

FEDERAL ACQUISITION CIRCULAR

December 13, 2010

Number 2005-47

Federal Acquisition Circular (FAC) 2005-47 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 2005-47 is effective December 13, 2010, except for Items II and VI, which are effective January 12, 2011.

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FAC 2005-47 LIST OF SUBJECTS

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FAC 2005-47 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-47 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR case 2010-006) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). The Executive Order requires contractors and subcontractors to post a notice that includes employee rights under the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self organize and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. This FAR interim rule establishes a new subpart 22.16, Notification of Employee Rights under the National Labor Relations Act. The rule also creates a new FAR clause 52.222-40, Notification of Employee Rights under the National Labor Relations Act. In addition, this rule revises the FAR clauses at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244-6, Subcontracts for Commercial Items, to include the requirements of the new FAR clause 52.222-40. The required employee notice, "Notification of Employee Rights Under the National Labor Relations Act," may be obtained from the DoL; downloaded from a DoL website; provided by the Federal contracting agency, if requested; or reproduced and used as exact duplicate copies of the DoL's official poster (see FAR 52.222-40(c)). Contracting officers shall insert the clause at FAR 52.222-40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

A contracting agency may modify the clause at FAR 52.222-40, if necessary, to reflect an exemption granted by the Secretary of the Department of Labor (see 22.1603(b)).

Replacement pages: General Structure pp. iii and iv; 1.1-3 thru 1.1-6; 2.1-15 and 2.1-16; Part 22 TOC pp. 22-3 and 22-4; 22.16-1 and 22.16-2; Part 52 TOC pp. 52-3 and 52-4; 52.2-39 thru 52.2-42.2; 52.2-123 thru 52.2-132.4; 52.2-263 and 52.2-264; and Matrix pp. 52.3-15 and 52.3-16.

Item II—HUBZone Program Revisions (FAR Case 2006-005)

This FAR final rule implements the Small Business Administration (SBA) final rule published in the *Federal Register* at 69 FR 29411 on May 24, 2004, and an interim rule published in the *Federal Register* at 70 FR 51243 on August 30, 2005, amending its HUBZone regulations at 13 CFR part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act of 2005, and other various policy changes. The FAR is amended to—

(1) Require a HUBZone small business concern to be a HUBZone small business concern both at the time of its initial offer and at the time of contract award; and

(2) Require that HUBZone concerns provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility. In addition, in accordance with 13 CFR 126.700, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50 percent of the cost of contract performance incurred for personnel on its own employees or subcontract employees of other HUBZone small business concerns. This final rule also amends FAR clause 52.219-3, Notice of Total HUBZone Set-Aside, and FAR clause 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, to include an Alternate I, to be used to waive the 50 percent requirement only after determining that at least two HUBZone small business concerns cannot meet the requirement. However, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

Replacement pages: THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JANUARY 12, 2011.

**Item III—Preventing Abuse of Interagency Contracts
(FAR Case 2008-032) (Interim)**

This interim rule implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009. FAR subpart 17.5 now addresses all interagency acquisitions, not just those made under the Economy Act authority. A new subsection 17.502-1 is added to require that all interagency acquisitions include a determination of best procurement approach. For an assisted acquisition between the servicing agency and the requesting agency, this subsection now requires a written agreement that establishes the general terms and conditions governing the relationship between the parties. Subsection 17.502-2 contains business-case analysis requirements when an agency wishes to establish a contract that would be used by other agencies. There is a statutory exception included in subpart 17.5 for orders of \$500,000 or less issued against Federal Supply Schedules.

Replacement pages: General Structure iii and iv; 2.1-1 thru 2.1-6; 2.1-9 thru 2.1-12; 4.6-1 thru 4.6-4; 8.4-1 and 8.4-2; 9.1-5 and 9.1-6; Part 17 TOC pp. 17-1 and 17-2; 17.5-1 thru 17.5-4 (17.5-3 and 17.5-4 added); Part 18 TOC pp. 18-1 and 18-2; 18.1-1 and 18.1-2; 35.0-7 and 35.0-8; and 41.2-3 and 41.2-4.

**Item IV—Small Disadvantaged Business Program Self-Certification
of Subcontractors (FAR Case 2009-019) (Interim)**

This interim rule amends the FAR by allowing small disadvantaged businesses (SDBs) to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This change implements revisions made by the Small Business Administration (SBA) to its SDB regulations. This case only addresses the subcontracting status portion of the SBA final rule for Small Disadvantaged Business certification. The Small Disadvantaged Business certification

for prime contracts will be addressed in a future rule. This change removes a cost of compliance burden on SDB subcontractors seeking SBA certification.

Replacement pages: 2.1-13 and 2.1-14; 19.3-1 and 19.3-2; 19.7-1 and 19.7-2; 52.2-39 thru 52.2-42.2; 52.2-91 thru 52.2-94; 52.2-101 and 52.2-102; and 52.2-263 and 52.2-264.

**Item V—Uniform Suspension and Debarment Requirement
(FAR Case 2009-036) (Interim)**

This interim rule amends the FAR at parts 9 and 52 to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for the acquisition of commercially available off-the-shelf items, and in the case of contracts for the acquisition of commercial items, first-tier subcontracts only.

This requirement will protect the Government against contracting with entities at any tier who are suspended, debarred or proposed for debarment. This rule does not have a significant impact on the Government, contractors or any automated systems.

Replacement pages: 9.4-3 and 9.4-4; 52.2-19 thru 52.2-20.2; 52.2-39 and 52.2-40; and 52.2-42.1 thru 52.2-42.4.

Item VI—Limitations on Pass-Through Charges (FAR Case 2008-031)

This final rule adopts the interim rule published in the *Federal Register* at 74 FR 52853, October 14, 2009, as a final rule with minor changes.

This interim rule amended the FAR to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Public Law 110-417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Public Law 109-364). This legislation required the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

Replacement pages: THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JANUARY 12, 2011.

Item VII—Technical Amendments

Editorial changes are made at FAR 3.104-1, 5.601, 7.105, and 10.002.

Replacement pages: 3.1-1 and 3.1-2; 5.6-1 and 5.6-2; 7.1-3 and 7.1-4; and 10.0-1 and 10.0-2.

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

Remove Pages

General Structure
pp. iii and iv

1.1-3 thru 1.1-6

2.1-1 thru 2.1-6
2.1-9 thru 2.1-16

3.1-1 and 3.1-2

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5.6-1 and 5.6-2

7.1-3 and 7.1-4

8.4-1 and 8.4-2

9.1-5 and 9.1-6

9.4-3 and 9.4-4

10.0-1 and 10.0-2

Part 17 TOC
pp. 17-1 and 17-2

17.5-1 and 17.5-2

Part 18 TOC
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19.7-1 and 19.7-2

Part 22 TOC
pp. 22-3 and 22-4

Insert Pages

General Structure
pp. iii and iv

1.1-3 thru 1.1-6

2.1-1 thru 2.1-6
2.1-9 thru 2.1-16

3.1-1 and 3.1-2

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7.1-3 and 7.1-4

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9.4-3 and 9.4-4

10.0-1 and 10.0-2

Part 17 TOC
pp. 17-1 and 17-2

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Part 18 TOC
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Part 22 TOC
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Part 52 TOC

pp. 52-3 and 52-4

52.2-19 thru 52.2-20.2

52.2-39 thru 52.2-42.2

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Matrix

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Part 52 TOC

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52.2-101 and 52.2-102

52.2-123 and 52.2-132.4

52.2-263 and 52.2-264

Matrix

pp. 52.3-15 and 52.3-16

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NOTE: THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JANUARY 12, 2011.

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PART 10—MARKET RESEARCH**PART 11—DESCRIBING AGENCY NEEDS**

- 11.1 Selecting and Developing Requirements Documents
- 11.2 Using and Maintaining Requirements Documents
- 11.3 Acceptable Material
- 11.4 Delivery or Performance Schedules
- 11.5 Liquidated Damages
- 11.6 Priorities and Allocations
- 11.7 Variation in Quantity
- 11.8 Testing

PART 12—ACQUISITION OF COMMERCIAL ITEMS

- 12.1 Acquisition of Commercial Items—General
- 12.2 Special Requirements for the Acquisition of Commercial Items
- 12.3 Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items
- 12.4 Unique Requirements Regarding Terms and Conditions for Commercial Items
- 12.5 Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-The-Shelf Items
- 12.6 Streamlined Procedures for Evaluation and Solicitation for Commercial Items

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

- 13.1 Procedures
- 13.2 Actions At or Below the Micro-Purchase Threshold
- 13.3 Simplified Acquisition Methods
- 13.4 Fast Payment Procedure
- 13.5 Test Program for Certain Commercial Items

PART 14—SEALED BIDDING

- 14.1 Use of Sealed Bidding
- 14.2 Solicitation of Bids
- 14.3 Submission of Bids
- 14.4 Opening of Bids and Award of Contract
- 14.5 Two-Step Sealed Bidding

PART 15—CONTRACTING BY NEGOTIATION

- 15.1 Source Selection Processes and Techniques
- 15.2 Solicitation and Receipt of Proposals and Information
- 15.3 Source Selection
- 15.4 Contract Pricing
- 15.5 Preaward, Award, and Postaward Notifications, Protests, and Mistakes
- 15.6 Unsolicited Proposals

PART 16—TYPES OF CONTRACTS

- 16.1 Selecting Contract Types
- 16.2 Fixed-Price Contracts
- 16.3 Cost-Reimbursement Contracts
- 16.4 Incentive Contracts
- 16.5 Indefinite-Delivery Contracts
- 16.6 Time-and-Materials, Labor-Hour, and Letter Contracts
- 16.7 Agreements

PART 17—SPECIAL CONTRACTING METHODS

- 17.1 Multi-year Contracting
- 17.2 Options
- 17.3 [Reserved]
- 17.4 Leader Company Contracting
- 17.5 Interagency Acquisitions
- 17.6 Management and Operating Contracts

PART 18—EMERGENCY ACQUISITIONS

- 18.1 Available Acquisition Flexibilities
- 18.2 Emergency Acquisition Flexibilities

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**PART 19—SMALL BUSINESS PROGRAMS**

- 19.1 Size Standards
- 19.2 Policies
- 19.3 Determination of Small Business Status for Small Business Programs
- 19.4 Cooperation with the Small Business Administration
- 19.5 Set-Asides for Small Business
- 19.6 Certificates of Competency and Determinations of Responsibility
- 19.7 The Small Business Subcontracting Program
- 19.8 Contracting with the Small Business Administration (The 8(a) Program)
- 19.9 [Reserved]
- 19.10 Small Business Competitiveness Demonstration Program
- 19.11 Price Evaluation Adjustment for Small Disadvantaged Business Concerns
- 19.12 Small Disadvantaged Business Participation Program
- 19.13 Historically Underutilized Business Zone (HUBZone) Program
- 19.14 Service-Disabled Veteran-Owned Small Business Procurement Program

PART 20—RESERVED**PART 21—RESERVED****PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

- 22.1 Basic Labor Policies
- 22.2 Convict Labor
- 22.3 Contract Work Hours and Safety Standards Act
- 22.4 Labor Standards for Contracts Involving Construction
- 22.5 Use of Project Labor Agreements for Federal Construction Projects
- 22.6 Walsh-Healey Public Contracts Act
- 22.7 [Reserved]
- 22.8 Equal Employment Opportunity
- 22.9 Nondiscrimination Because of Age
- 22.10 Service Contract Act of 1965, as Amended
- 22.11 Professional Employee Compensation
- 22.12 [Reserved]
- 22.13 Equal Opportunity for Veterans
- 22.14 Employment of Workers with Disabilities
- 22.15 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor
- 22.16 Notification of Employee Rights Under the National Labor Relations Act
- 22.17 Combating Trafficking in Persons
- 22.18 Employment Eligibility Verification

1.104 Applicability.

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

1.105 Issuance.

1.105-1 Publication and code arrangement.

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

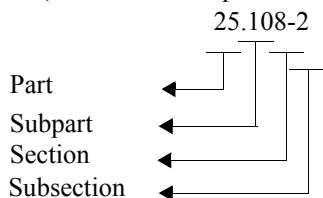
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see [Subpart 1.3](#)). The CFR Staff will assign chapter numbers to requesting agencies.

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

1.105-2 Arrangement of regulations.

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

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



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

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

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

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

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

- (i) Part would be “FAR Part 9” outside the FAR and “Part 9” within the FAR.
- (ii) Subpart would be “FAR Subpart 9.1” outside the FAR and “Subpart 9.1” within the FAR.
- (iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.
- (iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.
- (v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.

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

1.105-3 Copies.

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

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

1.106 OMB approval under the Paperwork Reduction Act.

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

FAR segment	OMB Control Number
3.103	9000-0018
3.4	9000-0003
4.102	9000-0033
4.5	9000-0137
4.605	9000-0145
4.607	9000-0145
4.7	9000-0034
4.9	9000-0097
5.405	9000-0036
7.2	9000-0082
8.5	9000-0113
9.1	9000-0011
9.2	9000-0020
14.201	9000-0034
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0037

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1.106

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FAR segment	OMB Control Number	FAR segment	OMB Control Number
14.407	9000-0038	48	9000-0027
14.5	9000-0041	49	9000-0028
15.2	9000-0037	50	9000-0029
15.209	9000-0034	51.1	9000-0031
15.4	9000-0013	51.2	9000-0032
15.404-1(f)	9000-0080	52.203-2	9000-0018
14.407-2	9000-0078	52.203-7	9000-0091
15.408	9000-0115	52.204-3	9000-0097
19.7	9000-0006 and	52.204-6	9000-0145
	9000-0007	52.204-7	9000-0159
19.12	9000-0150	52.207-3	9000-0114
22.103	9000-0065	52.208-8	9000-0113
22.8	1215-0072	52.208-9	9000-0113
22.11	9000-0066	52.209-1(b)	9000-0020
22.13	1293-0005 and	52.209-1(c)	9000-0083
	1215-0072	52.209-5	9000-0094
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27.4	9000-0090	52.212-4(t)	9000-0159
28.1	9000-0045	52.214-14	9000-0047
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29.304	9000-0059	52.214-16	9000-0044
30.6	9000-0129	52.214-21	9000-0039
31.205-46	9000-0079	52.214-26	9000-0034
31.205-46(a)(3)	9000-0088	52.214-28	9000-0013
32	9000-0035	52.215-2	9000-0034
32.000	9000-0138	52.215-1(c)(2)(iv)	9000-0048
32.1	9000-0070 and	52.215-1(d)	9000-0044
	9000-0138	52.215-6	9000-0047
32.2	9000-0138	52.215-9	9000-0078
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	9000-0138	52.215-14	9000-0080
32.7	9000-0074	52.215-19	9000-0115
32.9	9000-0102	52.215-20	9000-0013
32.10	9000-0138	52.215-21	9000-0013
33	9000-0035	52.216-2	9000-0068
34.1	9000-0133	52.216-3	9000-0068
36.213-2	9000-0037	52.216-4	9000-0068
36.603	9000-0157	52.216-5	9000-0071
41.202(c)	9000-0125	52.216-6	9000-0071
42.7	9000-0013	52.216-7	9000-0069
42.12	9000-0076	52.216-10	9000-0067
42.13	9000-0076	52.216-15	9000-0069
45	9000-0075	52.216-16	9000-0067
46	9000-0077	52.216-17	9000-0067
47	9000-0061	52.219-9	9000-0006 and
47.208	9000-0056		9000-0007

