Federal Acquisition Circular (FAC) 2005-52 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 2005-52 are effective May 31, 2011, except for Items II and V, which are effective June 30, 2011.
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Federal Acquisition Circular (FAC) 2005-52 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Sustainable Acquisition (FAR Case 2010-001) (Interim)

This interim rule amends the FAR to implement Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. It requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an agency’s environmental management system.

Replacement pages: General Structure pp. v and vi; 1.1-3 thru 1.1-6; 2.1-11 thru 2.1-16; 4.3-1 and 4.3-2; 4.6-1 thru 4.6-4; 4.12-1 and 4.12-2; 5.2-3 and 5.2-4; 7.1-1 thru 7.1-8 (7.1-7 and 7.1-8 added); Part 11 TOC pp. 11-1 and 11-2; 11.1-1 thru 11.1-4; 11.3-1 and 11.3-2; 12.1-1 and 12.1-2; 13.2-1 and 13.2-2; Part 23 TOC pp. 23-1 and 23-2; 23.1-1 and 23.1-2; 23.2-1 and 23.2-2; 23.4-1 and 23.4-2; 23.7-1 and 23.7-2; 23.8-1 and 23.8-2; 23.9-1 and 23.9-2; 23.10-1 and 23.10-2; Part 36 TOC pp. 36-1 and 36-2; 36.1-1 and 36.1-2; 37.1-1 and 37.1-2; 39.1-1 thru 39.1-4; Part 52 TOC pp. 52-1 thru 52-10; 52.2-9 thru 52.2-12 (52.2-8.3 and 52.2-8.4 removed); 52.2-42.1 and 52.2-42.2; 52.2-133 thru 52.2-142.2; and Matrix pp. 52.3-3 and 52.3-4; and 52.3-15 and 52.3-16.

Item II—Contract Closeout (FAR Case 2008-020)

This final rule amends the FAR procedures for closing out contracts. A proposed rule was published August 20, 2009. This rule revises procedures and sets forth a timeframe for clearing final patent reports; updates quick-closeout procedures, including applicable thresholds; sets forth a description of an adequate final indirect cost rate proposal and supporting data; and adds language for withholding fees to protect the Government’s interest and encourage timely submissions of an adequate final indirect cost rate proposal. The rule does not impose any additional requirements on small businesses.

Item III—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2008-009)

This final rule implements section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117) and similar restrictions in 2008 and 2009 appropriations acts, which prohibit the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one, except as permitted in specific exceptions as set forth in the rule. The rule does not impose any requirements on small businesses.

Replacement pages: 4.12-1 and 4.12-2; Part 9 TOC pp. 9-1 and 9-2; 9.1-1 and 9.1-2; 9.1-5 and 9.1-6; Part 52 TOC pp. 52-1 and 52-2; 52.2-11 and 52.2-12; 52.2-17 thru 52.2-26; 52.2-29 thru 34.6; 52.2-39 thru 52.2-42; and Matrix pp. 52.3-5 thru 52.3-16.

Item IV—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009-039)

This rule adopts as final, without change, an interim rule. The interim rule amended the FAR to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Replacement pages: None.

Item V—Oversight of Contractor Ethics Programs (FAR Case 2010-017)

This final rule modifies FAR 42.302, Contract Administration Functions, to add to the list of contract administration functions, the function of ensuring that contractors have implemented FAR 52.203-13, Contractor Code of Business Ethics and Conduct.

Contracting officers may ask to see a contractor’s code of ethics or a contractor’s ethics program, but the contracting officer is not required to ask for a copy of any documents.

Item VI—Technical Amendments

Editorial changes are made at FAR 53.301-1447, 53.301-1449 and 53.302-347.

Replacement pages:  52.2-31 and 52.2-32; 53.3-159 thru 53.3-162; and 53.3-175 and 53.3-176.

Looseleaf Only Correction

FAR 52.212-3 [Corrected]

FAR 52.212-3 is corrected by moving the Note to follow paragraph (c)(7)(ii).

Replacement pages:  52.2-31 and 52.2-32; and 52.2-104.1 and 52.2-104.2.

FAR 52.219-29 [Corrected]

FAR 52.219-29(c)(2) is corrected by removing “Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;” and adding “Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);” in it place.

Replacement pages:  52.2-104.1 and 52.2-104.2.
**FAC 2005-52 FILING INSTRUCTIONS**

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

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NOTE: THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JUNE 30, 2011.
# Federal Acquisition Regulation

## PART 23—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

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- 23.2 Energy and Water Efficiency and Renewable Energy
- 23.3 Hazardous Material Identification and Material Safety Data
- 23.4 Use of Recovered Materials and Biobased Products
- 23.5 Drug-Free Workplace
- 23.6 Notice of Radioactive Material
- 23.7 Contracting for Environmentally Preferable Products and Services
- 23.8 Ozone-Depleting Substances
- 23.9 Contractor Compliance with Environmental Management Systems
- 23.10 Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements
- 23.11 Encouraging Contractor Policies to Ban Text Messaging While Driving

## PART 24—Protection of Privacy and Freedom of Information

- 24.1 Protection of Individual Privacy
- 24.2 Freedom of Information Act

## PART 25—Foreign Acquisition

- 25.1 Buy American Act—Supplies
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- 25.3 Contracts Performed Outside the United States
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- 26.1 Indian Incentive Program
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### PART 27—Patents, Data, and Copyrights

- 27.1 General
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### PART 28—Bonds and Insurance

- 28.1 Bonds and Other Financial Protections
- 28.2 Sureties and Other Security for Bonds
- 28.3 Insurance
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  
(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):

```
Part   +   Subpart +   Section   +   Subsection
25.108-2
```

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

(a)(1)(i)(A)(J)(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:

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### 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)).

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include shift premium, \textit{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 (\textit{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(e).

“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—
“Renewable energy” means energy produced by solar, wind, geothermal, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project (Energy Policy Act of 2005, 42 U.S.C. 15852).

“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.

“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 public- ly 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.

“Ship” 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 2.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

“Sustainable acquisition” means acquiring goods and services in order to create and maintain conditions—
1. Under which humans and nature can exist in productive harmony; and
2. That permit fulfilling the social, economic, and other requirements of present and future generations.

“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 23, see definition at 23.001.
8. For use in Part 25, see the definition at 25.003.
9. For use in Part 27, see the definition at 27.001.
10. 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 lifecycle 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)” means a proposal that—

1. Requires a change to the instant contract to implement; and
2. 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.

3. 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).

“Value engineering change proposal (VECP)” means a proposal that—

1. Requires a change to the instant contract to implement; and
2. 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.

3. 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).

“Value engineering change proposal (VECP)” means a proposal that—

1. Requires a change to the instant contract to implement; and
2. 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.

3. 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).

“Value engineering change proposal (VECP)” means a proposal that—

1. Requires a change to the instant contract to implement; and
2. 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.

3. 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).

“Value engineering change proposal (VECP)” means a proposal that—

1. Requires a change to the instant contract to implement; and
2. 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.

3. 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).

“Value engineering change proposal (VECP)” means a proposal that—

1. Requires a change to the instant contract to implement; and
2. 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.

3. 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).
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.

“Water consumption intensity” means water consumption per square foot of building space.

“Women-owned small business concern” means—

(1) A small business concern—

(i) 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

(ii) Whose management and daily business operations are controlled by one or more women; or

(2) A small business concern eligible under the Women-Owned Small Business Program in accordance with 13 CFR part 127 (see subpart 19.15).

“Women-Owned Small Business (WOSB) Program.”

(1) “Women-Owned Small Business Program (WOSB Program)” means a program that authorizes contracting officers to limit competition to—

(i) Eligible economically disadvantaged women-owned small business concerns for Federal contracts assigned

a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and

(ii) Eligible WOSB concerns eligible under the WOSB Program for Federal contracts assigned a NAICS code in an industry in which SBA has determined that WOSB concerns are substantially underrepresented.

(2) “Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

(3) “Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127) means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.
Subpart 4.3—Paper Documents

4.300 Scope of subpart.
This subpart provides policies and procedures on contractor-submitted paper documents.

4.301 Definition.
“Printed or copied double-sided,” as used in this subpart, means printing or reproducing a document so that information is on both sides of a sheet of paper.

4.302 Policy.
(a) Section 3(a) of E.O. 13423, Strengthening Federal Environmental, Energy, and Transportation Management, directs agencies to implement waste prevention. In addition, section 2(e) of E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, directs agencies to eliminate waste. Electronic commerce methods (see 4.502) and double-sided printing and copying are best practices for waste prevention.

(b) When electronic commerce methods (see 4.502) are not used, agencies shall require contractors to submit paper documents to the Government relating to an acquisition printed or copied double-sided on at least 30 percent postconsumer fiber paper whenever practicable. If the contractor cannot print or copy double-sided, it shall print or copy single-sided on at least 30 percent postconsumer fiber paper.

4.303 Contract clause.
Insert the clause at 52.204-4, Printed or Copied Double-Sided on Recycled Paper, in solicitations and contracts that exceed the simplified acquisition threshold.
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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;
(3) A means of measuring and assessing the effect of Federal contracting for promoting sustainable technologies, materials, products, and high-performance sustainable buildings. This is accomplished by collecting and reporting agency data on sustainable acquisition, including types of products purchased, the purchase costs, and the exceptions used for other than sustainable acquisition; and
(4) 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., subcontracting 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) 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 30 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) 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.

(3) 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 memorandum 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.


(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.
Subpart 4.12—Representations and Certifications

4.1200 Scope.

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

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

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

4.1201 Policy.

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

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

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

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

4.1202 Solicitation provision and contract clause.

Except for commercial item solicitations issued under FAR Part 12, insert in solicitations the provision at 52.204-8, Annual Representations and Certifications. The contracting officer shall check the applicable provisions at 52.204-8(c)(2). When the clause at 52.204-7, Central Contractor Registration, is included in the solicitation, do not include the following representations and certifications:

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

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

(c) 52.204-3, Taxpayer Identification.

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

(e) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.

(f) 52.209-5, Certification Regarding Responsibility Matters.

(g) 52.214-14, Place of Performance—Sealed Bidding.

(h) 52.215-6, Place of Performance.

(i) 52.219-1, Small Business Program Representations (Basic & Alternate I).

(j) 52.219-2, Equal Low Bids.

