are prescribed for use for bond and insurance requirements, as specified in [Part 28](#):

(a) [SF 24](#) (Rev. 10/98) *Bid Bond*. (See [28.106-1](#).) [SF 24](#) is authorized for local reproduction.

(b) [SF 25](#) (Rev. 3/2013) *Performance Bond*. (See [28.106-1](#)(b).) [SF 25](#) is authorized for local reproduction.

(c) [SF 25A](#) (Rev. 3/2013) *Payment Bond*. (See [28.106-1](#)(c).) [SF 25A](#) is authorized for local reproduction.

(d) [SF 25B](#) (Rev. 10/83), *Continuation Sheet* (For Standard Forms [24](#), [25](#), and [25A](#)). (See [28.106-1](#)(c).)

(e) [SF 28](#) (Rev. 6/03) *Affidavit of Individual Surety*. (See [28.106-1](#)(e) and [28.203](#)(b).) [SF 28](#) is authorized for local reproduction.

(f) [SF 34](#) (Rev. 1/90), *Annual Bid Bond*. (See [28.106-1](#)(f).) [SF 34](#) is authorized for local reproduction.

(g) [SF 35](#) (Rev. 1/90), *Annual Performance Bond*. (See [28.106-1](#).) [SF 35](#) is authorized for local reproduction.

(h) [SF 273](#) (Rev. 4/2013) *Reinsurance Agreement for a Bond statute Performance Bond*. (See [28.106-1](#)(h) and [28.202-1](#)(a)(4).) [SF 273](#) is authorized for local reproduction.

(i) [SF 274](#) (Rev. 4/2013) *Reinsurance Agreement for a Bond statute Payment Bond*. (See [28.106-1](#)(i) and [28.202-1](#)(a)(4).) [SF 274](#) is authorized for local reproduction.

(j) [SF 275](#) (Rev. 10/98) *Reinsurance Agreement in Favor of the United States*. (See [28.106-1](#)(j) and [28.202-1](#)(a)(4).) [SF 275](#) is authorized for local reproduction.

(k) [SF 1414](#) (Rev. 10/93), *Consent of Surety*. [SF 1414](#) is authorized for local reproduction.

(l) [SF 1415](#) (Rev. 7/93), *Consent of Surety and Increase of Penalty*. (See [28.106-1\(l\)](#).) [SF 1415](#) is authorized for local reproduction.

(m) [SF 1416](#) (Rev. 10/98) *Payment Bond for Other than Construction Contracts*. (See [28.106-1\(m\)](#).) [SF 1416](#) is authorized for local reproduction.

(n) [SF 1418](#) (Rev. 2/99) *Performance Bond For Other Than Construction Contracts*. (See [28.106-1\(n\)](#).) [SF 1418](#) is authorized for local reproduction.

(o) [OF 90](#) (Rev. 1/90), *Release of Lien on Real Property*. (See [28.106-1\(o\)](#) and [28.203-5\(a\)](#).) [OF 90](#) is authorized for local reproduction.

(p) [OF 91](#) (1/90 Ed.), *Release of Personal Property from Escrow*. (See [28.106-1\(p\)](#) and [28.203-5\(a\)](#).) [OF 91](#) is authorized for local reproduction.

### 53.229 Taxes (SF's 1094, 1094-A).

[SF 1094](#) (Rev. 12/96), *U.S. Tax Exemption Form, and SF 1094A* (Rev. 12/96), *Tax Exemption Forms Accountability Record*. SF's [1094](#) and [1094A](#) are prescribed for use in establishing exemption from State or local taxes, as specified in [29.302\(b\)](#).

### 53.230 [Reserved]

### 53.231 [Reserved]

### 53.232 Contract financing (SF 1443).

[SF 1443](#) (7/09), *Contractor's Request for Progress Payment*. [SF 1443](#) is prescribed for use in obtaining contractors' requests for progress payments.

### 53.233 [Reserved]

### 53.234 [Reserved]

### 53.235 Research and development contracting (SF 298).

[SF 298](#) (2/89), *Report Documentation Page*. [SF 298](#) is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in [35.010](#).

### 53.236 Construction and architect-engineer contracts.

#### 53.236-1 Construction.

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

- (a) [Reserved]
- (b) [Reserved]
- (c) [Reserved]

(d) [SF 1442](#) (4/85 Ed.), *Solicitation, Offer and Award (Construction, Alteration, or Repair)*. [SF 1442](#) is prescribed for use in soliciting offers and awarding contracts expected to exceed the simplified acquisition threshold for—

(1) Construction, alteration, or repair; or

(2) Dismantling, demolition, or removal of improvements (and may be used for contracts within the simplified acquisition threshold), as specified in [36.701\(a\)](#).

(e) [OF 347](#) (Rev. 2/2012), *Order for Supplies or Services*. [OF 347](#), prescribed in [53.213\(f\)](#) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

(1) Construction, alteration, or repair; or

(2) Dismantling, demolition, or removal of improvements, as specified in [36.701\(b\)](#).

(f) [OF 1419](#) (11/88 Ed.), *Abstract of Offers—Construction, and OF 1419A* (11/88 Ed.), *Abstract of Offers—Construction, Continuation Sheet*. OF's [1419](#) and [1419A](#) are prescribed for use in recording bids (and may be used for recording proposal information), as specified in [36.701\(c\)](#).

#### 53.236-2 Architect-engineer services (SF's 252 and 330).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) [SF 252](#) (Rev. 10/83), *Architect-Engineer Contract*. [SF 252](#) is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in [36.702\(a\)](#). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) [SF 330](#) (Rev. 3/2013), *Architect-Engineer Qualifications*. [SF 330](#) is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in [36.702\(b\)\(1\)](#) and (b)(2).

### 53.237 [Reserved]

### 53.238 [Reserved]

### 53.239 [Reserved]

### 53.240 [Reserved]

### 53.241 [Reserved]

### 53.242 Contract administration.

#### 53.242-1 Novation and change-of-name agreements (SF 30).

[SF 30](#), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), shall be used in connection