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FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.219-10	9000-0006	52.227-20	9000-0090
52.219-19	9000-0100	52.227-21	9000-0090
52.219-20	9000-0100	52.227-22	9000-0090
52.219-21	9000-0100	52.227-23	9000-0090
52.219-22	9000-0150	52.228-1	9000-0045
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52.219-25	9000-0150	52.228-12	9000-0135
52.219-28	9000-0163	52.228-13	9000-0045
52.222-2	9000-0065	52.228-15	9000-0045
52.222-4	1215-0119	52.228-16	9000-0045
52.222-6	1215-0140	52.229-2	9000-0059
52.222-8	1215-0149 and	52.230-6	9000-0129
	1215-0017	52.232-1	9000-0070
52.222-11	9000-0014	52.232-2	9000-0070
52.222-18	9000-0127	52.232-3	9000-0070
52.222-21	1215-0072	52.232-4	9000-0070
52.222-22	1215-0072	52.232-5	9000-0070
52.222-23	1215-0072	52.232-6	9000-0070
52.222-25	1215-0072	52.232-7	9000-0070
52.222-26	1215-0072	52.232-8	9000-0070
52.222-27	1215-0072	52.232-9	9000-0070
52.222-32	9000-0154	52.232-10	9000-0070
52.222-35	1215-0072	52.232-11	9000-0070
52.222-36	1215-0072	52.232-12	9000-0073
52.222-37	1293-0005	52.232-13	9000-0010
52.222-40	1215-0209	52.232-14	9000-0010
52.222-41	1215-0017 and	52.232-15	9000-0010
	1215-0150	52.232-16	9000-0010
52.222-46	9000-0066	52.232-20	9000-0074
52.223-4	9000-0134	52.232-22	9000-0074
52.223-5	9000-0147	52.232-27	9000-0102
52.223-6(b)(5)	9000-0101	52.232-29	9000-0138
52.223-7	9000-0107	52.232-30	9000-0138
52.223-9	9000-0134	52.232-31	9000-0138
52.223-13	9000-0139	52.232-32	9000-0138
52.223-14	9000-0139	52.233-1	9000-0035
52.225-2	9000-0024	52.234-1	9000-0133
52.225-4	9000-0130	52.236-5	9000-0062
52.225-6	9000-0025	52.236-13	1220-0029 and
52.225-8	9000-0022		9000-0060
52.225-9	9000-0141	52.236-15	9000-0058
52.225-11	9000-0141	52.236-19	9000-0064
52.225-18	9000-0161	52.241-1	9000-0126
52.225-21	9000-0141	52.241-3	9000-0122
52.225-23	9000-0141	52.241-7	9000-0123
52.227-14	9000-0090	52.241-13	9000-0124
52.227-15	9000-0090	52.243-1	9000-0026
52.227-16	9000-0090	52.243-2	9000-0026
52.227-17	9000-0090	52.243-3	9000-0026
52.227-18	9000-0090	52.243-4	9000-0026
52.227-19	9000-0090	52.243-6	9000-0026

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.243-7	9000-0026	SF 35	9000-0045
52.245-1	9000-0075	SF 273	9000-0045
52.245-9	9000-0075	SF 274	9000-0045
52.246-2	9000-0077	SF 275	9000-0045
52.246-3	9000-0077	SF 330	9000-0157
52.246-4	9000-0077	SF 1403	9000-0011
52.246-5	9000-0077	SF 1404	9000-0011
52.246-6	9000-0077	SF 1405	9000-0011
52.246-7	9000-0077	SF 1406	9000-0011
52.246-8	9000-0077	SF 1407	9000-0011
52.246-10	9000-0077	SF 1408	9000-0011
52.246-12	9000-0077	SF 1413	9000-0014
52.246-15	9000-0077	SF 1416	9000-0045
52.247-2	9000-0053	SF 1418	9000-0045
52.247-29	9000-0061	SF 1428	9000-0075
52.247-30	9000-0061	SF 1429	9000-0075
52.247-31	9000-0061	SF 1435	9000-0012
52.247-32	9000-0061	SF 1436	9000-0012
52.247-33	9000-0061	SF 1437	9000-0012
52.247-34	9000-0061	SF 1438	9000-0012
52.247-35	9000-0061	SF 1439	9000-0012
52.247-36	9000-0061	SF 1440	9000-0012
52.247-37	9000-0061	SF 1443	9000-0010
52.247-38	9000-0061	SF 1444	9000-0089
52.247-39	9000-0061	SF 1445	9000-0089
52.247-40	9000-0061	SF 1446	9000-0089
52.247-41	9000-0061	OF 312	9000-0150
52.247-42	9000-0061		
52.247-43	9000-0061		
52.247-44	9000-0061		
52.247-48	9000-0061		
52.247-51	9000-0057		
52.247-53	9000-0055		
52.247-57	9000-0061		
52.247-63	9000-0054		
52.247-64	9000-0061		
52.247-68	9000-0056		
52.248-1	9000-0027		
52.248-2	9000-0027		
52.248-3	9000-0027		
52.249-2	9000-0028		
52.249-3	9000-0028		
52.249-5	9000-0028		
52.249-6	9000-0028		
52.249-11	9000-0028		
52.250-1	9000-0029		
SF 24	9000-0045		
SF 25	9000-0045		
SF 25A	9000-0045		
SF 28	9000-0001		
SF 34	9000-0045		

1.107 Certifications.

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

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

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

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

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

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

2.000 Scope of part.

(a) This part—

(1) Defines words and terms that are frequently used in the FAR;

(2) Provides cross-references to other definitions in the FAR of the same word or term; and

(3) Provides for the incorporation of these definitions in solicitations and contracts by reference.

(b) Other parts, subparts, and sections of this regulation (48 CFR Chapter 1) may define other words or terms and those definitions only apply to the part, subpart, or section where the word or term is defined (see the Index for locations).

Subpart 2.1—Definitions**2.101 Definitions.**

(a) A word or a term, defined in this section, has the same meaning throughout this regulation (48 CFR Chapter 1), unless—

(1) The context in which the word or term is used clearly requires a different meaning; or

(2) Another FAR part, subpart, or section provides a different definition for the particular part or portion of the part.

(b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of this regulation (48 CFR Chapter 1), the definition in—

(1) This section includes a cross-reference to the other definitions; and

(2) That part, subpart, or section applies to the word or term when used in that part, subpart, or section.

“Acquisition” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

“Acquisition planning” means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

“Adequate evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Advisory and assistance services” means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/

or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see [9.505-1\(b\)](#)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

“Affiliates” means associated business concerns or individuals if, directly or indirectly—

(1) Either one controls or can control the other; or

(2) A third party controls or can control both.

“Agency head” or “head of the agency” means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.

“Alternate” means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It adds wording to, deletes wording from, or substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see [52.105\(a\)](#)).

“Architect-engineer services,” as defined in [40 U.S.C. 1102](#), means—

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

“Assignment of claims” means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance.

“Assisted acquisition” means a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency’s behalf, such as awarding and administering a contract, task order, or delivery order.

“Basic research” means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

“Best value” means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.

“Bid sample” means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (*e.g.*, balance, facility of use, or pattern).

“Biobased product” means a product determined by the U.S. Department of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

“Broad agency announcement” means a general announcement of an agency’s research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government’s needs (see [6.102\(d\)\(2\)](#)).

“Building or work” means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways,

streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

“Bundled contract” means a contract where the requirements have been consolidated by bundling. (See the definition of bundling.)

“Bundling” means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

- (i) The diversity, size, or specialized nature of the elements of the performance specified;
- (ii) The aggregate dollar value of the anticipated award;
- (iii) The geographical dispersion of the contract performance sites; or
- (iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) “Separate smaller contract” as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) “Single contract” as used in this definition, includes—

- (i) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR [16.504\(c\)](#)); and
- (ii) An order placed against an indefinite quantity contract under a—

- (A) Federal Supply Schedule contract; or
- (B) Task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

(4) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

“Business Partner Network (BPN)” means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors. The BPN is located at <http://www.bpn.gov>.

“Business unit” means any segment of an organization, or an entire business organization that is not divided into segments.

“Central Contractor Registration (CCR) database” means the primary Government repository for contractor information required for the conduct of business with the Government.

“Certified cost or pricing data” means “cost or pricing data” that were required to be submitted in accordance with FAR [15.403-4](#) and [15.403-5](#) and have been certified, or is required to be certified, in accordance with [15.406-2](#). This certification states that, to the best of the person’s knowledge and belief, the cost or pricing data are accurate, complete, and current as of a date certain before contract award. Cost or pricing data are required to be certified in certain procurements ([10 U.S.C. 2306a](#) and [41 U.S.C. 254b](#)).

“Change-of-name agreement” means a legal instrument executed by the contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

“Change order” means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor’s consent.

“Chief Acquisition Officer” means an executive level acquisition official responsible for agency performance of acquisition activities and acquisition programs created pursuant to the Services Acquisition Reform Act of 2003, Section 1421 of Public Law 108-136.

“Chief of mission” means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96-465) to be temporarily in charge of such a mission or office.

“Claim” means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in [33.206\(a\)](#), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

“Classified acquisition” means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

“Classified contract” means any contract in which the contractor or its employees must have access to classified information during contract performance. A contract may be a

classified contract even though the contract document itself is unclassified.

“Classified information” means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

“Cognizant Federal agency” means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

“Combatant commander” means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

“Commercial component” means any component that is a commercial item.

“Commercial computer software” means any computer software that is a commercial item.

“Commercial item” means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—

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

(ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

“Commercially available off-the-shelf (COTS)” item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in this section);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products.

“Common item” means material that is common to the applicable Government contract and the contractor’s other work.

“Component” means any item supplied to the Government as part of an end item or of another component, except that for use in—

(1) [Part 25](#), see the definition in [25.003](#);

(2) [52.225-1](#) and [52.225-3](#), see the definition in [52.225-1\(a\)](#) and [52.225-3\(a\)](#);

(3) [52.225-9](#) and [52.225-11](#), see the definition in [52.225-9\(a\)](#) and [52.225-11\(a\)](#); and

(4) [52.225-21](#) and [52.225-23](#), see the definition in [52.225-21\(a\)](#) and [52.225-23\(a\)](#).

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—(1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Consent to subcontract” means the contracting officer’s written consent for the prime contractor to enter into a particular subcontract.

“Construction” means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property (except that for use in subpart [22.5](#), see the definition at [22.502](#)).

“Contiguous United States (CONUS)” means the 48 contiguous States and the District of Columbia.

“Contingency operation” ([10 U.S.C. 101\(a\)\(13\)](#)) means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section [688](#), [12301\(a\)](#), [12302](#), [12304](#), [12305](#), or [12406](#) of [10 U.S.C.](#), [Chapter 15 of 10 U.S.C.](#), or any other provision of law during a war or during a national emergency declared by the President or Congress.

“Continued portion of the contract” means the portion of a contract that the contractor must continue to perform following a partial termination.

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by [31 U.S.C. 6301](#), *et seq.* For discussion of various types of contracts, see [Part 16](#).

“Contract administration office” means an office that performs—

(1) Assigned postaward functions related to the administration of contracts; and

(2) Assigned preaward functions.

“Contract clause” or “clause” means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

“Contract modification” means any written change in the terms of a contract (see [43.103](#)).

“Contracting” means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

“Contracting activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

“Contracting office” means an office that awards or executes a contract for supplies or services and performs postaward functions not assigned to a contract administration office (except for use in [Part 48](#), see also [48.001](#)).

“Contracting officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of

these areas. Reference in this regulation (48 CFR Chapter 1) to administrative contracting officer or termination contracting officer does not—

(1) Require that a duty be performed at a particular office or activity; or

(2) Restrict in any way a contracting officer in the performance of any duty properly assigned.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*. For use in [Subpart 23.5](#), see the definition at [23.503](#).

“Cost or pricing data” ([10 U.S.C. 2306a\(h\)\(1\)](#) and [41 U.S.C. 254b](#)) means all facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include, but are not limited to, such factors as—

(1) Vendor quotations;

(2) Nonrecurring costs;

(3) Information on changes in production methods and in production or purchasing volume;

(4) Data supporting projections of business prospects and objectives and related operations costs;

(5) Unit-cost trends such as those associated with labor efficiency;

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

(8) Information on management decisions that could have a significant bearing on costs.

“Cost realism” means that the costs in an offeror’s proposal—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements;

and

(3) Are consistent with the various elements of the offeror’s technical proposal.

“Cost sharing” means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

“Customs territory of the United States” means the 50 States, the District of Columbia, and Puerto Rico.

“Data other than certified cost or pricing data” means pricing data, cost data, and judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism. Such data may include the identical types of data as certified cost or pricing data, consistent with [Table 15-2](#) of [15.408](#), but without the certification. The

data may also include, for example, sales data and any information reasonably required to explain the offeror's estimating process, including, but not limited to—

(1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed price.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities, which is used as the identification number for Federal contractors.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see [Subpart 32.11](#)) for the same concern.

“Day” means, unless otherwise specified, a calendar day.

“Debarment” means action taken by a debarring official under [9.406](#) to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.”

“Delivery order” means an order for supplies placed against an established contract or with Government sources.

“Depreciation” means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

“Descriptive literature” means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

“Design-to-cost” means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

“Designated operational area” means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

“Direct cost” means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

“Direct acquisition” means a type of interagency acquisition where a requesting agency places an order directly against a servicing agency's indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order.

“Disaster Response Registry” means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities established in accordance with [6 U.S.C. 796](#), Registry of Disaster Response Contractors. The Registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. The Registry is located at www.ccr.gov and alternately through the FEMA website at <http://www.fema.gov/business/index.shtm>. (See [26.205](#)).

“Drug-free workplace” means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Earned value management system” means a project management tool that effectively integrates the project scope of work with cost, schedule and performance elements for optimum project planning and control. The qualities and operating characteristics of an earned value management system are described in American National Standards Institute /Electronics Industries Alliance (ANSI/EIA) Standard-748, Earned Value Management Systems. (See OMB Circular A-11, Part 7.)

“Effective date of termination” means the date on which the notice of termination requires the contractor to stop performance under the contract. If the contractor receives the termination notice after the date fixed for termination, then the effective date of termination means the date the contractor receives the notice.

“Electronic and information technology (EIT)” has the same meaning as “information technology” except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

“Electronic commerce” means electronic techniques for accomplishing business transactions including electronic mail

(iii) Significantly affect the life, liberty, or property of private persons;

(iv) Commission, appoint, direct, or control officers or employees of the United States; or

(v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services.