(k) 52.219-22, Small Disadvantaged Business Status (Basic & Alternate I).

(l) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

(m) 52.222-22, Previous Contracts and Compliance Reports.

(n) 52.222-25, Affirmative Action Compliance.

(o) 52.222-38, Compliance with Veterans’ Employment Reporting Requirements.

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

(q) 52.222-52, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

(r) 52.223-1, Biobased Product Certification.

(s) 52.223-4, Recovered Material Certification.

(t) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designed Items (Alternate I only).

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

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

(w) 52.225-6, Trade Agreements Certificate.

(x) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(y) 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.

(z) 52.226-2, Historically Black College or University and Minority Institution Representation.

(aa) 52.227-6, Royalty Information (Basic & Alternate I).

(bb) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.
must synopsize (see 5.201) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

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

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

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

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

(2) When the total fee is expected to exceed $15,000 but not exceed $25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

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

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

(f) Section 8(a) competitive acquisition. When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under Subpart 19.8, the contracting officer must transmit a synopsis of the proposed contract action to the GPE. The synopsis may be transmitted to the GPE concurrent with submission of the agency offering (see 19.804-2) to the Small Business Administration (SBA). The synopsis should also include information—

1. Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;
2. Specifying the North American Industry Classification System (NAICS) code;
3. Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and
4. Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

5.206 Notices of subcontracting opportunities.

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

1. A contractor awarded a contract exceeding $150,000 that is likely to result in the award of any subcontracts.
2. A subcontractor or supplier, at any tier, under a contract exceeding $150,000, that has a subcontracting opportunity exceeding $15,000.

(b) The notices must describe—

1. The business opportunity;
2. Any prequalification requirements; and
3. Where to obtain technical data needed to respond to the requirement.

5.207 Preparation and transmittal of synopses.

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

2. Date.
3. Year.
5. Classification Code.
7. Subject.
8. Proposed Solicitation Number.
9. Closing Response Date.
10. Contact Point or Contracting Officer.
11. Contract Award and Solicitation Number.
13. Contract Line Item Number.
14. Contract Award Date.
15. Contractor.
16. Description.
(17) Place of Contract Performance.

(18) Set-aside Status.

(b) Transmittal. Transmissions to the GPE must be in accordance with the interface description available via the Internet at http://www.fedbizopps.gov.

(c) General format for “Description.” Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested including the following, as appropriate:

1. National Stock Number (NSN) if assigned.
2. Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).
3. Manufacturer, including part number, drawing number, etc.
4. Size, dimensions, or other form, fit or functional description.
5. Predominant material of manufacture.
6. Quantity, including any options for additional quantities.
7. Unit of issue.
8. Destination information.
9. Delivery schedule.
10. Duration of the contract period.
11. Sustainable acquisition requirements (or a description of high-performance sustainable building practices required, if for design, construction, renovation, repair, or deconstruction) (see parts 23 or 36).
12. For a proposed contract action in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, enter—
   (i) A description of the procedures to be used in awarding the contract (e.g., request for oral or written quotation or solicitation); and
   (ii) The anticipated award date.
13. For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.
14. (i) If the solicitation will include the FAR clause at 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to Free Trade Agreements.”
   (ii) If the solicitation will include the FAR clause at 52.225-5, Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”
   (iii) If the solicitation will include the FAR clause at 52.225-11, Buy American Act—Construction Materials Under Trade Agreements, 52.225-23, Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”
15. In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source and insert a statement of the reason justifying the lack of competition.
16. (i) Except when using the sole source authority at 6.302-1, insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.
   (ii) When using the sole source authority at 6.302-1, insert a statement that all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency.
17. If solicitations synopsized through the GPE will not be made available through the GPE, provide information on how to obtain the solicitation.
18. If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.
19. If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, such as http://www.fedbizopps.gov/, from which the technical data may be obtained.
   (d) Set-asides. When the proposed acquisition provides for a total or partial small business program set-aside, or when the proposed acquisition provides for a local area set-aside (see Subpart 26.2), the contracting officer shall identify the type of set-aside in the synopsis and in the solicitation.
   (e) Codes to be used in Synopses to identify services or supplies. Contracting officers must use one of the classification codes identified at http://www.fedbizopps.gov/ to identify services or supplies in synopses.
   (f) Notice of solicitation cancellation. Contracting officers may publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE.
7.000 Scope of part.
This part prescribes policies and procedures for—
(a) Developing acquisition plans;
(b) Determining whether to use commercial or Government resources for acquisition of supplies or services;
(c) Deciding whether it is more economical to lease equipment rather than purchase it; and
(d) Determining whether functions are inherently governmental.

Subpart 7.1—Acquisition Plans

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

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

“Order” means an order placed under a—
(1) Federal Supply Schedule contract; or
(2) Task-order contract or delivery-order contract awarded by another agency, (i.e., Governmentwide acquisition contract or multi-agency contract).

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

7.102 Policy.
(a) Agencies shall perform acquisition planning and conduct market research (see Part 10) for all acquisitions in order to promote and provide for—
(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items, to the maximum extent practicable (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)); and
(2) Full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)).

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

7.103 Agency-head responsibilities.
The agency head or a designee shall prescribe procedures for—
(a) Promoting and providing for full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, for obtaining competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)).

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations (10 U.S.C. 2377 and 41 U.S.C. 251, et seq.); and

c) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2305(a)(1)(A) and 41 U.S.C. 253a(a)(1)). (See Part 6 and 10.002.)

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

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

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

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

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

(i) Designating planners for acquisitions.

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

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

(l) Establishing standard acquisition plan formats, if desired, suitable to agency needs; and

(m) Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.
(n) Assuring that the contracting officer, prior to contracting, reviews:
   (1) The acquisition history of the supplies and services; and
   (2) A description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

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

(p) Ensuring that agency planners—
   (1) Specify needs for printing and writing paper consistent with the 30 percent postconsumer fiber minimum content standards specified in section 2(d)(ii) of Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management, and section 2(e)(iv) of Executive Order 13514 of October 5, 2009 (see 11.303).

   (2) Comply with the policy in 11.002(d) regarding procurement of: biobased products, products containing recovered materials, environmentally preferable products and services (including Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, nontoxic or low-toxic alternatives), ENERGY STAR® and Federal Energy Management Program-designated products, renewable energy, water-efficient products, and non-ozone depleting products;

   (3) Comply with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (Guiding Principles), for the design, construction, renovation, repair, or deconstruction of Federal buildings. The Guiding Principles can be accessed at http://www.wbdg.org/pdfs/hpsb_guidance.pdf; and

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

(q) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions that address Electronic and Information Technology Accessibility Standards (see 36 CFR Part 1194) in proposed acquisitions (see 11.002(e)) and that these standards are included in requirements planning, as appropriate (see Subpart 39.2).

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

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

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

(u) Ensuring that acquisition planners, to the maximum extent practicable—
   (1) Structure contract requirements to facilitate competition by and among small business concerns; and
   (2) Avoid unnecessary and unjustified bundling that precludes small business participation as contractors (see 7.107 (15 U.S.C. 631(j)));

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

(w) Ensuring that agency planners on information technology acquisitions comply with the information technology security requirements in the Federal Information Security Management Act (44 U.S.C. 3544), OMB’s implementing policies including Appendix III of OMB Circular A-130, and guidance and standards from the Department of Commerce’s National Institute of Standards and Technology.

(x) Encouraging agency planners to consider the use of a project labor agreement (see subpart 22.5).

(y) Ensuring that contracting officers consult the Disaster Response Registry at www.ccr.gov as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

7.104 General procedures.

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

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

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

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under Part 19. The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. If the strategy involves substantial bundling, the small business specialist shall assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(2)(i) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

(A) $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.

(e) The planner shall ensure that a COR is nominated by the requirements official, and designated and authorized by the contracting officer, as early as practicable in the acquisition process. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. See 1.602-2(d).

7.105 Contents of written acquisition plans.

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

(a) Acquisition background and objectives—

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

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

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

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

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

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

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

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

4. Capability or performance. Specify the required capabilities or performance characteristics of the supplies or future systems or programs; 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 these components or subsystems.

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

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

(4) Source-selection procedures. Discuss the source-selection procedures for the acquisition, including the 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.

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

(ii) For each order contemplated, discuss—

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

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

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

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

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

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

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

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

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

(9) Contractor versus Government performance. Address the consideration given to OMB Circular No. A-76 (see Subpart 7.3).

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

(11) Management information requirements. Discuss, as appropriate, what management system will be used by the Government to monitor the contractor’s effort. If an Earned Value Management System is to be used, discuss the methodology the Government will employ to analyze and use the earned value data to assess and monitor contract performance. In addition, discuss how the offeror’s/contractor’s EVMS will be verified for compliance with the 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.)

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

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

(14) Logistics considerations. Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3), support for contracts to be performed in a designated operational area or supporting a diplomatic or consular mission (see 25.301-3); and distribution of commercial items;

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

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

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

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

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

(17) Environmental and energy conservation objectives. Discuss all applicable environmental and energy conservation objectives associated with the acquisition (see Part 23), the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts (see 11.002 and 11.303).

(18) Security considerations. For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 7.4). For information technology acquisitions, discuss how agency information security requirements will be met. For acquisitions requiring routine contractor physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system, discuss how agency requirements for personal identity verification of contractors will be met (see Subpart 4.13).

(19) Contract administration. Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement’s performance criteria will be enforced.

(20) Other considerations. Discuss, as applicable:

(i) Standardization concepts;

(ii) The industrial readiness program;

(iii) The Defense Production Act;

(iv) The Occupational Safety and Health Act;

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

(vi) Foreign sales implications;

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

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

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

Acquisition plan approval.

Statement of work.

Specifications.

Data requirements.

Completion of acquisition-package preparation.

Purchase request.

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

Issuance of synopsis.

Issuance of solicitation.

Evaluation of proposals, audits, and field reports.

Beginning and completion of negotiations.

Contract preparation, review, and clearance.

Contract award.

(22) Identification of participants in acquisition plan preparation. List the individuals who participated in preparing the acquisition plan, giving contact information for each.
7.106 Additional requirements for major systems. (a) In planning for the solicitation of a major system (see Part 34) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

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

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

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

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

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

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

7.107 Additional requirements for acquisitions involving bundling. (a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified (15 U.S.C. 644(c)(2)). Market research may indicate that bundling is necessary and justified (10 U.S.C. 644(c)(2)). Market research may indicate that bundling is necessary and justified (15 U.S.C. 644(c)(2)).