“Inspection” means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

“Insurance” means a contract that provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

“Interagency acquisition” means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency), by an assisted acquisition or a direct acquisition. The term includes—

(1) Acquisitions under the Economy Act ([31 U.S.C. 1535](#)); and

(2) Non-Economy Act acquisitions completed under other statutory authorities, (e.g., General Services Administration Federal Supply Schedules in subpart 8.4 and Government-wide acquisition contracts (GWACs)).

“Invoice” means a contractor’s bill or written request for payment under the contract for supplies delivered or services performed (see also “proper invoice”).

“Irrevocable letter of credit” means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government’s (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

“Labor surplus area” means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

“Labor surplus area concern” means a concern that together with its first-tier subcontractors will perform sub-

stantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

“Latent defect” means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

“Major system” means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$189.5 million or the eventual total expenditure for the acquisition exceeds \$890 million;

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$2 million or the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget Circular A-109, entitled “Major System Acquisitions,” whichever is greater; or

(3) The system is designated a “major system” by the head of the agency responsible for the system ([10 U.S.C. 2302](#) and [41 U.S.C. 403](#)).

“Make-or-buy program” means that part of a contractor’s written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor’s facilities and those to be subcontracted.

“Market research” means collecting and analyzing information about capabilities within the market to satisfy agency needs.

“Master solicitation” means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

“May” denotes the permissive. However, the words “no person may...” mean that no person is required, authorized, or permitted to do the act described.

“Micro-purchase” means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

“Micro-purchase threshold” means \$3,000, except it means—

(1) For acquisitions of construction subject to the Davis-Bacon Act, \$2,000;

(2) For acquisitions of services subject to the Service Contract Act, \$2,500; and

(3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as described in [13.201\(g\)\(1\)](#), except for construction subject to the Davis-Bacon Act ([41 U.S.C. 428a](#))—

(i) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

“Minority Institution” means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act ([20 U.S.C. 1101a](#)).

“Multi-agency contract (MAC)” means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see [17.502-2](#)). Multi-agency contracts include contracts for information technology established pursuant to [40 U.S.C. 11314\(a\)\(2\)](#).

“Must” (see “shall”).

“National defense” means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space, except that for use in [Subpart 11.6](#), see the definition in [11.601](#).

“Neutral person” means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person must have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve ([5 U.S.C. 583](#)).

“Nondevelopmental item” means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraphs (1) or (2) solely because the item is not yet in use.

“Novation agreement” means a legal instrument—

(1) Executed by the—

- (i) Contractor (transferor);
- (ii) Successor in interest (transferee); and
- (iii) Government; and

(2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers. For unsolicited proposals, see [Subpart 15.6](#).

“Offeror” means offeror or bidder.

“Office of Small and Disadvantaged Business Utilization” means the Office of Small Business Programs when referring to the Department of Defense.

“Online Representations and Certifications Application (ORCA)” means the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. ORCA is part of the Business Partner Network (BPN). ORCA is located at <http://orca.bpn.gov>.

“Option” means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

“Outlying areas” means—

- (1) *Commonwealths*.(i) Puerto Rico.
- (ii) The Northern Mariana Islands;
- (2) *Territories*.(i) American Samoa.
- (ii) Guam.
- (iii) U.S. Virgin Islands; and
- (3) *Minor outlying islands*.(i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

“Overtime” means time worked by a contractor’s employee in excess of the employee’s normal workweek.

“Overtime premium” means the difference between the contractor’s regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not

include shift premium, *i.e.*, the difference between the contractor's regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“Partial termination” means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

“Past performance” means an offeror’s or contractor’s performance on active and physically completed contracts (see [4.804-4](#)).

“Performance-based acquisition (PBA)” means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.

“Performance Work Statement (PWS)” means a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.

“Personal property” means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

“Personal services contract” means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see [37.104](#)).

“Plant clearance officer” means an authorized representative of the contracting officer, appointed in accordance with agency procedures, responsible for screening, redistributing, and disposing of contractor inventory from a contractor’s plant or work site. The term “Contractor’s plant” includes, but is not limited to, Government-owned contractor-operated plants, Federal installations, and Federal and non-Federal industrial operations, as may be required under the scope of the contract.

“Pollution prevention” means any practice that—

(1)(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(3) Protects natural resources by conservation.

“Power of attorney” means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also “attorney-in-fact” at [28.001](#)).

“Preaward survey” means an evaluation of a prospective contractor’s capability to perform a proposed contract.

“Preponderance of the evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Pricing” means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

“Procurement” (see “acquisition”).

“Procuring activity” means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” is synonymous with “contracting activity.”

“Projected average loss” means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

“Proper invoice” means an invoice that meets the minimum standards specified in [32.905\(b\)](#).

“Purchase order,” when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

“Qualification requirement” means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

“Qualified products list (QPL)” means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

“Receiving report” means written evidence that indicates Government acceptance of supplies delivered or services performed (see [Subpart 46.6](#)). Receiving reports must meet the requirements of [32.905\(c\)](#).

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in [Subpart 11.3](#) for paper and paper products, see the definition at [11.301](#).

“Registered in the CCR database” means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

“Renewable energy” means energy produced by solar, wind, geothermal, and biomass power.

“Renewable energy technology” means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

“Requesting agency” means the agency that has the requirement for an interagency acquisition.

“Residual value” means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

“Responsible audit agency” means the agency that is responsible for performing all required contract audit services at a business unit.

“Responsible prospective contractor” means a contractor that meets the standards in [9.104](#).

“Scrap” means personal property that has no value except its basic metallic, mineral, or organic content.

“Segment” means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

(1) Government-owned contractor-operated (GOCO) facilities; and

(2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—

(i) A majority ownership; or

(ii) Less than a majority ownership, but over which it exercises control.

“Self-insurance” means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

“Senior procurement executive” means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act ([41 U.S.C. 414\(3\)](#)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique

acquisition policies, regulations, and standards of the executive agency.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Servicing agency” means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

“Shall” means the imperative.

“Shipment” means freight transported or to be transported.

“Shop drawings” means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

(1) The proposed fabrication and assembly of structural elements.

(2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

“Should” means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

“Signature” or “signed” means the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

“Simplified acquisition procedures” means the methods prescribed in [Part 13](#) for making purchases of supplies or services.

“Simplified acquisition threshold” means \$150,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack ([41 U.S.C. 428a](#)), the term means—

(1) \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

“Single, Governmentwide point of entry,” means the one point of entry to be designated by the Administrator of OFPP

that will allow the private sector to electronically access procurement opportunities Governmentwide.

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see [19.102](#)). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity. (See [15 U.S.C. 632](#).)

“Small business subcontractor” means a concern, including affiliates, that for subcontracts valued at—

(1) \$10,000 or less, does not have more than 500 employees; and

(2) More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR Part 121 (see [19.102](#)) for the product or service it is providing on the subcontract.

“Small disadvantaged business concern” (except for [52.212-3\(c\)\(4\)](#) and [52.219-1\(b\)\(2\)](#) for general statistical purposes and [52.212-3\(c\)\(9\)\(ii\)](#), [52.219-22\(b\)\(2\)](#), [52.219-22\(b\)\(1\)\(C\)](#), and [52.219-23\(a\)\(3\)](#) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), consistent with 13 CFR 124.1002, means an offeror, that is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR Part 124, Subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the CCR Dynamic Small Business Search data base maintained by the Small Business Administration;

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred

since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award; or

(3) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

“Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

“Solicitation provision or provision” means a term or condition used only in solicitations and applying only before contract award.

“Source selection information” means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “Source Selection Information—See FAR [2.101](#) and [3.104](#)” based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

“Special competency” means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

“Special test equipment” means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

“State and local taxes” means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

“Statement of Objectives (SOO)” means a Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

“Substantial evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Substantially as follows” or “substantially the same as,” when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

“Supplemental agreement” means a contract modification that is accomplished by the mutual action of the parties.

“Supplies” means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

“Supporting a diplomatic or consular mission” means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a Chief of Mission.

“Surety” means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

“Suspension” means action taken by a suspending official under [9.407](#) to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

“Task order” means an order for services placed against an established contract or with Government sources.

“Taxpayer Identification Number (TIN)” means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 403\(8\)](#)).

“Termination for convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

“Termination for default” means the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Termination inventory” means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

“Terminated portion of the contract” means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

“Unallowable cost” means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that—

- (1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—
 - (i) Is the product of original thinking submitted confidentially by one source;
 - (ii) Contains new, novel, or changed concepts, approaches, or methods;
 - (iii) Was not submitted previously by another; and
 - (iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

“United States,” when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

- (1) For use in [Subpart 3.10](#), see the definition at [3.1001](#).
- (2) For use in [Subpart 22.8](#), see the definition at [22.801](#).
- (3) For use in [Subpart 22.10](#), see the definition at [22.1001](#).
- (4) For use in [Subpart 22.13](#), see the definition at [22.1301](#).
- (5) For use in subpart [22.16](#), see the definition at [22.1601](#).
- (6) For use in [Subpart 22.18](#), see the definition at [22.1801](#).
- (7) For use in [Part 25](#), see the definition at [25.003](#).
- (8) For use in [Part 27](#), see the definition at [27.001](#).
- (9) For use in [Subpart 47.4](#), see the definition at [47.401](#).

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (Section 36 of the Office of Federal Procurement

Policy Act, [41 U.S.C. 401](#), *et seq.*). For use in the clause at [52.248-2](#), see the definition at [52.248-2\(b\)](#).

“Value engineering change proposal (VECP)”—

- (1) Means a proposal that—
 - (i) Requires a change to the instant contract to implement; and
 - (ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—
 - (A) In deliverable end item quantities only;
 - (B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or
 - (C) To the contract type only.
- (2) For use in the clauses at—
 - (i) [52.248-2](#), see the definition at [52.248-2\(b\)](#); and
 - (ii) [52.248-3](#), see the definition at [52.248-3\(b\)](#).

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Virgin material” means—

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
- (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

“Voluntary consensus standards” means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies (*e.g.*, International Organization for Standardization (ISO) and ASTM-International). See OMB Circular A-119.

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

“Women-owned small business concern” means a small business concern—

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

“Writing” or “written” (see “in writing”).

3.000 Scope of part.

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

Subpart 3.1—Safeguards**3.101 Standards of conduct.****3.101-1 General.**

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

3.101-2 Solicitation and acceptance of gratuities by Government personnel.

As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in agency regulations.

3.101-3 Agency regulations.

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR 735 to prescribe "Standards of Conduct." These agency standards contain—

(1) Agency-authorized exceptions to [3.101-2](#); and

(2) Disciplinary measures for persons violating the standards of conduct.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended [18 U.S.C. 207](#).

3.102 [Reserved]**3.103 Independent pricing.****3.103-1 Solicitation provision.**

The contracting officer shall insert the provision at [52.203-2](#), Certificate of Independent Price Determination, in solicitations when a firm-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) [Reserved]

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

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

3.103-2 Evaluating the certification.

(a) *Evaluation guidelines.* (1) None of the following, in and of itself, constitutes "disclosure" as it is used in paragraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of paragraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

(b) *Rejection of offers suspected of being collusive.* (1) If the offeror deleted or modified paragraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified paragraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting com-

petition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under paragraph (b)(1) or (b)(2) of this section, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with [3.303](#).

(4) The determination made under paragraph (b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

3.103-3 The need for further certifications.

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

3.104 Procurement integrity.

3.104-1 Definitions.

As used in this section—

“Agency ethics official” means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under [3.104-6](#) has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

“Compensation” means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

“Contractor bid or proposal information” means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by [10 U.S.C. 2306a\(h\)](#)) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 ([41 U.S.C. 254b\(h\)](#)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.

(5) Information marked in accordance with [52.215-1\(e\)](#).

“Decision to award a subcontract or modification of subcontract” means a decision to designate award to a particular source.

“Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovation research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

“In excess of \$10,000,000” means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

“Official” means—

(1) An officer, as defined in [5 U.S.C. 2104](#);

(2) An employee, as defined in [5 U.S.C. 2105](#);

(3) A member of the uniformed services, as defined in [5 U.S.C. 2101\(3\)](#); or

(4) A special Government employee, as defined in [18 U.S.C. 202](#).

“Participating personally and substantially in a Federal agency procurement” means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

Subpart 4.6—Contract Reporting

4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Definitions.

As used in this subpart—

“*Contract action*” means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Contract action does not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.

“*Contract action report (CAR)*” means contract action data required to be entered into the Federal Procurement Data System (FPDS).

“*Definitive contract*” means any contract that must be reported to FPDS other than an indefinite delivery vehicle. This definition is only for FPDS, and is not intended to apply to [Part 16](#).

“*Entitlement program*” means a Federal program that guarantees a certain level of benefits to persons or other entities who meet requirements set by law, such as Social Security, farm price supports, or unemployment benefits.

“*Generic DUNS number*” means a DUNS number assigned to a category of vendors not specific to any individual or entity.

“*Indefinite delivery vehicle (IDV)*” means an indefinite delivery contract or agreement that has one or more of the following clauses:

- (1) [52.216-18](#), Ordering.
- (2) [52.216-19](#), Order Limitations.
- (3) [52.216-20](#), Definite Quantity.
- (4) [52.216-21](#), Requirements.
- (5) [52.216-22](#), Indefinite Quantity.
- (6) Any other clause allowing ordering.

4.602 General.

(a) The FPDS provides a comprehensive web-based tool for agencies to report contract actions. The resulting data provides—

(1) A basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the effect of Federal contracting on the Nation’s economy and the extent to

which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and AbilityOne nonprofit agencies operating under the Javits-Wagner-O’Day Act, are sharing in Federal contracts; and

(3) A means of measuring and assessing the effect of other policy and management initiatives (e.g., performance based acquisitions and competition).

(b) FPDS does not provide reports for certain acquisition information used in the award of a contract action (e.g., sub-contracting data, funding data, or accounting data).

(c) The FPDS Web site, <https://www.fpds.gov>, provides instructions for submitting data. It also provides—

- (1) A complete list of departments, agencies, and other entities that submit data to the FPDS;
- (2) Technical and end-user guidance;
- (3) A computer-based tutorial; and
- (4) Information concerning reports not generated in FPDS.

4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), all Federal award data must be publicly accessible.

(b) Except as provided in 4.606(a)(2), executive agencies shall use FPDS to maintain publicly available information about all contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Funding Agency Code from the applicable agency codes maintained by the National Institute of Standards and Technology (NIST) using NIST Special Publication 800-87, “Codes for the Identification of Federal and Federally Assisted Organizations,” at <http://csrc.nist.gov/publications/nistpubs/800-87/sp800-87-Final.pdf>.

(d) Agencies exempt from the FAR are encouraged to report contract actions in FPDS.

(e) Agencies awarding contract actions with a mix of appropriated and nonappropriated funding shall only report the full appropriated portion of the contract action in FPDS.

4.604 Responsibilities.

(a) The Senior Procurement Executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS.

(b)(1) The responsibility for the submission and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action.

(2) When a contract writing system is integrated with FPDS, the CAR must be confirmed for accuracy prior to release of the contract award.

(3) When a contract writing system is not integrated with FPDS, the CAR must be submitted to FPDS within three business days after contract award.

(4) For any action awarded in accordance with FAR [6.302-2](#) or pursuant to any of the authorities listed at FAR [Subpart 18.2](#), the CAR must be submitted to FPDS within 30 days after contract award.

(5) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS-NG.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, by January 5, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies must have in place a process that ensures that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. Agencies must submit their proposed identifier format to the FPDS Program Management Office, which maintains a registry of the agency unique identifiers on the FPDS website, and must validate their use in all transactions. The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alphanumeric characters identifying bureaus, offices, or other administrative subdivisions. Other pertinent PIID instructions can be found at <https://www.fpds.gov>.

(b) *Data Universal Numbering System (DUNS)*. The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the Central Contractor Registration (CCR) database in accordance with the clause at [52.204-7](#), Central Contractor Registration. The contracting officer must ask the offeror to provide its DUNS number by using either the provision at [52.204-6](#), Data Universal Numbering System (DUNS) Number, the clause at [52.204-7](#), Central Contractor Registration, or the provision at [52.212-1](#), Instructions to Offerors—Commercial Items.

(1) Notwithstanding the inclusion of the provision at [52.204-6](#) in the associated solicitation or except as provided in paragraph (b)(2) of this section, the contracting officer shall

use one of the generic DUNS numbers identified in CCR to report corresponding contract actions if the contract action is—

(i) With contractors located outside the United States and its outlying areas as defined in [2.101](#) who do not have a DUNS number, and the contracting officer determines it is impractical to obtain a DUNS number;

(ii) With students who do not have DUNS numbers;

(iii) With dependents of veterans, Foreign Service Officers, and military members assigned overseas who do not have DUNS numbers; or

(iv) For classified or national security.

(2) In accordance with agency procedures, authorized generic DUNS numbers found at <https://www.fpds.gov> may be used to report contract actions when—

(i) Specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services; or

(ii) The agency determines it is impractical to obtain a DUNS number.

(c) The contracting officer, when entering data in FPDS, shall use the instructions at <https://www.fpds.gov> to identify any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

4.606 Reporting Data.

(a) *Actions required to be reported to FPDS*. (1) As a minimum, agencies must report the following contract actions over the micro-purchase threshold, regardless of solicitation process used, and agencies must report any modification to these contract actions that change previously reported contract action data, regardless of dollar value:

(i) Definitive contracts, including purchase orders and imprest fund buys over the micro-purchase threshold awarded by a contracting officer.

(ii) Indefinite delivery vehicle (identified as an "IDV" in FPDS). Examples of IDVs include the following:

(A) Task and Delivery Order Contracts (see [Subpart 16.5](#)), including—

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

(C) Blanket Purchase Agreements (see [13.303](#)).

(D) Basic Ordering Agreements (see [16.703](#)).

(E) Any other agreement or contract against which individual orders or purchases may be placed.

(iii) All calls and orders awarded under the indefinite delivery vehicles identified in paragraph (a)(1)(ii) of this section.

(2) Agencies participating in the Small Business Competitiveness Demonstration Program (see [Subpart 19.10](#)) shall report as a contract action each award in the designated industry groups, regardless of dollar value.

(3) The GSA Office of Charge Card Management will provide the Government purchase card data, at a minimum annually, and GSA will incorporate that data into FPDS for reports.

(4) Agencies may use the FPDS Express Reporting capability for consolidated multiple action reports for a vendor when it would be overly burdensome to report each action individually. When used, Express Reporting should be done at least monthly.

(b) *Reporting Other Actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section, and must contact the FPDS Program Office at integrated.acquisition@gsa.gov if they desire to submit any of the following types of activity:

(1) Transactions at or below the micro-purchase threshold, except as provided in paragraph (a)(2) of this section.

(2) Any non-appropriated fund (NAF) or NAF portion of a contract action using a mix of appropriated and nonappropriated funding.

(3) Lease and supplemental lease agreements for real property.

(4) Resale activity (*i.e.*, commissary or exchange activity).

(5) Revenue generating arrangements (*i.e.*, concessions).

(6) Training expenditures not issued as orders or contracts.

(7) Grants and entitlement actions.

(8) Interagency agreements, also known as interservice level agreements, memoranda of understanding, or memoranda of agreement.

(9) Letters of obligation used in the A-76 process.

(c) *Actions not reported.* The following types of contract actions are not to be reported to FPDS:

(1) Imprest fund transactions below the micro-purchase threshold, including those made via the Government purchase card (unless specific agency procedures prescribe reporting these actions).

(2) Orders from GSA stock and the GSA Global Supply Program.

(3) Purchases made at GSA or AbilityOne service stores, as these items stocked for resale have already been reported by GSA.

(4) Purchases made using non-appropriated fund activity cards, chaplain fund cards, individual Government personnel training orders, and Defense Printing orders.

(5) Actions that, pursuant to other authority, will not be entered in FPDS (*e.g.*, reporting of the information would compromise national security).

(d) Agencies not subject to the FAR may be required by other authority (*e.g.*, statute or OMB) to report certain information to FPDS.

4.607 Solicitation Provisions.

(a) Insert the provision at [52.204-6](#), Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of a CAR (see [4.606\(a\)\(1\)](#)); and

(2) Do not contain the clause at [52.204-7](#), Central Contractor Registration.

(b) Insert the provision at [52.204-5](#), Women-Owned Business (Other Than Small Business), in all solicitations that—

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

(2) Exceed the simplified acquisition threshold; and

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

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Subpart 5.6—Publicizing Multi-Agency Use Contracts**5.601 Governmentwide database of contracts.**

(a) A Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies is available via the Internet at www.contractdirectory.gov/contractdirectory/. This searchable database is a tool that may be used to identify existing contracts and other procurement instruments that may be used to fulfill Government needs.

(b) The contracting activity shall—

(1) Enter the information specified at www.contractdirectory.gov/contractdirectory/, in accordance

with the instructions on that web site, within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or any other procurement instrument intended for use by multiple agencies, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts.

(2) Enter the information specified at www.contractdirectory.gov/contractdirectory/ in accordance with the instructions on that web site by October 31, 2003, for all contracts and other procurement instruments intended for use by multiple agencies that were awarded before July 24, 2003.

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

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

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

(ii) If the strategy contemplates the award of multiple contracts or orders, the thresholds in paragraph (d)(2)(i) of this section apply to the cumulative maximum potential value, including options, of the contracts and orders.

7.105 Contents of written acquisition plans.

In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions should be made (see paragraph (b)(18) of this section). The plan must address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner must follow the applicable instructions in paragraphs (a) and (b) of this section, together with the agency's implementing procedures. Acquisition plans for service contracts or orders must describe the strategies for implementing performance-based acquisition methods or must provide rationale for not using those methods (see [Subpart 37.6](#)).

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

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

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

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

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

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

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

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

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

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

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

(7) *Risks*. Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

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

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

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

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

(b) *Plan of action*— (1) *Sources*. Indicate the prospective sources of supplies or services that can meet the need. Consider required sources of supplies or services (see [Part 8](#)) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at www.contractdirectory.gov/contractdirectory/. Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see [Part 19](#)), and the impact of any bundling that might affect their participation in the acquisition (see [7.107](#)) ([15 U.S.C. 644\(e\)](#)). When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling. Address the extent and results of the market research and indicate their impact on the various elements of the plan (see [Part 10](#)).

(2) *Competition*. (i) Describe how competition will be sought, promoted, and sustained throughout the course of the

acquisition. If full and open competition is not contemplated, cite the authority in [6.302](#), discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

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

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

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

(3) *Source-selection procedures.* Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see [Subpart 15.3](#)). When an EVMS is required (see FAR [34.202\(a\)](#)) and a pre-award IBR is contemplated, the acquisition plan must discuss—

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

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

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

(4) *Acquisition considerations.*(i) For each contract contemplated, discuss contract type selection (see [Part 16](#)); use of multiyear contracting, options, or other special contracting methods (see [Part 17](#)); any special clauses, special solicitation provisions, or FAR deviations required (see [Subpart 1.4](#)); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see [Subpart 7.4](#)) and why; and any other contracting considerations. Provide rationale if a performance-based acquisition will not be used or if a performance-based acquisition for services is contemplated on other than a firm-fixed-price basis (see [37.102\(a\)](#), [16.103\(d\)](#), and [16.505\(a\)\(3\)](#)).

(ii) For each order contemplated, discuss—

(A) For information technology acquisitions, how the capital planning and investment control requirements of [40 U.S.C. 11312](#) and OMB Circular A-130 will be met (see [7.103\(t\)](#) and [Part 39](#)); and

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

(1) The agency can accomplish its mission more efficiently and effectively (*e.g.*, take advantage of the

servicing agency's specialized expertise; or gain access to contractors with needed expertise); or

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

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

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

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

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

(8) *Contractor versus Government performance.* Address the consideration given to OMB Circular No. A-76 (see [Subpart 7.3](#)).

(9) *Inherently governmental functions.* Address the consideration given to [Subpart 7.5](#).

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

(11) *Make or buy.* Discuss any consideration given to make-or-buy programs (see [15.407-2](#)).

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

(13) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency mainte-

Subpart 8.4—Federal Supply Schedules

8.401 Definitions.

As used in this subpart—

“Ordering activity” means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts. A list of eligible ordering activities is available at <http://www.gsa.gov/schedules> (click “For Customers Ordering from Schedules” and then “Eligibility to Use GSA Sources”).

“Multiple Award Schedule (MAS)” means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authorities for the MAS program are Title III of the Federal Property and Administrative Services Act of 1949 ([41 U.S.C. 251](#), *et seq.*) and Title [40 U.S.C. 501](#), Services for Executive Agencies.

“Requiring agency” means the agency needing the supplies or services.

“Schedules e-Library” means the on-line source for GSA and VA Federal Supply Schedule contract award information. Schedules e-Library may be accessed at <http://www.gsa.gov/elibrary>.

“Special Item Number (SIN)” means a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

8.402 General.

(a) The Federal Supply Schedule program is also known as the GSA Schedules Program or the Multiple Award Schedule Program. The Federal Supply Schedule program is directed and managed by GSA and provides Federal agencies (see [8.002](#)) with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. Indefinite delivery contracts are awarded to provide supplies and services at stated prices for given periods of time. GSA may delegate certain responsibilities to other agencies (*e.g.*, GSA has delegated authority to the VA to procure medical supplies under the VA Federal Supply Schedules program). Orders issued under the VA Federal Supply Schedule program are covered by this subpart. Additionally, the Department of Defense (DoD) manages similar systems of schedule-type contracting for military items; however, DoD systems are not covered by this subpart.

(b) GSA schedule contracts require all schedule contractors to publish an “Authorized Federal Supply Schedule Pricelist” (pricelist). The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number that is on schedule. The schedule contractor is required to provide one copy of its pricelist to any ordering activity upon request. Also, a copy of the pricelist may be obtained from the Federal Supply Service by submitting a written e-mail request to schedules.infocenter@gsa.gov or by telephone at

1-800-488-3111. This subpart, together with the pricelists, contain necessary information for placing delivery or task orders with schedule contractors. In addition, the GSA schedule contracting office issues Federal Supply Schedules publications that contain a general overview of the Federal Supply Schedule (FSS) program and address pertinent topics. Ordering activities may request copies of schedules publications by contacting the Centralized Mailing List Service through the Internet at <http://www.gsa.gov/cmls>, submitting written e-mail requests to CMLS@gsa.gov; or by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7SM), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 may also be obtained from the above-referenced points of contact.

(c)(1) GSA offers an on-line shopping service called “GSA Advantage!” through which ordering activities may place orders against Schedules. (Ordering activities may also use GSA Advantage! to place orders through GSA’s Global Supply System, a GSA wholesale supply source, formerly known as “GSA Stock” or the “Customer Supply Center.” FAR [Subpart 8.4](#) is not applicable to orders placed through the GSA Global Supply System.) Ordering activities may access GSA Advantage! through the GSA Federal Supply Service Home Page (<http://www.gsa.gov/fss>) or the GSA Federal Supply Schedule Home Page at <http://www.gsa.gov/schedules>.

(2) GSA Advantage! enables ordering activities to search specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with Schedule contractors (except see [8.405-6](#)) and pay for orders using the Governmentwide commercial purchase card.

(d) “e-Buy,” GSA’s electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage!. E-Buy allows ordering activities to post requirements, obtain quotes, and issue orders electronically. Ordering activities shall post an RFQ to e-Buy when an order contains brand name specifications (see [8.405-6](#)). Ordering activities may access e-Buy at <http://www.ebuy.gsa.gov>. For more information or assistance on either GSA Advantage! or e-Buy, contact GSA at Internet e-mail address gsa.advantage@gsa.gov.

(e) For more information or assistance regarding the Federal Supply Schedule Program, review the following website: <http://www.gsa.gov/schedules>. Additionally, for on-line training courses regarding the Schedules Program, review the following website: <http://fsstraining.gsa.gov>.

(f) For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (*e.g.*, publicizing ([Part 5](#)), competition requirements ([Part 6](#)), acquisition of commercial items ([Part 12](#)), contracting methods ([Parts 13](#), [14](#), and [15](#)), and small business programs ([Part 19](#)));

(2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

(g) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

8.403 Applicability.

(a) Procedures in this subpart apply to—

(1) Individual orders for supplies or services placed against Federal Supply Schedules contracts; and

(2) BPAs established against Federal Supply Schedule contracts.

(b) GSA may establish special ordering procedures for a particular schedule. In this case, that schedule will specify those special ordering procedures. Unless otherwise noted, special ordering procedures established for a Federal Supply Schedule take precedence over the procedures in [8.405](#).

(c) In accordance with section 1427(b) of Public Law 108-136, for requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in [2.101](#)), agencies—

(1) Shall use the procedures at [Subpart 36.6](#); and

(2) Shall not place orders for such requirements under a Federal Supply Schedule.

8.404 Use of Federal Supply Schedules.

(a) *General.* [Parts 13](#) (except [13.303-2\(c\)\(3\)](#)), [14](#), [15](#), and [19](#) (except for the requirement at [19.202-1\(e\)\(1\)\(iii\)](#)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see [8.405-5](#)). BPAs and orders placed against a MAS, using the procedures in this subpart, are considered to be issued using full and open competition (see [6.102\(d\)\(3\)](#)). Therefore, when establishing a BPA (as authorized by [13.303-2\(c\)\(3\)](#)), or placing orders under Federal Supply Schedule contracts using the procedures of [8.405](#), ordering activities shall not seek competition outside of the Federal Supply Schedules or synopsise the requirement; but see paragraph (e) for orders (including orders issued under BPAs) funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b)(1) The contracting officer, when placing an order or establishing a BPA, is responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed or the BPA is established. The requiring agency shall provide the information on the applicable regulatory and statutory requirements to the contracting officer responsible for placing the order.