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

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

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

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

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

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

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

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in 7.104(d)(2). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

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

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

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

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

5. Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

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

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

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

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

7.108 Additional requirements for telecommuting. In accordance with section 1428 of Public Law 108-136, an agency shall generally not discourage a contractor from allowing its employees to telecommute in the performance of Government contracts. Therefore, agencies shall not—
(a) Include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and specify the prohibition in the solicitation; or

(b) When telecommuting is not prohibited, unfavorably evaluate an offer because it includes telecommuting, unless the contracting officer first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and address the evaluation procedures in the solicitation.
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PART 9—CONTRACTOR QUALIFICATIONS

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9.000 Scope of part.
This part prescribes policies, standards, and procedures pertaining to prospective contractors’ responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest.

Subpart 9.1—Responsible Prospective Contractors

9.100 Scope of subpart.
This subpart prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

9.101 Definitions.
“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 connections 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.

“Surveying activity,” as used in this subpart, means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.
(a) This subpart applies to all proposed contracts with any prospective contractor that is located—
   (1) In the United States or its outlying areas; or
   (2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.
(b) This subpart does not apply to proposed contracts with—
   (1) Foreign, State, or local governments;
   (2) Other U.S. Government agencies or their instrumentalities; or
   (3) Agencies for the blind or other severely handicapped (see Subpart 8.7).

9.103 Policy.
(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.
(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with Subpart 19.6, Certificates of Competency and Determinations of Responsibility. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see Subpart 19.8.)
   (c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

9.104 Standards.

9.104-1 General standards.
To be determined responsible, a prospective contractor must—
   (a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(a));
   (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
   (c) Have a satisfactory performance record (see 9.104-3(b) and Subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;
   (d) Have a satisfactory record of integrity and business ethics (for example, see Subpart 42.15).
   (e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See 9.104-3(a).)
   (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(a)); and
   (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations (see also inverted domestic corporation prohibition at 9.108).

9.104-2 Special standards.
(a) When it is necessary for a particular acquisition or class of acquisitions, the contracting officer shall develop, with the
assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

(b) Contracting officers shall award contracts for subsistence only to those prospective contractors that meet the general standards in 9.104-1 and are approved in accordance with agency sanitation standards and procedures.

9.104-3 Application of standards.

(a) Ability to obtain resources. Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor’s ability to obtain required resources (see 9.104-1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor’s compliance with limitations on subcontracting shall take into account the time period covered by the contract base period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.

(b) Satisfactory performance record. A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor’s control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor’s compliance with subcontracting plans under recent contracts.

(c) Affiliated concerns. Affiliated concerns (see “Concern” in 19.001 and “Affiliates” in 19.101) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the contracting officer shall consider the affiliate’s past performance and integrity when they may adversely affect the prospective contractor’s responsibility.

(d) Small business concerns. Upon making a determination of nonresponsibility with regard to a small business concern, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether to issue a Certificate of Competency (see subpart 19.6).

(2) A small business that is unable to comply with the limitations on subcontracting at 52.219-14 may be considered nonresponsible.

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government’s determination of the prospective prime contractor’s responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor’s responsibility.

(b) When it is in the Government’s interest to do so, the contracting officer may directly determine a prospective subcontractor’s responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor’s responsibility shall be used by the Government to determine subcontractor responsibility.

9.104-5 Certification regarding responsibility matters.

(a) When an offeror provides an affirmative response in paragraph (a)(1) of the provision at 52.209-5, Certification Regarding Responsibility Matters, or paragraph (h) of provision 52.212-3, the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror’s responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds $3,000.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

9.104-6 Federal Awardee Performance and Integrity Information System.

(a) Before awarding a contract in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information Sys-
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.


(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 Definitions.

As used in this section—
“Inverted domestic corporation” 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). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.


(a) Section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117) prohibits the use of 2010 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 Governmentwide restriction was also contained in the Fiscal Year 2008 and 2009 appropriations acts. Agency-specific restrictions on contracting with inverted domestic corporations also existed in FY 2006 and FY 2007 appropriations for United States Departments of Transportation and Treasury, Housing and Urban Development, the Judiciary and Independent Agencies (including Public Laws 109-115 and 109-289).

(b) This prohibition does not apply as follows:

(1) When using Fiscal Year 2008 funds for any contract entered into before December 26, 2007, or for any order issued pursuant to such contract.

(2) When using Fiscal Year 2009 funds for any contract entered into before March 11, 2009, or for any order issued pursuant to such contract.

(3) When using Fiscal Year 2010 funds for any contract entered into before December 16, 2009, or for any order issued pursuant to such contract.

9.108-3 Representation by the offeror.

(a) In order to be eligible for contract award when using Fiscal Year 2008 through Fiscal Year 2010 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) The contracting officer may rely on an offeror’s representation that it is not an inverted domestic corporation unless the contracting officer has reason to question the representation.

9.108-4 Waiver.

Any agency head may waive the prohibition in subsection 9.108-2 and 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.


When using funds appropriated in Fiscal Year 2008 through Fiscal Year 2010, unless waived in accordance with FAR 9.108-4, the contracting officer shall—

(a) Include the provision at 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation, in each solicitation for the acquisition of products or services (including construction); and

(b) Include the clause at 52.210, Prohibition on Contracting with Inverted Domestic Corporations, in each solicitation and contract for the acquisition of products or services (including construction).
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SUBPART 11.1—SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

11.000 Scope of part.
This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.
As used in this part—

“Reconditioned” means restored to the original normal operating condition by readjustments and material replacement.

“Remanufactured” means factory rebuilt to original specifications.

11.002 Policy.
(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see Part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and
(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;
(B) Performance required; or
(C) Essential physical characteristics;
(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items, in response to the agency solicitations;
(iii) Provide offerors of commercial items and non-developmental items an opportunity to compete in any acquisition to fill such requirements;
(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and
(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, et seq.), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with Subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d)(1) When agencies acquire products and services, various statutes and executive orders (identified in part 23) require consideration of sustainable acquisition (see subpart 23.1) including—

(i) Energy-efficient and water-efficient services and products (including products containing energy-efficient standby power devices) (subpart 23.2);
(ii) Products and services that utilize renewable energy technologies (subpart 23.2);
(iii) Products containing recovered materials (subpart 23.4);
(iv) Biobased products (subpart 23.4);
(v) Environmentally preferable products and services, including EPEAT-registered electronic products and non-toxic or low-toxic alternatives (subpart 23.7); and
(vi) Non-ozone depleting substances (subpart 23.8).

(2) Unless an exception applies and is documented by the requiring activity, Executive agencies shall, to the maximum practicable, require the use of products and services listed in paragraph (d)(1) of this section when—

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;
(ii) Describing Government requirements for products and services; and
(iii) Developing source-selection factors.

d) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

(f) In accordance with Section 508 of the Rehabilitation Act Act of 1973 (29 U.S.C. 794d), requiring activities must prepare requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see Subpart 39.2).
(g) Unless the agency Chief Information Officer waives the requirement, when acquiring information technology using Internet Protocol, the requirements documents must include reference to the appropriate technical capabilities defined in the USGv6 Profile (NIST Special Publication 500-267) and the corresponding declarations of conformance defined in the USGv6 Test Program. The applicability of IPv6 to agency networks, infrastructure, and applications specific to individual acquisitions will be in accordance with the agency's Enterprise Architecture (see OMB Memorandum M-05-22 dated August 2, 2005).

(h) Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR 7.108(a).

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents. (a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

(1) Documents mandated for use by law.
(2) Performance-oriented documents (e.g., a PWS or SOO). (See 2.101.)
(3) Detailed design-oriented documents.
(4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) In accordance with OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” and Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113 (15 U.S.C. 272 note), agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (e.g., industry standards such as ISO 9000, and IEEE 1680).

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM-0001; for DoD components, DoD 4120.24-M, Defense Standardization Program Policies and Procedures; and for IT standards and guidance, the Federal Information Processing Standards Publications (FIPS PUBS). The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.24-M may be obtained from DoD (see 11.201(d)(2) or 11.201(d)(3)). FIPS PUBS may be obtained from the Government Printing Office (GPO), or the Department of Commerce's National Technical Information Service (NTIS) (see address in 11.201(d)(4)).

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103-355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—
   (i) Achieved commercial market acceptance; or
   (ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency’s minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency’s needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item’s acceptability to meet the agency’s minimum need;
(2) Relate to an item’s performance and intended use, not an offeror’s capability;
(3) Are supported by market research;
(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and
(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government’s requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and
(2) Support the specific criteria being used.

11.104 Use of brand name or equal purchase descriptions.

(a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.
(b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

11.105 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to require a particular brand name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a)(1) The particular brand name, product, or feature is essential to the Government’s requirements, and market research indicates other companies’ similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency’s needs;

(ii) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1); or

(ii) The basis for not providing for maximum practicable competition is documented in the file (see 13.106-1(b)) or justified (see 13.501) when the acquisition is awarded using simplified acquisition procedures.

(3) The documentation or justification is posted for acquisitions over $25,000. (See 5.102(a)(6).)

(b) For multiple award schedule orders, see 8.405-6.

11.106 Purchase descriptions for service contracts.

In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see Subpart 7.5) are not assigned to a contractor. These purchase descriptions shall—

(a) Reserve final determination for Government officials;

(b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and

(c) Require suitable marking of all documents or reports produced by contractors.

11.107 Solicitation provision.

(a) Insert the provision at 52.211-6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

(b) Insert the provision at 52.211-7, Alternatives to Government-Unique Standards, in solicitations that use Government-unique standards when the agency uses the transaction-based reporting method to report its use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities”). Use of the provision is optional for agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method. Agencies that manage their specifications on a contract-by-contract basis use the transaction-based method of reporting. Agencies that manage their specifications centrally use the categorical method of reporting. Agency regulations regarding specification management describe which method is used.
11.301 Definitions.
As used in this subpart—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

1. Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-use as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
2. All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
3. Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

“Recovered material” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

1. Postconsumer fiber.
2. Manufacturing wastes such as—
   a. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
   b. Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

11.302 Policy.
(a) Agencies must not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b)(1) When acquiring other than commercial items, agencies must require offerors to identify used, reconditioned, or remanufactured supplies; or unused former Government surplus property proposed for use under the contract. These supplies or property may not be used in contract performance unless authorized by the contracting officer.