(2) For orders over \$500,000, see subpart [17.5](#) for additional requirements for interagency acquisitions. For example, the requiring agency shall make a determination that use

of the Federal Supply Schedule is the best procurement approach, in accordance with [17.502-1\(a\)](#).

(c) *Acquisition planning.* Orders placed under a Federal Supply Schedule contract—

(1) Are not exempt from the development of acquisition plans (see [Subpart 7.1](#)), and an information technology acquisition strategy (see [Part 39](#));

(2) Must comply with all FAR requirements for a bundled contract when the order meets the definition of “bundled contract” (see [2.101\(b\)](#)); and

(3) Must, whether placed by the requiring agency, or on behalf of the requiring agency, be consistent with the requiring agency’s statutory and regulatory requirements applicable to the acquisition of the supply or service.

(d) *Pricing.* Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g., installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, ordering activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by [8.405-2\(d\)](#). By placing an order against a schedule contract using the procedures in [8.405](#), the ordering activity has concluded that the order represents the best value (as defined in FAR [2.101](#)) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government’s needs. Although GSA has already negotiated fair and reasonable pricing, ordering activities may seek additional discounts before placing an order (see [8.405-4](#)).

(e) Publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5):

(1) Notices of proposed MAS orders (including orders issued under BPAs) that are for “informational purposes only” exceeding \$25,000 shall follow the procedures in [5.704](#) for posting orders.

(2) Award notices for MAS orders (including orders issued under BPAs) shall follow the procedures in [5.705](#).

8.405 Ordering procedures for Federal Supply Schedules.

Ordering activities shall use the ordering procedures of this section when placing an order or establishing a BPA for supplies or services. The procedures in this section apply to all schedules.

8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

(a) Ordering activities shall use the procedures of this subsection when ordering supplies and services that are listed in the schedules contracts at a fixed price for the performance of a specific task, where a statement of work is not required (e.g., installation, maintenance, and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-

9.106-2 Requests for preaward surveys.

The contracting officer's request to the surveying activity (Preaward Survey of Prospective Contractor (General), [SF 1403](#)) shall—

(a) Identify additional factors about which information is needed;

(b) Include the complete solicitation package (unless it has previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(c) State whether the contracting office will participate in the survey;

(d) Specify the date by which the report is required. This date should be consistent with the scope of the survey requested and normally shall allow at least 7 working days to conduct the survey; and

(e) When appropriate, limit the scope of the survey.

9.106-3 Interagency preaward surveys.

When the contracting office and the surveying activity are in different agencies, the procedures of this section [9.106](#) and [Subpart 42.1](#) shall be followed along with the regulations of the agency in which the surveying activity is located, except that reasonable special requests by the contracting office shall be accommodated (also see subpart [17.5](#)).

9.106-4 Reports.

(a) The surveying activity shall complete the applicable parts of [SF 1403](#), Preaward Survey of Prospective Contractor (General); [SF 1404](#), Preaward Survey of Prospective Contractor—Technical; [SF 1405](#), Preaward Survey of Prospective Contractor—Production; [SF 1406](#), Preaward Survey of Prospective Contractor—Quality Assurance; [SF 1407](#), Preaward Survey of Prospective Contractor—Financial Capability; and [SF 1408](#), Preaward Survey of Prospective Contractor—Accounting System; and provide a narrative discussion sufficient to support both the evaluation ratings and the recommendations.

(b) When the contractor surveyed is a small business that has received preferential treatment on an ongoing contract under Section 8(a) of the Small Business Act ([15 U.S.C. 637](#)) or has received a Certificate of Competency during the last 12 months, the surveying activity shall consult the appropriate Small Business Administration field office before making an affirmative recommendation regarding the contractor's responsibility or nonresponsibility.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity shall specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance. The narrative shall report any persistent pattern of need for

costly and burdensome Government assistance (e.g., engineering, inspection, or testing) provided in the Government's interest but not contractually required.

(d) When the surveying activity possesses information that supports a recommendation of complete award without an on-site survey and no special areas for investigation have been requested, the surveying activity may provide a short-form preaward survey report. The short-form report shall consist solely of the Preaward Survey of Prospective Contractor (General), [SF 1403](#). Sections III and IV of this form shall be completed and block 21 shall be checked to show that the report is a short-form preaward report.

9.107 Surveys of nonprofit agencies participating in the AbilityOne Program under the Javits-Wagner-O'Day Act.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by [41 U.S.C. 46-48c](#), determines what supplies and services Federal agencies are required to purchase from AbilityOne participating nonprofit agencies serving people who are blind or have other severe disabilities (see [Subpart 8.7](#)). The Committee is required to find an AbilityOne participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the AbilityOne Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the AbilityOne participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the [Standard Form 1403](#) to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the AbilityOne participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

9.108 Prohibition on contracting with inverted domestic corporations.**9.108-1 Definition.**

"Inverted domestic corporation," as used in this section, means a foreign incorporated entity which is treated as an

inverted domestic corporation under [6 U.S.C. 395\(b\)](#), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

9.108-2 Relationship with the Internal Revenue Code and Treasury regulations.

(a) Inverted domestic corporations are covered not only in the Department of Homeland Security statute at [6 U.S.C. 395](#), but also are similarly covered in the Internal Revenue Code at [26 U.S.C. 7874](#). A foreign corporation is treated as an inverted domestic corporation for U.S. Federal income tax purposes, rather than as a foreign corporation, if—

(1) At least 80 percent (80%) of the stock is now held by former shareholders of the domestic corporation or partners of the domestic partnership; and

(2) The foreign entity plus companies connected to it by 50 percent (50%) or more ownership do not have substantial business activities in the foreign country.

(b) A foreign corporation that is treated as an inverted domestic corporation for U.S. Federal income tax purposes, is also treated as one for purposes of this section.

(c) A foreign entity that escapes the tax consequence of [26 U.S.C. 7874](#) only because the inversion transactions were completed on or before the March 4, 2003, date in section 7874, is nevertheless treated as an inverted domestic corporation for purposes of [6 U.S.C. 395](#) (which does not have a limiting date) and therefore also for purposes of this section.

9.108-3 Prohibition.

(a) Section 743 of Division D of the FY 2009 Omnibus Appropriations Act (Public Law 111-8) prohibits the use of

2009 appropriated funds for contracting with any foreign incorporated entity that is treated as an inverted domestic corporation, or with a subsidiary of such a corporation. The same restriction was also contained in the Fiscal Year 2006 through 2008 appropriations acts. In order to be eligible for contract award when using Fiscal Year 2006 through Fiscal Year 2009 funds, an offeror must represent that it is not an inverted domestic corporation or subsidiary. Any offeror that cannot so represent is ineligible for award of a contract using such appropriated funds.

(b) Contracting officers should rigorously examine circumstances known to them that would lead a reasonable business person to question the contractor self-certification and, after consultation with legal counsel, take appropriate action where that questionable self-certification cannot be verified.

9.108-4 Waiver.

Any agency head may waive the requirement of subsection [9.108-3](#) for a specific contract if the agency head determines in writing that the waiver is required in the interest of national security, documents the determination, and reports it to the Congress.

9.108-5 Solicitation provision.

When using funds appropriated in Fiscal Year 2006 through Fiscal Year 2009, the contracting officer shall include the provision at [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations-Representation, in each solicitation issued after July 1, 2009 for the acquisition of products or services (see FAR [52.212-3](#) for solicitations issued under [Part 12](#)), unless waived in accordance with FAR [9.108-4](#).

reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the EPLS to ensure that no award is made to a listed contractor.

9.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the agency head directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;

(2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

9.405-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see [Subpart 44.2](#)), contracting officers shall not consent to subcontracts with such contractors unless the agency head states in writing the compelling reasons for this approval action. (See [9.405\(b\)](#) concerning declarations of ineligibility affecting sub-contracting.)

(b) The Government suspends or debar contractors to protect the Government's interests. By operation of the clause at [52.209-6](#), Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment, contractors shall not enter into any subcontract in excess of \$30,000, other than a subcontract for a commercially available off-the-shelf item, with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract, other than a subcontract for a commercially available off-the-shelf item, with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion in the EPLS (see [9.404](#)), a corporate officer or designee of the contractor is required by operation of the clause at [52.209-6](#), Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting

officer, in writing, before entering into such subcontract. For contracts for the acquisition of commercial items, the notification requirement applies only for first-tier subcontracts. For all other contracts, the notification requirement applies to subcontracts at any tier. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being in the EPLS;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the EPLS; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(c) The contractor's compliance with the requirements of [52.209-6](#) will be reviewed during Contractor Purchasing System Reviews (see [Subpart 44.3](#)).

9.406 Debarment.

9.406-1 General.

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in [9.406-2](#), using the procedures in [9.406-3](#). The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the proposed debarment and an opportunity to respond (see [9.406-3\(c\)](#)).

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see [23.506\(e\)](#)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

9.406-2 Causes for debarment.

The debarring official may debar—

(a) A contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with—

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract.

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b)(1) A contractor, based upon a preponderance of the evidence, for any of the following—

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—

(A) Failure to comply with the requirements of the clause at [52.223-6](#), Drug-Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see [23.504](#)).

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558)).

(iv) Commission of an unfair trade practice as defined in [9.403](#) (see Section 201 of the Defense Production Act (Pub. L. 102-558)).

(v) Delinquent Federal taxes in an amount that exceeds \$3,000.

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements the requirements of [41 U.S.C. 253a\(a\)\(1\)](#), [41 U.S.C. 264b](#), [10 U.S.C. 2377](#), and [6 U.S.C. 796](#).

10.001 Policy.

(a) Agencies must—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to a bundled contract ([15 U.S.C. 644\(e\)\(2\)\(A\)](#));

(v) Before awarding a task or delivery order under an indefinite-delivery/indefinite-quantity (ID/IQ) contract (e.g., GWACs, MACs) for a noncommercial item in excess of the simplified acquisition threshold ([10 U.S.C. 2377\(c\)](#)); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. (See [26.205](#)).

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see [Subpart 23.4](#)) and promote energy conservation and efficiency; and

(vi) Determine whether bundling is necessary and justified (see [7.107](#)) ([15 U.S.C. 644\(e\)\(2\)\(A\)](#)).

(vii) Assess the availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see [Subpart 39.2](#)).

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

(c) If an agency contemplates awarding a bundled contract, the agency—

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see [19.402\(a\)](#); and

(2) At least 30 days before release of the solicitation or 30 days prior to placing an order without a solicitation—

(i) Must notify any affected incumbent small business concerns of the Government's intention to bundle the requirement; and

(ii) Should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative.

(d) See [44.402\(a\)\(2\)](#) and [52.244-6](#) (Alternate I) for the requirement for a prime contractor to perform market research in contracts in excess of \$5 million for the procurement of items other than commercial items.

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Market research involves obtaining

information specific to the item being acquired and should include—

- (i) Whether the Government’s needs can be met by—
 - (A) Items of a type customarily available in the commercial marketplace;
 - (B) Items of a type customarily available in the commercial marketplace with modifications; or
 - (C) Items used exclusively for governmental purposes;
 - (ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;
 - (iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;
 - (iv) The requirements of any laws and regulations unique to the item being acquired;
 - (v) The availability of items that contain recovered materials and items that are energy efficient;
 - (vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and
 - (vii) Size and status of potential sources (see [Part 19](#)).
- (2) Techniques for conducting market research may include any or all of the following:
- (i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
 - (ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.
 - (iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.
 - (iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by

multiple agencies available at www.contractdirectory.gov/contractdirectory/ and other Government and commercial databases that provide information relevant to agency acquisitions.

- (v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.
- (vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.
- (vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.
- (viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(c) If market research indicates commercial or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with [10.001\(a\)\(3\)\(ii\)](#) and determine whether the need can be restated to permit commercial or nondevelopmental items to satisfy the agency’s needs.

(d)(1) If market research establishes that the Government’s need may be met by a type of item or service customarily available in the commercial marketplace that would meet the definition of a commercial item at [Subpart 2.1](#), the contracting officer shall solicit and award any resultant contract using the policies and procedures in [Part 12](#).

(2) If market research establishes that the Government’s need cannot be met by a type of item or service customarily available in the marketplace, [Part 12](#) shall not be used. When publication of the notice at [5.201](#) is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use [Part 12](#) for the acquisition.

(e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

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PART 17—SPECIAL CONTRACTING METHODS

Sec.

17.000	Scope of part.	17.207	Exercise of options.
		17.208	Solicitation provisions and contract clauses.
	Subpart 17.1—Multi-year Contracting		Subpart 17.3—[Reserved]
17.101	Authority.		Subpart 17.4—Leader Company Contracting
17.102	Applicability.	17.401	General.
17.103	Definitions.	17.402	Limitations.
17.104	General.	17.403	Procedures.
17.105	Policy.		Subpart 17.5—Interagency Acquisitions
17.105-1	Uses.	17.500	Scope of subpart.
17.105-2	Objectives.	17.501	General.
17.106	Procedures.	17.502	Procedures.
17.106-1	General.	17.502-1	General.
17.106-2	Solicitations.	17.502-2	The Economy Act.
17.106-3	Special procedures applicable to DoD, NASA, and the Coast Guard.	17.503	Ordering procedures.
17.107	Options.	17.504	Reporting requirements.
17.108	Congressional notification.		Subpart 17.6—Management and Operating Contracts
17.109	Contract clauses.		
	Subpart 17.2—Options		
17.200	Scope of subpart.	17.600	Scope of subpart.
17.201	[Reserved]	17.601	Definition.
17.202	Use of options.	17.602	Policy.
17.203	Solicitations.	17.603	Limitations.
17.204	Contracts.	17.604	Identifying management and operating contracts.
17.205	Documentation.	17.605	Award, renewal, and extension.
17.206	Evaluation.		

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Subpart 17.5—Interagency Acquisitions

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to all interagency acquisitions under any authority, except as provided for in paragraph (b) of this section.

(b) This subpart does not apply to orders of \$500,000 or less issued against Federal Supply Schedules.

17.501 General.

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

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

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

(d) An agency shall not use an interagency acquisition to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under [title 40, United States Code](#), "Public Buildings, Property and Works" and title III of the Federal Property and Administrative Services Act of 1949.)

17.502 Procedures.

17.502-1 General.

(a) *Determination of best procurement approach.*

(1) *Assisted acquisitions.* Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency—

(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);

(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and

(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.

(2) *Direct acquisitions.* Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach. At a minimum, the determination shall include an analysis, including factors such as:

(i) The suitability of the contract vehicle;

(ii) The value of using the contract vehicle, including—

(A) The administrative cost savings from using an already existing contract;

(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and

(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.

(b) *Written agreement on responsibility for management and administration.* (1) *Assisted acquisitions.* (i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract; for patent rights, see [27.304-2](#). In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf.

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

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

17.502-2 The Economy Act.

(a) The Economy Act ([31 U.S.C. 1535](#)) authorizes agencies to enter into agreements to obtain supplies or services by interagency acquisition. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority

are [40 U.S.C. 501](#) for the Federal Supply Schedules (subpart [8.4](#)), and [40 U.S.C. 11302](#)(e) for Governmentwide acquisition contracts (GWACs).