(2) When acquiring commercial items, the contracting officer must consider the customary practices in the industry for the item being acquired. The contracting officer may require offerors to provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property proposed for use under the contract. The request for the information must be included in the solicitation, and to the maximum extent practicable must be limited to information or standards consistent with normal commercial practices.

(c)(1) When the contracting officer needs additional information to determine whether supplies meet minimum recovered material or biobased standards stated in the solicitation, the contracting officer may require offerors to submit additional information on the recycled or biobased content or related standards. The request for the information must be included in the solicitation. When acquiring commercial items, limit the information to the maximum extent practicable to that available under normal commercial practices.

(2) For biobased products, the contracting officer may require vendors to provide information on life cycle costs and environmental and health benefits in accordance with 7 CFR 2902.8.

11.303 Special requirements for paper.
(a) The following applies when agencies acquire paper in the United States (as defined in 23.001):

1. Section 2(d)(ii) of Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, establishes a 30 percent postconsumer fiber content standards for agency paper use. Section 2(d)(ii) requires that an agency’s paper products must meet or exceed the minimum content standard.

2. Section 2(e)(iv) of Executive Order 13514 requires acquisition of uncoated printing and writing paper containing at least 30 percent postconsumer fiber.

(b) Exceptions. If paper under paragraphs (a)(1) or (a)(2) of this section containing at least 30 percent postconsumer fiber is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency must purchase—

1. Printing and writing paper containing no less than 20 percent postconsumer fiber; or

2. Paper, other than printing and writing paper, with the maximum practicable percentage of postconsumer fiber that is reasonably available at a reasonable price and that meets reasonable performance requirements.

11.304 Contract clause.
Insert the clause at 52.211-5, Material Requirements, in solicitations and contracts for supplies that are not commercial items.
12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government’s preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

12.001 Definition.

“Subcontract,” as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

Agencies shall—

(a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency’s requirements;

(b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

12.102 Applicability.

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of the FAR. When a policy in another part of the FAR is inconsistent with a policy in this part, this part 12 shall take precedence for the acquisition of commercial items.

(d) The definition of commercial item in section 2.101 uses the phrase “purposes other than governmental purposes.” These purposes are those that are not unique to a government.

(e) This part shall not apply to the acquisition of commercial items—

1. At or below the micro-purchase threshold;
2. Using the Standard Form 44 (see 13.306); (3) Using the imprest fund (see 13.305);
4. Using the Governmentwide commercial purchase card; or
5. Directly from another Federal agency.

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items.

(2) A contract in an amount greater than $17.5 million that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (f)(1) of this section but does not meet the definition of a commercial item as defined at FAR 2.101 shall not be exempt from—

(i) Cost accounting standards (see Subpart 30.2); or
(ii) Certified cost or pricing data requirements (see 15.403).

(g)(1) In accordance with section 1431 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) (41 U.S.C. 437), the contracting officer also may use Part 12 for any acquisition for services that does not meet the definition of commercial item in FAR 2.101, if the contract or task order—

(i) Is entered into on or before November 24, 2013;
(ii) Has a value of $29.5 million or less;
(iii) Meets the definition of performance-based acquisition at FAR 2.101;
(iv) Uses a quality assurance surveillance plan;
(v) Includes performance incentives where appropriate;
(vi) Specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved; and
(vii) Is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order.

(2) In exercising the authority specified in paragraph (g)(1) of this section, the contracting officer may tailor paragraph (a) of the clause at FAR 52.212-4 as may be necessary to ensure the contract’s remedies adequately protect the Government’s interests.

12.103 Commercially available off-the-shelf (COTS) items.

COTS items are defined in 2.101. Unless indicated otherwise, all of the policies that apply to commercial items also apply to COTS. Section 12.505 lists the laws that are not applicable to COTS (in addition to 12.503 and 12.504); the components test of the Buy American Act, and the two recovered materials certifications in Subpart 23.4, do not apply to COTS.
Subpart 13.2—Actions At or Below the Micro-Purchase Threshold

13.201 General.
(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603-3).
(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see 2.101).
(c) Purchases at or below the micro-purchase threshold may be conducted using any of the methods described in Subpart 13.3, provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods.
(d) Micro-purchases do not require provisions or clauses, except as provided at 4.1105 and 32.1110. This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause.
(e) The requirements in Part 8 apply to purchases at or below the micro-purchase threshold.
(f) The procurement requirements in subparts 23.1, 23.2, 23.4, and 23.7 apply to purchases at or below the micro-purchase threshold.
(g)(1) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the micro-purchase threshold is —
   (i) $15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and
   (ii) $30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.
(2) Purchases using this authority must have a clear and direct relationship to the support of a contingency operation or the defense against or recovery from nuclear, biological, chemical, or radiological attack.
(h) When using the Governmentwide commercial purchase card as a method of payment, purchases 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).

13.202 Purchase guidelines.
(a) Solicitation, evaluation of quotations, and award.
(1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.
(2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603-3 considers the price to be reasonable.
(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—
   (i) The contracting officer or individual appointed in accordance with 1.603-3 suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or
   (ii) Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).
(b) Documentation. If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.
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PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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SUBPART 23.1—SUSTAINABLE ACQUISITION POLICY

23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace, for protecting and improving the quality of the environment, and to foster markets for sustainable technologies, materials, products, and services, and encouraging the safe operation of vehicles by—

(a) Reducing or preventing pollution;
(b) Managing efficiently and reducing energy and water use in Government facilities;
(c) Using renewable energy and renewable energy technologies;
(d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable (including EPEAT-registered, and non-toxic and less toxic) products, products containing recovered materials, non-ozone depleting products, and biobased products;
(e) Requiring contractors to identify hazardous materials;
(f) Encouraging contractors to adopt and enforce policies that ban text messaging while driving; and
(g) Requiring contractors to comply with agency environmental management systems.

23.001 Definitions.

As used in this part—

“Environmental” means environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions.

“Greenhouse gases” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

“United States”, except as used in subpart 23.10, means—
(1) The fifty States;
(2) The District of Columbia;
(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
(4) The territories of Guam, American Samoa, and the United States Virgin Islands; and
(5) Associated territorial waters and airspace.

23.002 Policy.

Executive Order 13423 sections 3(e) and (f) require that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order to the same extent as the agency would be required to comply if the agency operated or supported the facility. Compliance includes developing programs to promote and implement cost-effective waste reduction.

23.101 Definition.

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, including purchases below the micro-purchase threshold. 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.

23.102 Authorities.

(c) All of the authorities specified in subparts 23.2, 23.3, 23.7, 23.8, 23.9, and 23.10.

23.103 Sustainable acquisitions.

(a) Federal agencies shall advance sustainable acquisition by ensuring that 95 percent of new contract actions for the supply of products and for the acquisition of services (including construction) require that the products are—
(1) Energy-efficient (ENERGY STAR® or Federal Energy Management Program (FEMP)-designated);
(2) Water-efficient;
(3) Biobased;
(4) Environmentally preferable (e.g., EPEAT-registered, or non-toxic or less toxic alternatives);
(5) Non-ozone depleting; or
(6) Made with recovered materials.
(b) The required products in the contract actions for services include products that are—
(1) Delivered to the Government during performance;
(2) Acquired by the contractor for use in performing services at a Federally-controlled facility; or
(3) Furnished by the contractor for use by the Government.
(c) The required products in the contract actions must meet agency performance requirements.
(d) For purposes of meeting the 95 percent sustainable acquisition requirement, the term “contract actions” includes new contracts (and task and delivery orders placed against them) and new task and delivery orders on existing contracts.

23.104 Exceptions.

This subpart does not apply to the following acquisitions:
(a) Contracts performed outside of the United States, unless the agency head determines that such application is in the interest of the United States.

(b) Weapon systems.

23.105 Exemption authority.

(a) The head of an agency may exempt—

1. Intelligence activities of the United States, and related personnel, resources, and facilities, to the extent the Director of National Intelligence or agency head determines it necessary to protect intelligence sources and methods from unauthorized disclosure;

2. Law enforcement activities of that agency and related personnel, resources, and facilities, to the extent the head of an agency determines it necessary to protect undercover operations from unauthorized disclosure;

3. Law enforcement, protective, emergency response, or military tactical vehicle fleets of that agency; and

4. Agency activities and facilities in the interest of national security.

(b) If the head of the agency issues an exemption under paragraph (a) of this section, the agency must notify the Chair of the Council on Environmental Quality in writing within 30 days of the issuance of the exemption.

(c) The agency head may submit through the Chair of the Council on Environmental Quality a request for exemption of an agency activity other than those activities listed in paragraph (a) of this section and related personnel, resources, and facilities.
Subpart 23.2—Energy and Water Efficiency and Renewable Energy

23.200 Scope.
(a) This subpart prescribes policies and procedures for—
(1) Acquiring energy- and water-efficient products and services, and products that use renewable energy technology; and
(2) Using an energy-savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.
(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

23.201 Authorities.
(b) National Energy Conservation Policy Act (42 U.S.C. 8253, 8259b, 8262g, and 8287).
(c) Section 706 of Division D, Title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111-8).
(d) Title VI of the Clean Air Act, as amended (42 U.S.C. 7671, et seq.).

23.202 Policy.
(a) Introduction. The Government’s policy is to acquire supplies and services that promote a clean energy economy that increases our Nation’s energy security, safeguards the health of our environment, and reduces greenhouse gas emissions from direct and indirect Federal activities. To implement this policy, Federal acquisitions will foster markets for sustainable technologies, products, and services. This policy extends to all acquisitions, including those below the simplified acquisition threshold and those at or below the micro-purchase threshold (including those made with a Government purchase card).
(b) Water-efficient. In accordance with Executive Order 13514, dated October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance, it is the policy and objective of the Government to use and manage water through water-efficient means by—
(1) Reducing potable water consumption intensity to include low-flow fixtures and efficient cooling towers;
(2) Reducing agency, industry, landscaping, and agricultural water consumption; and

23.203 Energy-efficient products.
(a) Unless exempt as provided at 23.204—
(1) When acquiring energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP)—
(i) Agencies shall purchase ENERGY STAR® or FEMP-designated products; and
(ii) For products that consume power in a standby mode and are listed on FEMP’s Low Standby Power Devices product listing, agencies shall—
(A) Purchase items which meet FEMP’s standby power wattage recommendation or document the reason for not purchasing such items; or
(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and
(2) When contracting for services or construction that will include the provision of energy-consuming products, agencies shall specify products that comply with the applicable requirements in paragraph (a)(1) of this section.
(b) Information is available via the Internet about—
(1) ENERGY STAR® at http://www.energystar.gov/products; and
(2) FEMP at http://www1.eere.energy.gov/femp/procurement/EEP_requirements.html.