(c) *Requirements for determinations and findings.*

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

(i) Use of an interagency acquisition is in the best interest of the Government; and

(ii) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

(2) If the Economy Act order requires contract action by the servicing agency, the D&F must also include a statement that at least one of the following circumstances applies:

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

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

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

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

(4) The requesting agency shall furnish a copy of the D&F to the servicing agency with the order.

(d) Business-case analysis requirements for multi-agency contracts. In order to establish a multi-agency contract in accordance with Economy Act authority, a business-case analysis must be prepared by the servicing agency. The business-case analysis shall—

(1) Consider strategies for the effective participation of small businesses during acquisition planning (see [7.103](#)(s));

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

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

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

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

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

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

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

(4) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

17.503 Ordering procedures.

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

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

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

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see [17.502-2](#)(e) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (see [17.503](#)(d)).

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

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

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

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

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

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

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

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if

the terms of the FFRDC’s sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See [35.017](#); see also [6.302](#) for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.504 Reporting requirements.

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

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PART 18—EMERGENCY ACQUISITIONS

Sec.

18.000	Scope of part.	18.115	HUBZone sole source awards.
18.001	Definition.	18.116	Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.
Subpart 18.1—Available Acquisition Flexibilities			
18.101	General.	18.117	Overtime approvals.
18.102	Central contractor registration.	18.118	Trade agreements.
18.103	Synopses of proposed contract actions.	18.119	Use of patented technology under the North American Free Trade Agreement.
18.104	Unusual and compelling urgency.	18.120	Bid guarantees.
18.105	Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts.	18.121	Advance payments.
18.106	Acquisitions from Federal Prison Industries, Inc. (FPI).	18.122	Assignment of claims.
18.107	AbilityOne specification changes.	18.123	Electronic funds transfer.
18.108	Qualifications requirements.	18.124	Protest to GAO.
18.109	Priorities and allocations.	18.125	Contractor rent-free use of Government property.
18.110	Soliciting from a single source.	18.126	Extraordinary contractual actions.
18.111	Oral requests for proposals.	Subpart 18.2—Emergency Acquisition Flexibilities	
18.112	Letter contracts.	18.201	Contingency operation.
18.113	Interagency acquisitions.	18.202	Defense or recovery from certain attacks.
18.114	Contracting with the Small Business Administration (The 8(a) Program).	18.203	Emergency declaration or major disaster declaration.
		18.204	Resources.

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18.000 Scope of part.

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

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

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

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

18.001 Definition.

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

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

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

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

18.102 Central contractor registration.

Contractors are not required to be registered in the Central Contractor Registration (CCR) for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See [4.1102](#)). However, contractors are required to register with CCR in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster Response Registry at www.ccr.gov to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See [26.205](#)).

18.103 Synopses of proposed contract actions.

Contracting officers need not submit a synopsis notice when there is an unusual and compelling urgency and the

Government would be seriously injured if the agency complied with the notice time periods. (See [5.202](#)(a)(2).)

18.104 Unusual and compelling urgency.

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

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

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

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

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

18.107 AbilityOne specification changes.

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

18.108 Qualifications requirements.

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

18.109 Priorities and allocations.

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

18.110 Soliciting from a single source.

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

18.111 Oral requests for proposals.

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

18.112 Letter contracts.

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

18.113 Interagency acquisitions.

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

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

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

18.115 HUBZone sole source awards.

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

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

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

18.117 Overtime approvals.

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

18.118 Trade agreements.

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

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

Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. (See [27.204-1](#).)

18.120 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions

when a performance bond or a performance bond and payment bond is required. (See [28.101-1\(c\)](#).)

18.121 Advance payments.

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

18.122 Assignment of claims.

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

18.123 Electronic funds transfer.

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

18.124 Protest to GAO.

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

18.125 Contractor rent-free use of Government property.

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

18.126 Extraordinary contractual actions.

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

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

Subpart 19.3—Determination of Small Business Status for Small Business Programs

19.301 Representations and rerepresentations.

19.301-1 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation. An offeror may represent that it is a small business concern in connection with a specific solicitation if it meets the definition of a small business concern applicable to the solicitation and has not been determined by the Small Business Administration (SBA) to be other than a small business.

(b) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the concern's small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning a specific representation shall be referred to the SBA in accordance with [19.302](#).

(c) An offeror's representation that it is a small business is not binding on the SBA. If an offeror's small business status is challenged, the SBA will evaluate the status of the concern and make a determination, which will be binding on the contracting officer, as to whether the offeror is a small business. A concern cannot become eligible for a specific award by taking action to meet the definition of a small business concern after the SBA has determined that it is not a small business.

(d) If the SBA determines that the status of a concern as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Sections 16(a) or 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 121.108 for small business, 13 CFR 124.501 for 8(a) small business, 13 CFR 124.1004 for small disadvantaged business, 13 CFR 125.29 for veteran or service-disabled veteran-owned small business, and 13 CFR 126.900 for HUBZone small business.

19.301-2 Rerepresentation by a contractor that represented itself as a small business concern.

(a) *Definition.* As used in this subsection—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

(b) A contractor that represented itself as a small business concern before contract award must rerepresent its size status for the North American Industry Classification System (NAICS) code in the contract upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) A contractor must rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract.

(d) After a contractor rerepresents it is other than small in accordance with [52.219-28](#), the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements. Agencies should issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation.

(e) A change in size status does not change the terms and conditions of the contract.

19.301-3 Rerepresentation by a contractor that represented itself as other than a small business concern.

A contractor that represented itself as other than small before contract award may, but is not required to, rerepresent its size status when—

(a) The conditions in [19.301-2](#)(b) apply; and

(b) The contractor qualifies as a small business concern under the applicable size standard in effect at the time of its rerepresentation.

19.302 **Protesting a small business representation or rerepresentation.**

(a) An offeror, the SBA, or another interested party may protest the small business representation of an offeror in a specific offer. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA.

(b) Any time after offers are opened, the contracting officer may question the small business representation of any offeror in a specific offer by filing a contracting officer's protest (see paragraph (c) of this section).

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, or rerepresentation of a contractor, shall promptly forward the protest to the SBA Government Contracting Area Office for the geographical area where the principal office of the concern in question is located.

(2) The protest, or confirmation if the protest was initiated orally, shall be in writing and shall contain the basis for the protest with specific, detailed evidence to support the allegation that the offeror is not small. The SBA will dismiss any protest that does not contain specific grounds for the protest.

(d) In order to affect a specific solicitation, a protest must be timely. SBA's regulations on timeliness are contained in 13 CFR 121.1004. SBA's regulations on timeliness related to protests of disadvantaged status are contained in 13 CFR 124, Subpart B.

(1) To be timely, a protest by any concern or other interested party must be received by the contracting officer (see paragraphs (d)(1)(i) and (ii) of this section) by the close of business of the 5th business day after bid opening (in sealed bid acquisitions) or receipt of the special notification from the contracting officer that identifies the apparently successful offeror (in negotiated acquisitions) (see [15.503\(a\)\(2\)](#)).

(i) A protest may be made orally if it is confirmed in writing either within the 5-day period or by letter postmarked no later than 1 business day after the oral protest.

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, or letter postmarked within the 5-day period.

(2) A contracting officer's protest is always considered timely whether filed before or after award.

(3) A protest under a Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals.

(e) Upon receipt of a protest from or forwarded by the Contracting Office, the SBA will—

(1) Notify the contracting officer and the protester of the date it was received, and that the size of the concern being challenged is under consideration by the SBA; and

(2) Furnish to the concern whose representation is being protested a copy of the protest and a blank SBA Form 355, Application for Small Business Determination, by certified mail, return receipt requested.

(f) Within 3 business days after receiving a copy of the protest and the form, the challenged concern must file with the SBA a completed SBA Form 355 and a statement answering the allegations in the protest, and furnish evidence to support its position. If the concern does not submit the required material within the 3 business days or another period of time granted by the SBA, the SBA may assume that the disclosure would be contrary to the concern's interests.

(g)(1) Within 10 business days after receiving a protest, the challenged concern's response, and other pertinent information, the SBA will determine the size status of the challenged concern and notify the contracting officer, the protester, and the challenged concern of its decision by certified mail, return receipt requested.

(2) The SBA Government Contracting Area Director, or designee, will determine the small business status of the questioned concern and notify the contracting officer and the concern of the determination. Award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with paragraph (i) of this section, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid.

(h)(1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until (i) the SBA has made a size determination or (ii) 10 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) After the 10-day period has expired, the contracting officer may, when practical, continue to withhold award until the SBA's determination is received, unless further delay would be disadvantageous to the Government.

(3) Whenever an award is made before the receipt of SBA's size determination, the contracting officer shall notify SBA that the award has been made.

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action. The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(i) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by a Government Contracting Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the—

Office of Hearings and Appeals
Small Business Administration

Subpart 19.7—The Small Business Subcontracting Program

19.701 Definitions.

As used in this subpart—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting.

“Failure to make a good faith effort to comply with the subcontracting plan” means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601 et seq.](#)), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for

supplies and/or services required for performance of the contract, contract modification, or subcontract.

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(a) Except as stated in paragraph (b) of this section, Section 8(d) of the Small Business Act ([15 U.S.C. 637\(d\)](#)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, that individually is expected to exceed \$650,000 (\$1.5 million for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award.

(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, that individually is expected to exceed \$650,000 (\$1.5 million for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award.

(b) Subcontracting plans (see paragraphs (a)(1) and (2) of this section) are not required—

- (1) From small business concerns;
- (2) For personal services contracts;

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at [52.219-8](#), Utilization of Small Business Concerns (or equiva-

lent prior clauses; *e.g.*, contracts awarded before the enactment of Public Law 95-507).

(c) As stated in [15 U.S.C. 637\(d\)\(8\)](#), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, [15 U.S.C. 637\(d\)\(4\)\(F\)](#) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.

(d) As authorized by [15 U.S.C. 637\(d\)\(11\)](#), certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as if they were subcontract awards to a protégé firm for the purpose of determining whether the mentor firm attains the applicable goals under any subcontracting plan entered into with any executive agency. However, the mentor-protégé agreement must have been approved by the Director, Small Business Programs of the cognizant DoD military department or defense agency, before developmental assistance costs may be credited against subcontract goals. A list of approved agreements may be obtained at http://www.acq.osd.mil/osbp/mentor_protege/.

19.703 Eligibility requirements for participating in the program.

(a) Except as provided in paragraph (c) of this section to be eligible as a subcontractor under the program, a concern must represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, or woman-owned small business concern.

(1) To represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or woman-owned small business concern, a concern must meet the appropriate definition (see [2.101](#) and [19.001](#)).

(2) In connection with a subcontract, or a requirement for which the apparently successful offeror received an evaluation credit for proposing one or more SDB subcontractors, the contracting officer or the SBA may protest the disadvantaged status of a proposed subcontractor. Such protests will be processed in accordance with 13 CFR 124.1007 through 124.1014. Other interested parties may submit information to the contracting officer or the SBA in an effort to persuade the contracting officer or the SBA to initiate a protest. Such protests, in order to be considered timely, must be submitted to the SBA prior to completion of performance by the intended subcontractor.

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcon-

tractor's status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business concern. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1001 through 121.1008. Protests challenging a subcontractor's small disadvantaged business representation must be filed in accordance with 13 CFR 124.1007 through 124.1014.

(c)(1) In accordance with [43 U.S.C. 1626](#), the following procedures apply:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the contracting officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status of the ANC or Indian tribe unless an interested party challenges its status or the contracting officer has independent reason to question its status. In the event of a challenge of a representation of an ANC or Indian tribe, the interested parties shall follow the procedures at [26.103\(b\)](#) through (e).

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FEDERAL ACQUISITION REGULATION

- 22.1403 Waivers.
- 22.1404 Department of Labor notices.
- 22.1405 Collective bargaining agreements.
- 22.1406 Complaint procedures.
- 22.1407 Actions because of noncompliance.
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Subpart 22.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

- 22.1500 Scope.
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Subpart 22.16—Notification of Employee Rights Under the National Labor Relations Act

- 22.1600 Scope of subpart.
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- 22.1800 Scope.
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Subpart 22.16—Notification of Employee Rights Under the National Labor Relations Act

22.1600 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 13496, dated January 30, 2009 (74 FR 6107, February 4, 2009).

22.1601 Definitions.

As used in this subpart—

“Secretary” means the Secretary of Labor, U.S. Department of Labor.

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

22.1602 Policy.

(a) Executive Order 13496 requires contractors to post a notice informing employees of their rights under Federal labor laws.

(b) The Secretary has determined that the notice must contain employee rights under the National Labor Relations Act (Act), [29 U.S.C. 151](#) *et seq.* The Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self-organize, and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

22.1603 Exceptions.

(a) The requirements of this subpart do not apply to—

- (1) Contracts under the simplified acquisition threshold;
- (2) Subcontracts of \$10,000 or less; and
- (3) Contracts or subcontracts for work performed exclusively outside the United States.

(b) *Exemptions granted by the Secretary.* (1) If the Secretary finds that the requirements of the Executive Order impair the ability of the Government to procure goods and services on an economical and efficient basis or if special circumstances require an exemption in order to serve the national interest, the Secretary may exempt a contracting department or agency, or groups of departments or agencies, from the requirements of any or all of the provisions of this Executive

Order with respect to a particular contract or subcontract, or any class of contracts or subcontracts, including the requirement to include the clause at [52.222-40](#), or parts of that clause, in contracts.

(2) Requests for exemptions may be submitted in accordance with Department of Labor regulations at 29 CFR 471.3.

22.1604 Compliance evaluation and complaint investigations and sanctions for violations.

(a) The Secretary may conduct compliance evaluations or investigate complaints of any contractor or subcontractor to determine if any of the requirements of the clause at [52.222-40](#) have been violated.

(b) Contracting departments and agencies shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary’s functions.

(c) If the Secretary determines that there has been a violation, the Secretary may take such actions as set forth in 29 CFR 471.14.

(d) The Secretary may not terminate or suspend a contract or suspend or debar a contractor if the agency head has provided written objections, which must include a statement of reasons for the objection and a finding that the contractor’s performance is essential to the agency’s mission, and continues to object to the imposition of such sanctions and penalties. Procedures for enforcement by the Secretary are set out in 29 CFR 471.10 through 29 CFR 471.16.

22.1605 Contract clause.

(a) Insert the clause at [52.222-40](#), Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) *Under the simplified acquisition threshold.* For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

(b) A contracting agency may modify the clause at [52.222-40](#), if necessary, to reflect an exemption granted by the Secretary (see [22.1603\(b\)](#)).

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(a) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs.

(b) The notices required for publication (see [5.205\(b\)](#)) are placed as required.

(c) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(d) The Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506, is notified.

(e) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(f) The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by non-FFRDC's.

(g) A reasonable continuity in the level of support to the FFRDC is maintained, consistent with the agency's need for the FFRDC and the terms of the sponsoring agreement.