23.204 Procurement exemptions.
An agency is not required to procure an ENERGY STAR® or FEMP-designated product if the head of the agency determines in writing that—
(a) No ENERGY STAR® or FEMP-designated product is reasonably available that meets the functional requirements of the agency; or
(b) No ENERGY STAR® or FEMP-designated product is cost effective over the life of the product taking energy cost savings into account.
23.205  Energy-savings performance contracts.

(a) Agencies should make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency’s facilities and operations.

(b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(2) Except as provided in 10 CFR 436.34, ESPC’s are subject to Subpart 17.1.

(c) To solicit and award an ESPC, the contracting officer—

(1) Must use the procedures, selection method, and terms and conditions provided in 10 CFR Part 436, Subpart B; and

(2) May use the “Qualified List” of energy service companies established by the Department of Energy and other agencies.

23.206 Contract clause.

Unless exempt pursuant to 23.204, insert the clause at 52.223-15, Energy Efficiency in Energy-Consuming Products, in solicitations and contracts when energy-consuming products listed in the ENERGY STAR® Program or 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.
Subpart 23.4—Use of Recovered Materials and Biobased Products

23.400 Scope of subpart.
(a) The procedures in this subpart apply to all agency acquisitions of an Environmental Protection Agency (EPA) or United States Department of Agriculture (USDA)-designated item, if—
(1) The price of the designated item exceeds $10,000; or
(2) The aggregate amount paid for designated items, or for functionally equivalent designated items, in the preceding fiscal year was $10,000 or more.
(b) While micro-purchases are included in determining the aggregate amount paid under paragraph (a)(2) of this section, it is not recommended that an agency track micro-purchases when—
(1) The agency anticipates the aggregate amount paid will exceed $10,000; or
(2) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

23.401 Definitions.
As used in this subpart—
(a) “EPA-designated item” means a product that is or can be made with recovered material—
(1) That is listed by EPA in a procurement guideline (40 CFR part 247); and
(2) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm).
(b) “USDA-designated item” means a generic grouping of products that are or can be made with biobased materials—
(1) That is listed by USDA in a procurement guideline (7 CFR part 2902, subpart B); and
(2) For which USDA has provided purchasing recommendations.

23.402 Authorities.

23.403 Policy.
Government policy on the use of products containing recovered materials and biobased products considers cost, availability of competition, and performance. Agencies shall purchase these products or require in the acquisition of services, the delivery, use, or furnishing (see 23.103(b)) of such products. Agency contracts should specify that these products are composed of the highest percent of recovered material or biobased content practicable, or at least meet, but may exceed, the minimum recovered materials or biobased content of an EPA- or USDA-designated product. Agencies shall purchase these products to the maximum extent practicable without jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price. Such products shall meet the reasonable performance standards of the agency and be acquired competitively, in a cost-effective manner. Except as provided at 23.404(b), virgin material shall not be required by the solicitation (see 11.302).

23.404 Agency affirmative procurement programs.
(a) An agency must establish an affirmative procurement program for EPA and USDA-designated items if the agency’s purchases of designated items exceed the threshold set forth in 23.400.
(1) Agencies have a period of 1 year to revise their procurement program(s) after the designation of any new item by EPA or USDA.
(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.
(3) Agency affirmative procurement programs must include—
(i) A recovered materials and biobased products preference program;
(ii) An agency promotion program;
(iii) For EPA-designated items only, a program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts. Both the recovered material content and biobased programs require preaward certification that the products meet EPA or USDA recommendations. A second certification is required at contract completion for recovered material content; and
(iv) Annual review and monitoring of the effectiveness of the program.
(b) “Exemptions”. (1) Agency affirmative procurement programs must require that 100 percent of purchases of EPA or USDA-designated items contain recovered material or biobased content, respectively, unless the item cannot be acquired—
(i) Competitively within a reasonable time frame;
(ii) Meeting reasonable performance standards; or
(iii) At a reasonable price.
(2) EPA and USDA may provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants (see 7 CFR 2902.10 et seq.) are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

(i) Spacecraft system and launch support equipment.
(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(d) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials or biobased products. When using either, the contract should specify—

(1) For products containing recovered materials, that the product is composed of the—

(i) Highest percent of recovered materials practicable; or
(ii) Minimum content standards in accordance with EPA’s Recovered Materials Advisory Notices; and

(2) For biobased products, that the product is composed of—

(i) The highest percentage of biobased material practicable; or
(ii) USDA’s recommended minimum contents standards.

(e) Agencies shall treat as eligible for the preference for biobased products, products from “designated countries,” as defined in 25.003, provided that those products—

(1) Meet the criteria for the definition of biobased product, except that the products need not meet the requirement that renewable agricultural materials (including plant, animal, and marine materials) or forestry materials in such product must be domestic; and

(2) Otherwise meet all requirements for participation in the preference program.

23.405 Procedures.

(a) Designated items and procurement guidelines.

(1) Recovered Materials. Contracting officers should refer to EPA's list of EPA-designated items (available via the Internet at http://www.epa.gov/cpg/products.htm) and to their agencies’ affirmative procurement program when purchasing products that contain recovered material, or services that could include the use of products that contain recovered material.

(2) Biobased products. Contracting officers should refer to USDA’s list of USDA-designated items (available through the Internet at http://www.usda.gov/biopreferred) and to their agencies affirmative procurement program when purchasing services that contain biobased material or when purchasing supplies that contain biobased material.

(b) Procurement exemptions.

(1) Once an item has been designated by either EPA or USDA, agencies shall purchase conforming products unless an exemption applies (see 23.404(b)).

(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in the contract file.

(c) Program priorities. When both the USDA-designated item and the EPA-designated item will be used for the same purposes, and both meet the agency’s needs, the agency shall purchase the EPA-designated item.

23.406 Solicitation provisions and contract clauses.

(a) Insert the provision at 52.223-1, Biobased Product Certification, in solicitations that—

(1) Require the delivery or specify the use of USDA-designated items; or

(2) Include the clause at 52.223-2.

(b) Insert the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of USDA-designated items at http://www.usda.gov/biopreferred or 7 CFR Part 2902.

(c) Except for the acquisition of commercially available off-the-shelf items, insert the provision at 52.223-4, Recovered Material Certification, in solicitations that—

(1) Require the delivery or specify the use of EPA-designated items; or

(2) Include the clause at 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

(d) Except for the acquisition of commercially available off-the-shelf items, insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding $150,000 that are for, or specify the use of, EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(e) Insert the clause at 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of EPA-designated items.
Subpart 23.7—Contracting for Environmentally Preferable Products and Services

23.700 Scope.
This subpart prescribes policies for acquiring environmentally preferable products and services.

23.701 Definitions.
As used in this subpart—
“Computer monitor” means a video display unit used with a computer.
“Desktop computer” means a computer designed for use on a desk or table.
“Notebook computer” means a portable-style or laptop-style computer system.
“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

23.702 Authorities.
(b) National Energy Conservation Policy Act (42 U.S.C. 8262g).
(c) Pollution Prevention Act of 1990 (42 U.S.C. 13101, et seq.).

23.704 Electronic products environmental assessment tool.
(a) General. As required by E.O. 13423, agencies must ensure that they meet at least 95 percent of their annual acquisition requirement for electronic products with Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, unless there is no EPEAT standard for such products. This policy applies to contracts performed in the United States, unless otherwise provided by agency procedures.

(b) Personal computer products. Personal computer products is a category of EPEAT-registered electronic products.

(1) The IEEE 1680 standard for personal computer products—
   (i) Was issued by the Institute of Electrical and Electronics Engineers on April 28, 2006;
   (ii) Is a voluntary consensus standard consistent with Section 12(d) of Pub. L. 104-113, the “National Technology Transfer and Advancement Act of 1995”, (see 11.102(c));
   (iii) Meets EPA-issued guidance on environmentally preferable products and services; and
   (iv) Is described in more detail at www.epeat.net.

(2) A list of EPEAT-registered products that meet the IEEE 1680 standard can be found at www.epeat.net.

(3) The IEEE 1680 standard sets forth required and optional criteria. EPEAT “Bronze” registered products must meet all required criteria. EPEAT “Silver” registered products meet all required criteria and 50 percent of the optional criteria. EPEAT “Gold” registered products meet all required criteria and 75 percent of the optional criteria. These are the levels discussed in clause 1.4 of the IEEE 1680 Standard. The clause at 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, makes EPEAT Bronze registration the standard that contractors must meet. In accordance with guidance from the Office of the Federal Environmental Executive encouraging agencies to procure EPEAT Silver registered products, Alternate I of the clause makes EPEAT Silver registration the standard that con-
tractors must meet. Agencies also may use EPEAT Silver or Gold registration in the evaluation of proposals.

(c) The agency shall establish procedures for granting exceptions to the requirement in paragraph (a) of this section, with the goal that the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the agency, for which EPEAT-registered products are available. For example, agencies may grant an exception if the agency determines that no EPEAT-registered product meets agency requirements, or that the EPEAT-registered product will not be cost effective over the life of the product.

23.705 Contract clauses.

(a) Insert the clause at 52.223-10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or leased facilities and all solicitations and contracts for support services at Government-owned or operated facilities.

(b)(1) Unless an exception has been approved in accordance with 23.704(c), insert the clause at 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, in all solicitations and contracts for—

(i) Personal computer products;

(ii) Services that require furnishing of personal computer products for use by the Government; or

(iii) Contractor operation of Government-owned facilities.

(2) Agencies may use the clause with its Alternate I when there are sufficient EPEAT Silver registered products available to meet agency needs.
Subpart 23.8—Ozone-Depleting Substances

23.800 Scope of subpart.
This subpart sets forth policies and procedures for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances.

23.801 Authorities.
(a) Title VI of the Clean Air Act (42 U.S.C. 7671, et seq.).
(b) Section 706 of Division D, Title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111-8).
(e) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR Part 82).

23.802 [Reserved]

23.803 Policy.
(a) It is the policy of the Federal Government that Federal agencies—
(1) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and
(2) Give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere.
(b) In preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall—
(1) Comply with the requirements of Title VI of the Clean Air Act, Section 706 of Division D, Title VII of Pub. L. 111-8, Executive Order 13423, Executive Order 13514, and 40 CFR 82.84(a)(2), (3), (4), and (5); and
(2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(r). EPA’s Significant New Alternatives Policy (SNAP) program (available at http://www.epa.gov/ozone/snap) has a list of safe alternatives to ozone-depleting substances.

23.804 Contract clauses.
Except for contracts that will be performed outside the United States and its outlying areas, insert the clause at:
(a) 52.223-11, Ozone-Depleting Substances, in solicitations and contracts for ozone-depleting substances or for supplies that may contain or be manufactured with ozone-depleting substances.
(b) 52.223-12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.
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Subpart 23.9—Contractor Compliance with Environmental Management Systems

23.900 Scope.
This subpart implements the environmental management systems requirements for contractors.

23.901 Authority.

23.902 Policy.
(a) Agencies shall implement environmental management systems (EMS) at all appropriate organizational levels. Where contractor activities affect an agency’s environmental management aspects, EMS requirements shall be included in contracts to ensure proper implementation and execution of EMS roles and responsibilities.
(b) The contracting officer shall—
(1) Specify the EMS directives with which the contractor must comply; and
(2) Ensure contractor compliance to the same extent as the agency would be required to comply, if the agency operated the facilities or vehicles.

23.903 Contract clause.
The contracting officer shall insert the clause at 52.223-19, Compliance With Environmental Management Systems, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities or vehicles, located in the United States. For facilities located outside the United States, the agency head may determine that use of the clause is in the best interest of the Government.
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Subpart 23.10—Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements

23.1000 Scope.
This subpart prescribes policies and procedures for obtaining information needed for Government—
(a) Compliance with right-to-know laws and pollution prevention requirements;
(b) Implementation of an environmental management system (EMS) at a Federal facility; and
(c) Completion of facility compliance audits (FCAs) at a Federal facility.

23.1001 Authorities.

23.1002 Applicability.
The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

23.1003 Definitions.
As used in this subpart—
“Federal agency” means an executive agency (see 2.101).

23.1004 Requirements.
(a) Federal facilities are required to comply with—
(1) The emergency planning and toxic release reporting requirements in EPCRA and PPA; and
(2) The toxic chemical, and hazardous substance release and use reduction goals of sections 2(e) and 3(a)(vi) of Executive Order 13423.
(b) Pursuant to EPCRA, PPA, E.O. 13423, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the—
(1) Requirements in paragraph (a) of this section; and
(2) Requirements for EMSs and FCAs if the place of performance is at a Federal facility designated by the agency.

23.1005 Contract clause.
(a) Insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.
(b) Use the clause with its Alternate I if the contract provides for contractor—
(1) Operation or maintenance of a Federal facility at which the agency has implemented or plans to implement an EMS; or
(2) Activities and operations—
(i) To be performed at a Government-operated Federal facility that has implemented or plans to implement an EMS; and
(ii) That the agency has determined are covered within the EMS.
(c) Use the clause with its Alternate II if—
(1) The contract provides for contractor activities on a Federal facility; and
(2) The agency has determined that the contractor activities should be included within the FCA or an environmental management system audit.
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PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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**Subpart 36.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements**

36.700 Scope of subpart.

36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

36.702 Forms for use in contracting for architect-engineer services.
36.000 Scope of part.

This part prescribes policies and procedures peculiar to contracting for construction and architect-engineer services. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

36.001 Definitions.

As used in this part—

“Construction and demolition materials and debris” means materials and debris generated during construction, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure.

“Diverting” means redirecting materials that might otherwise be placed in the waste stream to recycling or recovery, excluding diversion to waste-to-energy facilities.

36.101 Applicability.

(a) Construction and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this Part 36 shall take precedence if the acquisition of construction or architect-engineer services is involved.

(c) A contract for both construction and supplies or services shall include—

(1) Clauses applicable to the predominant part of the work (see Subpart 22.4), or

(2) If the contract is divided into parts, the clauses applicable to each portion.

36.102 Definitions.

As used in this part—

“Contract” is intended to refer to a contract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

“Design” means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

“Design-bid-build” means the traditional delivery method where design and construction are sequential and contracted for separately with two contracts and two contractors.

“Design-build” means combining design and construction in a single contract with one contractor.

“Firm” in conjunction with architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

“Plans and specifications” means drawings, specifications, and other data for and preliminary to the construction.

“Record drawings” means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

“Two-phase design-build selection procedures” is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see Subpart 36.3).

36.103 Methods of contracting.

(a) The contracting officer shall use sealed bid procedures for a construction contract if the conditions in 6.401(a) apply, unless the contract will be performed outside the United States and its outlying areas. (See 6.401(b)(2).)

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, Subpart 36.6, and agency regulations.

36.104 Policy.

(a) Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (40 U.S.C. 1101 et seq.) or another acquisition procedure authorized by law is used, the contracting officer shall use the two-phase selection procedures authorized by 10 U.S.C. 2305a or 41 U.S.C. 253m when entering into a contract for the design and construction of a public building, facility, or work, if the contracting officer makes a determination that the procedures are appropriate for use (see subpart 36.3). Other acquisition procedures authorized by law include the procedures established in this part and other parts of this chapter and, for DoD, the design-build process described in 10 U.S.C. 2862.

(b) Agencies shall implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices so as to—

(1) Ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (available at http://www.wbdg.org/pdfs/hpsb_guidance.pdf);

(2) Pursue cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials;
(3) Identify alternatives to renovation that reduce existing assets’ deferred maintenance costs;
(4) Ensure that rehabilitation of Federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings; and
(5) Ensure pollution prevention and eliminate waste by diverting at least 50 percent of construction and demolition materials and debris by the end of Fiscal Year 2015.
37.000 Scope of part.

This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts and orders for services regardless of the contract type or kind of service being acquired. This part requires the use of performance-based acquisitions for services to the maximum extent practicable and prescribes policies and procedures for use of performance-based acquisition methods (see Subpart 37.6). Additional guidance for research and development services is in Part 35; architect-engineering services is in Part 36; information technology is in Part 39; and transportation services is in Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see Subpart 22.10).

Subpart 37.1—Service Contracts—General

37.101 Definitions.

As used in this part—

“Child care services” means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

“Nonpersonal services contract” means a contract under which the personnel rendering the services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

“Service contract” means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

1. Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
2. Routine recurring maintenance of real property.
3. Housekeeping and base services.
4. Advisory and assistance services.
5. Operation of Government-owned equipment, real property, and systems.
6. Communications services.
7. Architect-Engineering (see Subpart 36.6).
8. Transportation and related services (see Part 47).
9. Research and development (see Part 35).

37.102 Policy.

(a) Performance-based acquisition (see Subpart 37.6) is the preferred method for acquiring services (Public Law 106-398, section 821). When acquiring services, including those acquired under supply contracts or orders, agencies must—

1. Use performance-based acquisition methods to the maximum extent practicable, except for—
   1. Architect-engineer services acquired in accordance with 40 U.S.C. 1101 et seq.;
   2. Construction (see Part 36);
   3. Utility services (see Part 41); or
   4. Services that are incidental to supply purchases; and

2. Use the following order of precedence (Public Law 106-398, section 821(a));

   1. A firm-fixed price performance-based contract or task order.
   2. A performance-based contract or task order that is not firm-fixed price.
   3. A contract or task order that is not performance-based.

(b) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Performance of Commercial Activities and Subpart 7.3).

(c) Agencies shall not award a contract for the performance of an inherently governmental function (see Subpart 7.5).

(d) Non-personal service contracts are proper under general contracting authority.

(e) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that ensures full understanding and responsive performance by contractors and, in so doing, should obtain assistance from contracting officials, as needed. To the maximum extent practicable, the program officials shall describe the need to be filled using performance-based acquisition methods.

(f) Agencies shall establish effective management practices in accordance with Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting, to prevent fraud, waste, and abuse in service contracting.

(g) Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

(h) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.

(i) Agencies shall ensure that service contracts that require the delivery, use, or furnishing of products are consistent with part 23.
37.103 Contracting officer responsibility.

(a) The contracting officer is responsible for ensuring that a proposed contract for services is proper. For this purpose the contracting officer shall—

(1) Determine whether the proposed service is for a personal or nonpersonal services contract using the definitions at 2.101 and 37.101 and the guidelines in 37.104;

(2) In doubtful cases, obtain the review of legal counsel; and

(3) Document the file (except as provided in paragraph (b) of this section) with—

(i) The opinion of legal counsel, if any,

(ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in 37.104(b), and

(iii) Any further documentation that the contracting agency may require.

(b) Nonpersonal services contracts are exempt from the requirements of paragraph (a)(3) of this section.

(c) Ensure that performance-based acquisition methods are used to the maximum extent practicable when acquiring services.

(d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 42 U.S.C. 13041, as amended, and agency procedures.

37.104 Personal services contracts.

(a) A personal services contract is characterized by the employee-employer relationship it creates between the Government and the contractor’s personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C. 3109) to do so.

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract’s terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) of this section).

(d) The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.

(2) Principal tools and equipment furnished by the Government.

(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(5) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(i) Adequately protect the Government’s interest;

(ii) Retain control of the function involved; or

(iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(e) When specific statutory authority for a personal service contract is cited, obtain the review and opinion of legal counsel.

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (e.g., benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

37.105 Competition in service contracting.

(a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met, (except see 6.401(b)).

(b) The provisions of statute and Part 6 is this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

37.106 Funding and term of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see paragraph (b) of this section for certain service contracts, 32.703-2 for contracts con-
39.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring—

(a) Information technology, including financial management systems, consistent with other parts of this regulation, OMB Circular No. A-127, Financial Management Systems and OMB Circular No. A-130, Management of Federal Information Resources.

(b) Information and information technology.