(h) The FFRDC is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in the public interest, free from organizational conflict of interest, and to disclose its affairs (as an FFRDC) to the primary sponsor.

(i) Quantity production or manufacturing is not performed unless authorized by legislation.

(j) Approval is received from the head of the sponsoring agency.

35.017-3 Using an FFRDC.

(a) All work placed with the FFRDC must be within the purpose, mission, general scope of effort, or special competency of the FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection. The non-sponsoring agency is responsible for making the determination required by [17.502-2\(c\)](#) and providing the documentation required by [17.503\(e\)](#). When permitted by the sponsor, a Federal agency may contract directly with the FFRDC in which case that Federal agency is responsible for compliance with [Part 6](#).

35.017-4 Reviewing FFRDC's.

(a) The sponsor, prior to extending the contract or agreement with an FFRDC, shall conduct a comprehensive review of the use and need for the FFRDC. The review will be coordinated with any co-sponsors and may be performed in conjunction with the budget process. If the sponsor determines

that its sponsorship is no longer appropriate, it shall apprise other agencies which use the FFRDC of the determination and afford them an opportunity to assume sponsorship.

(b) Approval to continue or terminate the sponsorship shall rest with the head of the sponsoring agency. This determination shall be based upon the results of the review conducted in accordance with paragraph (c) of this subsection.

(c) An FFRDC review should include the following:

(1) An examination of the sponsor's special technical needs and mission requirements that are performed by the FFRDC to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the sponsor's needs.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.

(4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.

(5) A determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement is in compliance with [35.017-1](#).

35.017-5 Terminating an FFRDC.

When a sponsor's need for the FFRDC no longer exists, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it shall be phased out.

35.017-6 Master list of FFRDC's.

The National Science Foundation (NSF) maintains a master Government list of FFRDC's. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.

35.017-7 Limitation on the creation of new FFRDC's.

Pursuant to [10 U.S.C. 2367](#), the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until—

(a) The head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(b) A period of 60 days, beginning on the date such report is received by Congress, has elapsed.

* * * * *

maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

(d) *List of areawide contracts.* A list of current GSA areawide contracts is available from the GSA office specified at [41.301\(a\)](#). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.

(e) *Notification.* Agencies shall provide GSA at the address specified at [41.301\(a\)](#) a copy of each [SF 26](#) and executed Authorization issued under an areawide contract within 30 days after execution.

41.205 Separate contracts.

(a) In the absence of an areawide contract or interagency agreement (see [41.206](#)), agencies shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority.

(b) If an agency enters into a separate contract, the contracting officer shall document the contract file with the following information:

- (1) The number of available suppliers.
- (2) Any special equipment, service reliability, or facility requirements and related costs.
- (3) The utility supplier’s rates, connection charges, and termination liability.
- (4) Total estimated contract value (including costs in paragraphs (b)(2) and (3) of this subsection).

(5) Any technical or special contract terms required.

(6) Any unusual characteristics of services required.

(7) The utility’s wheeling or transportation policy for utility service.

(c) If requesting GSA assistance with a separate contract, the requesting agency shall furnish the technical and acquisition data specified in [41.205\(b\)](#), [41.301](#), and such other data as GSA may deem necessary.

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to [41.103](#)), may be justified, and is usually required, where any of the following circumstances exist:

- (1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service.
- (2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Federal Government will be reduced or eliminated;
- (3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

41.206 Interagency agreements.

Agencies shall use interagency agreements (*e.g.*, consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at [17.502-2](#), The Economy Act.

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52.216-12 Cost-Sharing Contract—No Fee.	52.219-13 [Reserved]
52.216-13 [Reserved]	52.219-14 Limitations on Subcontracting.
52.216-14 [Reserved]	52.219-15 [Reserved]
52.216-15 Predetermined Indirect Cost Rates.	52.219-16 Liquidated Damages—Subcontracting Plan.
52.216-16 Incentive Price Revision—Firm Target.	52.219-17 Section 8(a) Award.
52.216-17 Incentive Price Revision—Successive Targets.	52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
52.216-18 Ordering.	52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
52.216-19 Order Limitations.	52.219-20 Notice of Emerging Small Business Set-Aside.
52.216-20 Definite Quantity.	52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.
52.216-21 Requirements.	52.219-22 Small Disadvantaged Business Status.
52.216-22 Indefinite Quantity.	52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
52.216-23 Execution and Commencement of Work.	52.219-24 Small Disadvantaged Business Participation Program—Targets.
52.216-24 Limitation of Government Liability.	52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
52.216-25 Contract Definitization.	52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.
52.216-26 Payments of Allowable Costs Before Definitization.	52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
52.216-27 Single or Multiple Awards.	52.219-28 Post-Award Small Business Program Rerepresentation.
52.216-28 Multiple Awards for Advisory and Assistance Services.	52.220 [Reserved]
52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.	52.221 [Reserved]
52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.	52.222-1 Notice to the Government of Labor Disputes.
52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.	52.222-2 Payment for Overtime Premiums.
52.217-1 [Reserved]	52.222-3 Convict Labor.
52.217-2 Cancellation Under Multi-year Contracts.	52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
52.217-3 Evaluation Exclusive of Options.	52.222-5 Davis-Bacon Act—Secondary Site of the Work.
52.217-4 Evaluation of Options Exercised at Time of Contract Award.	52.222-6 Davis-Bacon Act.
52.217-5 Evaluation of Options.	52.222-7 Withholding of Funds.
52.217-6 Option for Increased Quantity.	52.222-8 Payrolls and Basic Records.
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	52.222-9 Apprentices and Trainees.
52.217-8 Option to Extend Services.	52.222-10 Compliance with Copeland Act Requirements.
52.217-9 Option to Extend the Term of the Contract.	52.222-11 Subcontracts (Labor Standards).
52.218 [Reserved]	52.222-12 Contract Termination—Debarment.
52.219-1 Small Business Program Representations.	52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
52.219-2 Equal Low Bids.	52.222-14 Disputes Concerning Labor Standards.
52.219-3 Notice of Total HUBZone Set-Aside.	52.222-15 Certification of Eligibility.
52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.	52.222-16 Approval of Wage Rates.
52.219-5 [Reserved]	52.222-17 [Reserved]
52.219-6 Notice of Total Small Business Set-Aside.	52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
52.219-7 Notice of Partial Small Business Set-Aside.	52.222-19 Child Labor—Cooperation with Authorities and Remedies.
52.219-8 Utilization of Small Business Concerns.	52.222-20 Walsh-Healey Public Contracts Act.
52.219-9 Small Business Subcontracting Plan.	
52.219-10 Incentive Subcontracting Program.	
52.219-11 Special 8(a) Contract Conditions.	
52.219-12 Special 8(a) Subcontract Conditions.	

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- 52.222-21 Prohibition of Segregated Facilities.
 - 52.222-22 Previous Contracts and Compliance Reports.
 - 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
 - 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
 - 52.222-25 Affirmative Action Compliance.
 - 52.222-26 Equal Opportunity.
 - 52.222-27 Affirmative Action Compliance Requirements for Construction.
 - 52.222-28 [Reserved]
 - 52.222-29 Notification of Visa Denial.
 - 52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).
 - 52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).
 - 52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).
 - 52.222-33 Notice of Requirement for Project Labor Agreement.
 - 52.222-34 Project Labor Agreement.
 - 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
 - 52.222-36 Affirmative Action for Workers with Disabilities.
 - 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
 - 52.222-38 Compliance with Veterans' Employment Reporting Requirements.
 - 52.222-39 [Reserved]
 - 52.222-40 Notification of Employee Rights Under the National Labor Relations Act.
 - 52.222-41 Service Contract Act of 1965.
 - 52.222-42 Statement of Equivalent Rates for Federal Hires.
 - 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
 - 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
 - 52.222-45 [Reserved]
 - 52.222-46 Evaluation of Compensation for Professional Employees.
 - 52.222-47 [Reserved]
 - 52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
 - 52.222-49 Service Contract Act—Place of Performance Unknown.
 - 52.222-50 Combating Trafficking in Persons.
 - 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.
 - 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
 - 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.
 - 52.222-54 Employment Eligibility Verification.
 - 52.223-1 Biobased Product Certification.
 - 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
 - 52.223-3 Hazardous Material Identification and Material Safety Data.
 - 52.223-4 Recovered Material Certification.
 - 52.223-5 Pollution Prevention and Right-to-Know Information.
 - 52.223-6 Drug-Free Workplace.
 - 52.223-7 Notice of Radioactive Materials.
 - 52.223-8 [Reserved]
 - 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.
 - 52.223-10 Waste Reduction Program.
 - 52.223-11 Ozone-Depleting Substances.
 - 52.223-12 Refrigeration Equipment and Air Conditioners.
 - 52.223-13 Certification of Toxic Chemical Release Reporting.
 - 52.223-14 Toxic Chemical Release Reporting.
 - 52.223-15 Energy Efficiency in Energy-Consuming Products.
 - 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.
 - 52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.
 - 52.223-18 Contractor Policy to Ban Text Messaging While Driving.
 - 52.224-1 Privacy Act Notification.
 - 52.224-2 Privacy Act.
 - 52.225-1 Buy American Act—Supplies.
 - 52.225-2 Buy American Act Certificate.
 - 52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.
 - 52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.
 - 52.225-5 Trade Agreements.
 - 52.225-6 Trade Agreements Certificate.
 - 52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.
 - 52.225-8 Duty-Free Entry.
 - 52.225-9 Buy American Act—Construction Materials.

Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraph (b) or (c) of this clause, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

(End of clause)

Alternate I (Jan 1997). As prescribed in [9.308-2\(a\)\(2\)](#) and (b)(2), add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

Alternate II (Sept 1989). As prescribed in [9.308-2\(a\)\(3\)](#) and (b)(3), substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52.209-5 Certification Regarding Responsibility Matters.

As prescribed in [9.104-7\(a\)](#), insert the following provision:

CERTIFICATION REGARDING RESPONSIBILITY MATTERS
(APR 2010)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or sub-contract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see [52.209-7](#), if included in this solicitation);

(C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.*

The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples.*

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) “Principal,” for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Off-

er is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in [9.409](#), insert the following clause:

PROTECTING THE GOVERNMENT’S INTEREST WHEN
SUBCONTRACTING WITH CONTRACTORS DEBARRED,
SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010)

(a) *Definition.* “Commercially available off-the-shelf (COTS)” item, as used in this clause—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in FAR [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR

[9.404](#) for information on the Excluded Parties List System). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor’s knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government’s interests when dealing with such subcontractor in view of the specific basis for the party’s debarment, suspension, or proposed debarment.

(e) *Subcontracts*. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- (1) Exceeds \$30,000 in value; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

(End of clause)

52.209-7 Information Regarding Responsibility Matters.

As prescribed at [9.104-7\(b\)](#), insert the following provision:

INFORMATION REGARDING RESPONSIBILITY MATTERS
(APR 2010)

(a) *Definitions*. As used in this provision—

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means—

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

(b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that

the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

- (i) In a criminal proceeding, a conviction.
- (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
- (iii) In an administrative proceeding, a finding of fault and liability that results in—
 - (A) The payment of a monetary fine or penalty of \$5,000 or more; or
 - (B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.
- (iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall enter the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the Central Contractor Registration database at <http://www.ccr.gov> (see [52.204-7](#)).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(End of provision)

52.209-8 Updates of Information Regarding Responsibility Matters.

As prescribed at [9.104-7\(c\)](#), insert the following clause:

UPDATES OF INFORMATION REGARDING RESPONSIBILITY MATTERS (APR 2010)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by entering the required information in the Central Contractor Registration database at <http://www.ccr.gov> (see [52.204-7](#)).

(b)(1) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) With the exception of the Contractor, only Government personnel and authorized users performing business on behalf of the Government will be able to view the Contractor's record in the system. Public requests for system information will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

52.210 [Reserved]

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.

As prescribed in [11.204\(a\)](#), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS, FPMR PART 101-29 (AUG 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service
Specifications Section, Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407

Telephone (202) 619-8925
Facsimile (202) 619-8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the

addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

(End of provision)

52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).

As prescribed in [11.204\(b\)](#), insert the following provision:

AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)

(a) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(1) ASSIST (<http://assist.daps.dla.mil>);

(2) Quick Search (<http://assist.daps.dla.mil/quicksearch>);

(3) ASSISTdocs.com (<http://assistdocs.com>).

(b) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(1) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);

(2) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(3) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(End of provision)

52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in [11.204\(c\)](#), insert a provision substantially the same as the following:

AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUNE 1988)

The specifications cited in this solicitation may be obtained from:

pose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS— COMMERCIAL ITEMS (DEC 2010)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).
 Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (SEPT 2006), with Alternate I (OCT 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUNE 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (JUL 2010) (Pub. L. 111-5).

(6) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) ([31 U.S.C. 6101 note](#)). (Applies to contracts over \$30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

(7) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).

(8) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

(9) [Reserved]

(10)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (OCT 1995) of [52.219-6](#).

(iii) Alternate II (MAR 2004) of [52.219-6](#).

(11)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (OCT 1995) of [52.219-7](#).

(iii) Alternate II (MAR 2004) of [52.219-7](#).

(12) [52.219-8](#), Utilization of Small Business Concerns (DEC 2010) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

(13)(i) [52.219-9](#), Small Business Subcontracting Plan (OCT 2010) ([15 U.S.C. 637\(d\)\(4\)](#)).

(ii) Alternate I (OCT 2001) of [52.219-9](#).

(iii) Alternate II (OCT 2001) of [52.219-9](#).

(iv) Alternate III (JUL 2010) of [52.219-9](#).

(14) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

(15) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

(16)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I (JUNE 2003) of [52.219-23](#).

(17) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(18) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(19) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).

(20) [52.219-28](#), Post Award Small Business Program Rerepresentation (APR 2009) ([15 U.S.C. 632\(a\)\(2\)](#)).

(21) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(22) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126).

(23) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

(24) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(25) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

(26) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

— (27) [52.222-37](#), Employment Reports on Veterans, (SEP 2010) ([38 U.S.C. 4212](#)).

— (28) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

— (29) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

— (30)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (31) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

— (32)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

— (ii) Alternate I (DEC 2007) of [52.223-16](#).

— (33) [52.223-18](#), Contractor Policy to Ban Text Messaging While Driving (SEP 2010) (E.O. 13513).

— (34) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

— (35)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

— (ii) Alternate I (JAN 2004) of [52.225-3](#).

— (iii) Alternate II (JAN 2004) of [52.225-3](#).

— (36) [52.225-5](#), Trade Agreements (AUG 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (37) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (38) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (39) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (40) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (41) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (42) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

— (43) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

— (44) [52.232-36](#), Payment by Third Party (FEB 2010) ([31 U.S.C. 3332](#)).

— (45) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (46)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

— (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

— (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after

final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(ii) [52.219-8](#), Utilization of Small Business Concerns (DEC 2010) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

(vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(viii) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

(xii) [52.222-54](#), Employment Eligibility Verification (JAN 2009).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (Feb 2000). As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

Alternate II (Dec 2010). As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1)*. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5).