39.001 Applicability.

This part applies to the acquisition of information technology by or for the use of agencies except for acquisitions of information technology for national security systems. However, acquisitions of information technology for national security systems shall be conducted in accordance with 40 U.S.C. 11302 with regard to requirements for performance and results-based management; the role of the agency Chief Information Officer in acquisitions; and accountability. These requirements are addressed in OMB Circular No. A-130.

39.002 Definitions.

As used in this part—

“Modular contracting” means use of one or more contracts to acquire information technology systems in successive, interoperable increments.

“National security system” means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—

(1) Involves intelligence activities;
(2) Involves cryptologic activities related to national security;
(3) Involves command and control of military forces;
(4) Involves equipment that is an integral part of a weapon or weapons system; or
(5) Is critical to the direct fulfillment of military or intelligence missions. This does not include a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

“Year 2000 compliant,” with respect to information technology, means that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

Subpart 39.1—General

39.101 Policy.

(a) Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105-277) requires that agencies may not use appropriated funds to acquire information technology that does not comply with 39.106, unless the agency’s Chief Information Officer determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998. The Chief Information Officer must send to the Office of Management and Budget a copy of all waivers for forwarding to Congress.

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A-130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency;
(ii) Electronic Product Environmental Assessment Tool (EPEAT) standards (see 23.704);
(iii) Policies to enable power management, doublesided printing, and other energy-efficient or environmentally preferable features on all agency electronic products; and
(iv) Best management practices for energy-efficient management of servers and Federal data centers.

(2) When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see Part 10) and the application of technology refreshment techniques.

(c) Agencies must follow OMB Circular A-127, Financial Management Systems, when acquiring financial management systems. Agencies may acquire only core financial management software certified by the Joint Financial Management Improvement Program.

(d) In acquiring information technology, agencies shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology’s website at http://checklists.nist.gov. Agency contracting officers should consult with the requiring official to ensure the appropriate standards are incorporated.

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

39.102 Management of risk.

(a) Prior to entering into a contract for information technology, an agency should analyze risks, benefits, and costs. (See Part 7 for additional information regarding requirements definition.) Reasonable risk taking is appropriate as long as risks are controlled and mitigated. Contracting and program office officials are jointly responsible for assessing, monitoring and controlling risk when selecting projects for investment and during program implementation.

(b) Types of risk may include schedule risk, risk of technical obsolescence, cost risk, risk implicit in a particular contract type, technical feasibility, dependencies between a new project and other projects or systems, the number of simulta...
neous high risk projects to be monitored, funding availability, and program management risk.

(c) Appropriate techniques should be applied to manage and mitigate risk during the acquisition of information technology. Techniques include, but are not limited to: prudent project management; use of modular contracting; thorough acquisition planning tied to budget planning by the program, finance and contracting offices; continuous collection and evaluation of risk-based assessment data; prototyping prior to implementation; post implementation reviews to determine actual project cost, benefits and returns; and focusing on risks and returns using quantifiable measures.

39.103 Modular contracting.

(a) This section implements Section 5202, Incremental Acquisition of Information Technology, of the Clinger-Cohen Act of 1996 (Public Law 104-106). Modular contracting is intended to reduce program risk and to incentivize contractor performance while meeting the Government's need for timely access to rapidly changing technology. Consistent with the agency's information technology architecture, agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see 2.101) of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

(b) When using modular contracting, an acquisition of a system of information technology may be divided into several smaller acquisition increments that—

1. Are easier to manage individually than would be possible in one comprehensive acquisition;

2. Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;

3. Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions;

4. Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments; and

5. Reduce risk of potential adverse consequences on the overall project by isolating and avoiding custom-designed components of the system.

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

1. To promote compatibility, the information technology acquired through modular contracting for each increment should comply with common or commercially acceptable information technology standards when available and appropriate, and shall conform to the agency's master information technology architecture.

2. The performance requirements of each increment should be consistent with the performance requirements of the completed, overall system within which the information technology will function and should address interface requirements with succeeding increments.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to Parts 16 and 17 of the Federal Acquisition Regulation, contracting officers shall select the contract type and method appropriate to the circumstances (e.g., indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards, task order contracts). Contract(s) shall be structured to ensure that the Government is not required to procure additional increments.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued. If award cannot be made within 180 days, agencies should consider cancellation of the solicitation in accordance with 14.209 or 15.206(e). To the maximum extent practicable, deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation.

39.104 Information technology services.

When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless the contracting officer determines that the needs of the agency—

(a) Cannot be met without that requirement; or

(b) Require the use of other than a performance-based acquisition (see Subpart 37.6).

39.105 Privacy.

Agencies shall ensure that contracts for information technology address protection of privacy in accordance with the Privacy Act (5 U.S.C. 552a) and Part 24. In addition, each agency shall ensure that contracts for the design, development, or operation of a system of records using commercial information technology services or information technology support services include the following:

(a) Agency rules of conduct that the contractor and the contractor’s employees shall be required to follow.

(b) A list of the anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must specifically provide.

(d) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.
39.106 Year 2000 compliance.
When acquiring information technology that will be required to perform date/time processing involving dates subsequent to December 31, 1999, agencies shall ensure that solicitations and contracts—
(a)(1) Require the information technology to be Year 2000 compliant; or
(2) Require that non-compliant information technology be upgraded to be Year 2000 compliant prior to the earlier of—
   (i) The earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999, or
   (ii) December 31, 1999; and
(b) As appropriate, describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

39.107 Contract clause.
The contracting officer shall insert a clause substantially the same as the clause at 52.239-1, Privacy or Security Safeguards, in solicitations and contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.
PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 52.3—Provision and Clause Matrix
52.300 Scope of subpart.
52.301 Solicitation provisions and contract clauses (Matrix).
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52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper.

As prescribed in 4.303, insert the following clause:

PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)

(a) Definitions. As used in this clause—

“Postconsumer fiber” means—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

(End of clause)

52.204-5 Women-Owned Business (Other Than Small Business).

As prescribed in 4.607(b), insert the following provision:

WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) Definition. “Women-owned business concern,” as used in this provision, means a concern 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 its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it is a women-owned business concern.

(End of provision)

52.204-6 Data Universal Numbering System (DUNS) Number.

As prescribed in 4.607(a), insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (APR 2008)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS number or “DUNS+4” that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and ZIP Code.

(iv) Company mailing address, city, state and ZIP Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

52.204-7 Central Contractor Registration.

As prescribed in 4.1105, use the following clause:

CENTRAL CONTRACTOR REGISTRATION (APR 2008)

(a) Definitions. As used in this clause—

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

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.)
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 the FAR at Subpart 32.11) for the same concern.

“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.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror shall be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and ZIP Code.

(iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1) (i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.
Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at [http://www.ccr.gov](http://www.ccr.gov) or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

52.204-8 Annual Representations and Certifications.  
As prescribed in 4.1202, insert the following provision:

**ANNUAL REPRESENTATIONS AND CERTIFICATIONS (MAY 2011)**

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is __________________ [insert NAICS code].

(2) The small business size standard is ____________ [insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

- [ ] (i) Paragraph (d) applies.
- [ ] (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

- (i) 52.203-2, Certificate of Independent Price Determination. This provision applies to 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) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or
  - (C) The solicitation is for utility services for which rates are set by law or regulation.
  - (ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed $150,000.
  - (iii) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the clause at 52.204-7, Central Contractor Registration.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at [http://www.ccr.gov](http://www.ccr.gov) or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

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

- (A) Are not set aside for small business concerns;
- (B) Exceed the simplified acquisition threshold; and
- (C) Are for contracts that will be performed in the United States or its outlying areas.

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

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

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

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

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

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

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

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

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

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

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

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

(xv) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA-designated items.
(xvi) 52.225-2, Buy American Act Certificate. This provision applies to solicitations containing the clause at 52.225-1.

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

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

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

(C) If the acquisition value is $50,000 or more but is less than $67,826, the provision with its Alternate II applies.

(xviii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-7.

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

(xx) 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This provision applies to all solicitations.

(xxi) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

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

[Contracting Officer check as appropriate.]

(i) 52.219-22, Small Disadvantaged Business Status.

(1) (A) Basic.

(B) Alternate I.

(ii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

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

(iv) 52.222-52, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

(v) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA—Designated Products (Alternate I only).

(vi) 52.227-6, Royalty Information.

(A) Basic.

(B) Alternate I.

(vii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at http://orca.bpn.gov. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(End of provision)

52.204-9 Personal Identity Verification of Contractor Personnel.

As prescribed in 4.1303, insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)


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

(1) When no longer needed for contract performance.

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

(3) Upon contract completion or termination.

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

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor’s employees are required to have routine physical access to a Federally-controlled facility and/or routine access...
demonstrate their abilities to meet the standards specified for qualification.

(Name) ____________________________________________

(Address) ____________________________________________

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror’s Name ______________________________________
Manufacturer’s Name _________________________________
Source’s Name _______________________________________
Item Name __________________________________________
Test Number _______________________________________

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government’s best interests.

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government’s interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

52.209-2 Prohibition on Contracting with Inverted Domestic Corporations—Representation.

As prescribed in 9.108-5(a), insert the following provision:

PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS—REPRESENTATION
(MAY 2011)

(a) Definitions. Inverted domestic corporation and subsidiary have the meaning given in the clause of this contract entitled Prohibition on Contracting with Inverted Domestic Corporations (52.209-10).

(b) Relation to Internal Revenue Code. An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

(c) Representation. By submission of its offer, the offeror represents that—
(1) It is not an inverted domestic corporation; and
(2) It is not a subsidiary of an inverted domestic corporation.

(End of provision)

52.209-3 First Article Approval—Contractor Testing.

As prescribed in 9.308-1(a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING
(SEPT 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall test _____ unit(s) of Lot/Item ______ as specified in this contract. At least ______ calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within ______ calendar days from the date of this contract to ______ [insert address of the Government activity to receive the report] marked “FIRST ARTICLE TEST REPORT: Contract No. ______, Lot/Item No. ______ ” Within ______ calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disap-
proval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) of this subsection. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the 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, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) of this subsection, 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) 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.

(h) 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 9.308-1(a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

Alternate II (Sept 1989). As prescribed in 9.308-1(a)(3) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) 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.

52.209-4 First Article Approval—Government Testing.