(C) [52.219-8](#), Utilization of Small Business Concerns (Dec 2010) ([15 U.S.C. 637\(d\)\(2\) and \(3\)](#)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(D) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(E) [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212](#)).

(F) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).

(G) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(H) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(I) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

(J) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(K) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).

(L) [52.222-54](#), Employment Eligibility Verification (Jan 2009).

(M) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(N) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor’s expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice “FAST PAY.” Invoices not prominently marked “FAST PAY” via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

- (A) Shipment number.
- (B) Mode of shipment.
- (C) At line item level—

(1) National stock number and/or manufacturer’s part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

- (i) Ship-To Point.
- (ii) Mark-For Point.

52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor’s delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.*(1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers “FAST PAY.” When outer shipping containers are not marked “FAST PAY,” the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (DEC 2010)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(vii) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(2) Listed below are additional clauses that apply:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(ii) [52.232-1](#), Payments (APR 1984).

(iii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iv) [52.232-11](#), Extras (APR 1984).

(v) [52.232-25](#), Prompt Payment (OCT 2008).

(vi) [52.233-1](#), Disputes (JULY 2002).

(vii) [52.244-6](#), Subcontracts for Commercial Items (DEC 2010).

(viii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) [52.222-20](#), Walsh-Healey Public Contracts Act (Oct 2010) ([41 U.S.C. 35-45](#)) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)). (Applies to contracts

over \$15,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) [52.222-37](#), Employment Reports on Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)

(vii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(ix) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(x) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(xi) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) (Applies to contracts over \$30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(iv) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the

commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's

records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

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appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause [52.219-23](#)). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

☐ Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in

paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.219-5 [Reserved]

52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in [19.508\(c\)](#), insert the following clause:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE
(JUNE 2003)

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in [19.508\(c\)](#), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in [19.508\(d\)](#), insert the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE
(JUNE 2003)

(a) *Definitions.* “Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.*(1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in [19.508\(d\)](#), add the following paragraph (d) to the basic clause:

(d) Notwithstanding paragraph (b) of this clause, offers from Federal Prison Industries, Inc., will be solicited and con-

sidered for both the set-aside and non-set-aside portion of this requirement.

52.219-8 Utilization of Small Business Concerns.

As prescribed in [19.708\(a\)](#), insert the following clause:

UTILIZATION OF SMALL BUSINESS CONCERNS (DEC 2010)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor’s compliance with this clause.

(c) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

52.219-9 Small Business Subcontracting Plan.

As prescribed in [19.708](#)(b), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2010)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of

Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the

basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

Alternate I (Oct 1998). As prescribed in [19.308\(b\)](#), add the following paragraph (b)(3) to the basic provision:

(3) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in [19.1104](#), insert the following clause:

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 2008)

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

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act ([20 U.S.C. 1101a](#)).

“Small disadvantaged business concern” means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR Part 124, subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of ____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment; and

(ii) An otherwise successful offer from a historically black college or university or minority institution.

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

____ Offeror elects to waive the adjustment.

(d) *Agreements.* (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a non-manufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (June 2003). As prescribed in [19.1104](#), substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

Alternate II (Oct 1998) As prescribed in [19.1104](#), substitute the following paragraph (b)(1)(i) for paragraph (b)(1)(i) of the basic clause:

(i) Offers from small disadvantaged business concerns, that have not waived the adjustment, whose address is in a region for which an evaluation adjustment is authorized;

52.219-24 Small Disadvantaged Business Participation Program—Targets.

As prescribed in [19.1204](#)(a), insert a provision substantially the same as the following:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—TARGETS (OCT 2000)

(a) This solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the contract. Credit under that evaluation factor or subfactor is not available to an SDB concern that qualifies for a price evaluation adjustment under the clause at FAR [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, unless the SDB concern specifically waives the price evaluation adjustment.

(b) In order to receive credit under the source selection factor or subfactor, the offeror must provide, with its offer, targets, expressed as dollars and percentages of total contract value, for SDB participation in any of the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. The targets may provide for participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor;

however, the targets for subcontractors must be listed separately.

(End of provision)

52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

As prescribed in [19.1204](#)(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (DEC 2010)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors (see exception in paragraph (b) of this section) through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR [52.219-22](#), Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) For subcontractors that are not certified as a small disadvantaged business by the Small Business Administration, the Contractor shall accept the subcontractor's written self-representation as a small disadvantaged business, unless the Contractor has reason to question the self-representation.

(c) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on [Optional Form 312](#), Small Disadvantaged Business Participation Report, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

(End of clause)

Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (June 1998). As prescribed in [22.1408\(b\)](#), add the following as a preamble to the clause:

NOTICE: The following term(s) of this clause are waived for this contract: _____ [*List term(s)*].

52.222-37 Employment Reports Veterans.

As prescribed in [22.1310\(b\)](#), insert the following clause:

EMPLOYMENT REPORTS VETERANS (SEP 2010)

(a) *Definitions.* As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “other protected veteran,” and “recently separated veteran,” have the meanings given in the Equal Opportunity for Veterans clause [52.222-35](#).

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor’s workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled “Federal Contractor Veterans’ Employment Report (VETS-100A Report).”

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under [38 U.S.C. 4212](#).

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

52.222-38 Compliance with Veterans’ Employment Reporting Requirements.

As prescribed in [22.1310\(c\)](#), insert the following provision:

COMPLIANCE WITH VETERANS’ EMPLOYMENT REPORTING REQUIREMENTS (SEP 2010)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of [38 U.S.C. 4212\(d\)](#) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause [52.222-37](#), Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

(End of provision)

52.222-39 [Reserved]

52.222-40 Notification of Employee Rights Under the National Labor Relations Act.

As prescribed in [22.1605](#), insert the following clause:

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards website at www.dol.gov/olms/regs/compliance/EO13496.htm; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29

CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

52.222-41 Service Contract Act of 1965.

As prescribed in [22.1006\(a\)](#), insert the following clause:

SERVICE CONTRACT ACT OF 1965 (NOV 2007)

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

"Act" means the Service Contract Act of 1965 ([41 U.S.C. 351](#), *et seq.*).

"Contractor," when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by [41 U.S.C. 356](#), as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary

wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit [Standard Form \(SF\) 1444](#), Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed [SF 1444](#) (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay

relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determi-

nation shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon

direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages

(but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this con-

tract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

52.222-42 Statement of Equivalent Rates for Federal Hires.

As prescribed in [22.1006\(b\)](#), insert the following clause:

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES
(MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of [5 U.S.C. 5341](#) or [5332](#).

*This Statement is for Information Only:
It is not a Wage Determination*

Employee Class	Monetary Wage—Fringe Benefits
_____	_____
_____	_____
_____	_____
_____	_____

(End of clause)

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

As prescribed in [22.1006\(c\)\(1\)](#), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (SEP 2009)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, ([41 U.S.C. 351](#), *et seq.*), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as

amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 22.1006(c)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (SEP 2009)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract) claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

52.222-45 [Reserved]

52.222-46 Evaluation of Compensation for Professional Employees.

As prescribed in [22.1103](#), insert the following provision:

EVALUATION OF COMPENSATION FOR PROFESSIONAL
EMPLOYEES (FEB 1993)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

52.222-47 [Reserved]**52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.**

As prescribed in [22.1006\(e\)\(1\)](#), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE
CONTRACT ACT TO CONTRACTS FOR MAINTENANCE,
CALLIBRATION, OR REPAIR OF CERTAIN EQUIPMENT
CERTIFICATION (FEB 2009)

(a) The offeror shall check the following certification:

CERTIFICATION

The offeror does does not certify that—

(1) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontractor) in substantial quantities to the general public in the course of normal business operations;

(2) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

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

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

(3) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract are the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR [22.1003-4\(c\)\(3\)](#) that the Service Contract Act—

(1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair

of Certain Equipment-Requirements, in this solicitation will not be included in any resultant contract awarded to this offeror, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause in this solicitation at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, will not be included in any resultant contract awarded to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible, if the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

52.222-49 Service Contract Act—Place of Performance Unknown.

As prescribed in [22.1006](#)(f), insert the following clause:

SERVICE CONTRACT ACT—PLACE OF PERFORMANCE UNKNOWN (MAY 1989)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: _____ [*insert places or areas*]. The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ [*insert time and date*].

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

52.222-50 Combating Trafficking in Persons.

As prescribed in [22.1705](#)(a), insert the following clause:

COMBATING TRAFFICKING IN PERSONS (FEB 2009)

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

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.
“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—

(i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) *Mitigating Factor.* The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

(End of clause)

Alternate 1 (Aug 2007). As prescribed in [22.1705\(b\)](#), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

(i)(A) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and

(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title	Document may be obtained from:	Applies performance to in/at:
_____	_____	_____
_____	_____	_____

[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the U.S. to which the document applies.]

52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.

As prescribed in [22.1006\(e\)\(2\)](#), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT—REQUIREMENTS (NOV 2007)

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

(b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

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

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

(c) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract shall be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Contractor shall consider all factors and make an affirmative determination

that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

(End of clause)

52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

As prescribed in [22.1006](#)(e)(3), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE
CONTRACT ACT TO CONTRACTS FOR CERTAIN
SERVICES—CERTIFICATION (NOV 2007)

(a) The offeror shall check the following certification:

CERTIFICATION

The offeror does does not certify that—

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

(2) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;

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

(4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employ-

ees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR [22.1003-4](#)(d)(3) that the Service Contract Act—

(1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at FAR [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, in this solicitation will not be included in any resultant contract awarded to this offer, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause of this solicitation at [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, will not be included in any resultant contract to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible if the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.

As prescribed in [22.1006](#)(e)(4), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE
CONTRACT ACT TO CONTRACTS FOR CERTAIN
SERVICES—REQUIREMENTS (FEB 2009)

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers

free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

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

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

(e) (1) Except for services identified in FAR [22.1003-4\(d\)\(1\)\(iv\)](#), the subcontractor for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or

(2) A subcontract for exempt services shall be awarded on a sole source basis.

(f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Act shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(h) The Contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(End of clause)

52.222-54 Employment Eligibility Verification.

As prescribed in [22.1803](#), Insert the following clause:

EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

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

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.* (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.* (A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) *Is for—* (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of clause)

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52.244-1 [Reserved]

52.244-2 Subcontracts.

As prescribed in [44.204\(a\)\(1\)](#), insert the following clause:

SUBCONTRACTS (OCT 2010)

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

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with [Part 44](#) of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR [Subpart 2.1](#), entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor’s current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor’s certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor’s certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR [15.404-4\(c\)\(4\)\(i\)](#).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR [Subpart 44.3](#).

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

Alternate I (June 2007). As prescribed in [44.204\(a\)\(2\)](#), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

52.244-3 [Reserved]

52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in [44.204\(b\)](#), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND
 CONSULTANTS (ARCHITECT-ENGINEER SERVICES)
 (AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244-5 Competition in Subcontracting.

As prescribed in [44.204\(c\)](#), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical

extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

52.244-6 Subcontracts for Commercial Items.

As prescribed in [44.403\(a\)](#), insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)

(a) *Definitions.* As used in this clause—
 "Commercial item" has the meaning contained in Federal Acquisition Regulation [2.101](#), Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) [52.219-8](#), Utilization of Small Business Concerns (DEC 2010) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212\(a\)](#));

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

(vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-40 Notification of Employee Rights Under the National Labor Relations Act.	22.1605	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-41 Service Contract Act of 1965.	22.1006(a)	C	Yes	I					A	A			A		A	A	A			A	A		
52.222-42 Statement of Equivalent Rates For Federal Hires.	22.1006(b)	C	No	I					A	A			A		A	A	A			A	A		
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	22.1006(c)(1)	C	Yes	I					A				A		A	A	A			A	A		
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.	22.1006(c)(2)	C	Yes	I					A				A		A	A	A			A	A		
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L					A	A													
52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.	22.1006(e)(1)	C	Yes	I					A	A			A								A		
52.222-49 Service Contract Act—Place of Performance Unknown.	22.1006(f)	C	Yes	I					A	A			A		A	A				A	A		
52.222-50 Combating Trafficking in Persons.	22.1705(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1705(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	22.1006(e)(2)	C	Yes	I					A	A			A								A		
52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.	22.1006(e)(3)	P	Yes	I					A	A			A								A		
52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.	22.1006(e)(4)	C	Yes	I					A	A			A								A		
52.222-54 Employment Eligibility Verification	22.1803	C	Yes	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	A	A
52.223-1 Biobased Product Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.	23.406(b)	C	Yes	I					A	A	A	A	A		A	A		A	A	A	A		A ✓
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.303(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-4 Recovered Material Certification.	23.406(c)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
52.223-5 Pollution Prevention and Right-to-Know Information.	23.1005	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.1005(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	23.1005(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.223-6 Drug-Free Workplace.	23.505	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A			A		A	A		A			
52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate I	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.223-10 Waste Reduction Program.	23.706(a)	C	Yes	I				A	A					A			A						
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A	A												A		A			
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I				A	A			A			A			A		A			
52.223-13 Certification of Toxic Chemical Release Reporting.	23.906(a)	P	No	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.223-14 Toxic Chemical Release Reporting.	23.906(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.223-15 Energy Efficiency in Energy-Consuming Products.	23.206	C	Yes	I	A	A	A	A	A	A	A	A		A	A		A	A	A	A	A	A	A
52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.	23.706(b)(1)	C	Yes	I	A	A	A	A	A			A	A	A				A		A		A	
Alternate I	23.706(b)(2)	C	Yes	I	A	A	A	A	A			A	A	A				A		A		A	
52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.	23.406(e)	C	Yes	I				A	A	A	A	A		A	A		A	A	A	A			
52.223-18 Contractor Policy to Ban Text Messaging While Driving	23.1105	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
52.225-1 Buy American Act—Supplies.	25.1101(a)(1)	C	Yes	I	A	A	A	A	A			A	A	A				A		A		A	
52.225-2 Buy American Act Certificate.	25.1101(a)(2)	P	No	K	A	A	A	A	A			A	A	A				A		A			
52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.	25.1101(b)(1)(i)	C	Yes	I	A	A						A	A					A		A		A	
Alternate I	25.1101(b)(1)(ii)	C	Yes	I	A	A						A	A					A		A		A	
Alternate II	25.1101(b)(1)(iii)	C	Yes	I	A	A						A	A					A		A		A	
52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.	25.1101(b)(2)(i)	P	No	K	A	A						A	A					A		A			
Alternate I	25.1101(b)(2)(ii)	P	No	K	A	A						A	A					A		A			
Alternate II	25.1101(b)(2)(iii)	P	No	K	A	A						A	A					A		A			
52.225-5 Trade Agreements.	25.1101(c)(1)	C	Yes	I	A	A												A		A		A	
52.225-6 Trade Agreements Certificate.	25.1101(c)(2)	P	No	K	A	A												A		A			
52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.1101(d)	P	Yes	L	A	A	A	A										A		A		A	