As prescribed in 9.308-2(a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (SEPT 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall deliver ___unit(s) of Lot/Item ___ within _____ calendar days from the date of this contract to the Government at ______ [insert name and address of the testing facility] for first article tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.

(b) Within _____ calendar days after the Government receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified by the Government. The Contractor shall act on this first article within the time limit specified in paragraph (b) of this clause. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the 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 subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, 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.

(i) Federal taxes are considered delinquent if both of the following criteria apply:

(ii) 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 con-
testing 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. § 6501(b). 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).

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).

The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

2.101 Commercial Item (COTS). “Commercially available off-the-shelf (COTS) item, as used in this clause—

(a) Definition. “Commercially available off-the-shelf (COTS)” item, as used in this clause—

(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

(b) The Government suspends or debars 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 the Federal Government.

(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 any executive agency unless there is a compelling reason to do so.

(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 Offeror 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)
(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
(JAN 2011)

(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).

“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).

(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 (FAPIIS) 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 post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the Central Contractor Registration database at http://www.ccr.gov (see 52.204-7).

(End of provision)

52.209-8 [Reserved]

As prescribed at 9.104-7(c), insert the following clause:

UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS
(JAN 2011)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the Central Contractor Registration database at http://www.ccr.gov.

(b)(1) The Contractor will receive notification when the Government posts new information to the Contractor’s record.

(FAC 2005–52) 52.2-20.1
(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)(i) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

As required by section 3010 of Public Law 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

Alternate I (Jan 2011). As prescribed in 9.104-7(c)(2), redesignate paragraph (a) of the basic clause as paragraph (a)(1) and add the following paragraph (a)(2):

(2) At the first semi-annual update on or after April 15, 2011, the Contractor shall post again any required information that the Contractor posted prior to April 15, 2011.

52.209-10 Prohibition on Contracting with Inverted Domestic Corporations.

As prescribed in 9.108-5(b), insert the following clause:

PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (MAY 2011)

(a) Definitions. As used in this clause—

“Inverted domestic corporation” 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). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(End of clause)(End of clause)

52.210 [Reserved]

52.210-1 Market Research.

As prescribed in 10.003, insert the following clause:

MARKET RESEARCH (APR 2011)

(a) Definition. As used in this clause—

“Commercial item” and “nondevelopmental item” have the meaning contained in Federal Acquisition Regulation 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to—

(1) 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—

(i) Meet the agency’s requirements;

(ii) Could be modified to meet the agency’s requirements; or

(iii) Could meet the agency’s requirements if those requirements were modified to a reasonable extent; and

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

(End of clause)
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

(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)

(a) Definitions.

As used in this clause—

“New” means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

“Reconditioned” means restored to the original normal operating condition by readjustments and material replacement.

“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.

“Remanufactured” means factory rebuilt to original specifications.

(End of provision)

52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 11.204(d), insert a provision substantially the same as the following:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUNE 1988)

(a) Definitions.

As used in this clause—

“New” means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

“Reconditioned” means restored to the original normal operating condition by readjustments and material replacement.

“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.

“Remanufactured” means factory rebuilt to original specifications.

(End of provision)

52.211-5 Material Requirements.

As prescribed in 11.304, insert the following clause:

MATERIAL REQUIREMENTS (AUG 2000)

(a) Definitions.

As used in this clause—

“New” means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

“Reconditioned” means restored to the original normal operating condition by readjustments and material replacement.

“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.

“Remanufactured” means factory rebuilt to original specifications.

(End of provision)
52.211-6 **Brand Name or Equal.**

As prescribed in 11.107(a), insert the following provision:

**BRAND NAME OR EQUAL (AUG 1999)**

(a) If an item in this solicitation is identified as “brand name or equal,” the purchase description reflects the characteristics and level of quality that will satisfy the Government’s needs. The salient physical, functional, or performance characteristics that “equal” products must meet are specified in the solicitation.

(b) To be considered for award, offers of “equal” products, including “equal” products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate “equal” products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an “equal” product, the offeror shall provide the brand name product referenced in the solicitation.

(End of provision)
The Government will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. The Government reserves the right to award under either the required delivery schedule or the proposed delivery schedule, when an offeror offers an earlier delivery schedule than required above. If the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

### OFFEROR’S PROPOSED DELIVERY SCHEDULE

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>QUANTITY</th>
<th>WITHIN DAYS AFTER DATE OF CONTRACT</th>
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(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the offeror results in a binding contract. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor’s date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term “working day” excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)

**Alternate I (Apr 1984).** If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of a written notice of award” as the heading for the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by _______ [Contracting Officer insert date]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

**Alternate II (Apr 1984).** If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of a written notice of award” as the heading for the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by _______ [Contracting Officer insert date]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

**Alternate III (Apr 1984).** If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete paragraph (b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of a written notice of award” as the heading for the third column of paragraph (a) of the basic clause.

### 52.211-9 Desired and Required Time of Delivery.

As prescribed in 11.404(a)(3), insert the following clause:

**DESIRED AND REQUIRED TIME OF DELIVERY (JUNE 1997)**

(a) The Government desires delivery to be made according to the following schedule:

<table>
<thead>
<tr>
<th>DESIRED DELIVERY SCHEDULE</th>
</tr>
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<tbody>
<tr>
<td>[Contracting Officer insert specific details]</td>
</tr>
<tr>
<td>ITEM NO.</td>
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If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror’s proposed...
delivery schedule must not extend the delivery period beyond the time for delivery in the Government’s required delivery schedule as follows:

<table>
<thead>
<tr>
<th>REQUIRED DELIVERY SCHEDULE</th>
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</thead>
<tbody>
<tr>
<td>[Contracting Officer insert specific details]</td>
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</table>

Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

<table>
<thead>
<tr>
<th>OFFEROR’S PROPOSED DELIVERY SCHEDULE</th>
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</thead>
<tbody>
<tr>
<td>[Contracting Officer insert specific details]</td>
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</tbody>
</table>

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor’s date of receipt of the award; provided, that the Contractor promptly acknowledges receipt of notice of award, the Government’s required delivery schedule above will be extended by the number of calendar days after the above date that the contractor receives notice of award; provided, that the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

Alternate II (Apr 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor receives notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of a written notice of award” as the heading of the third column of paragraph (a) of the basic clause.

52.211-10 Commencement, Prosecution, and Completion of Work.

As prescribed in 11.404(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts for construction.

COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within [Contracting Officer insert date].
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.

As prescribed in 11.503(a), insert the following clause in solicitations and contracts:

LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (SEPT 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of $__________ per calendar day of delay [Contracting Officer insert amount].

(b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.211-12 Liquidated Damages—Construction.

As prescribed in 11.503(b), insert the following clause in solicitations and contracts:

LIQUIDATED DAMAGES—CONSTRUCTION (SEPT 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of $__________ for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor’s right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.211-13 Time Extensions.

As prescribed in 11.503(c), insert the following clause:

TIME EXTENSIONS (SEPT 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)


As prescribed in 11.604(a), insert the following provision:

NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008)

Any contract awarded as a result of this solicitation will be

- DX rated order;
- DO rated order certified for national defense, emergency, preparedness, and energy program use under the Defense Priorities and Allocation System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.]

(End of provision)

52.211-15 Defense Priority and Allocation Requirements.

As prescribed in 11.604(b), insert the following clause:
DEFENSE PRIORITY AND ALLOCATION REQUIREMENT (APR 2008)

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(End of clause)

52.211-16 Variation in Quantity.
As prescribed in 11.703(a), insert the following clause:

VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) of this clause.

(b) The permissible variation shall be limited to:

___ Percent increase [Contracting Officer insert percentage]

___ Percent decrease [Contracting Officer insert percentage]

This increase or decrease shall apply to ____________.*

(End of clause)

* Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as—

(1) The total contract quantity;
(2) Item 1 only;
(3) Each quantity specified in the delivery schedule;
(4) The total item quantity for each destination; or
(5) The total quantity of each item without regard to destination.

(End of clause)

52.211-17 Delivery of Excess Quantities.
As prescribed in 11.703(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (SEPT 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $250 will, at the option of the Government, either be returned at the Contractor’s expense or retained and paid for by the Government at the contract unit price.

(End of clause)

52.211-18 Variation in Estimated Quantity.
As prescribed in 11.703(c), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)
(1) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(a) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(b) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(c) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(d) A summary of the rationale for award.

(e) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(f) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.

Technical and past performance, when combined, are:

[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (MAY 2011)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically at [http://orca.bpn.gov](http://orca.bpn.gov). If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (o) of this provision.

(a) *Definitions.* As used in this provision—

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“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). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—
1. FSC 5510, Lumber and Related Basic Wood Materials;
2. Federal Supply Group (FSG) 87, Agricultural Supplies;
3. FSG 88, Live Animals;
4. FSG 89, Food and Related Consumables;
5. FSC 9410, Crude Grades of Plant Materials;
6. FSC 9430, Miscellaneous Crude Animal Products, Inedible;
7. FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
8. FSC 9610, Ores;
9. FSC 9620, Minerals, Natural and Synthetic; and
10. FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—
1. Are conducted under contract directly and exclusively with the regional government of southern Sudan;
2. Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
3. Consist of providing goods or services to marginalized populations of Sudan;
4. Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
5. Consist of providing goods or services that are used only to promote health or education; or
6. Have been voluntarily suspended.

“Service-disabled veteran-owned small business concern”—
1. Means a small business concern—
   i. Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
   ii. The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
2. Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—
1. Directly by a parent corporation; or
2. Through another subsidiary of a parent corporation.

“Veteran-owned small business concern” means a small business concern—
1. Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
2. The management and daily business operations of which are controlled by one or more veterans.

Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—
1. That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
2. Whose management and daily business operations are controlled by one or more women.

“Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management
and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b) (1) Annual Representations and Certifications. Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at http://orca.bpn.gov. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs__________.

[Offeror to identify the applicable paragraphs at (c) through (o) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, complete, and applicable as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that—

(i) It is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate in reference to the WOSB concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern or concerns that are participating in the joint venture: __________.] Each WOSB concern participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that—

(i) It is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate in reference to the EDWOSB concern or concerns that are participating in the joint venture. The offeror shall enter the name or names of the EDWOSB concern or concerns that are participating in the joint venture: __________. Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

NOTE: Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern.
(9) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(10) [Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) General. The offeror represents that either—

(A) If ☐ is, ☐ is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, 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); or

(B) If ☐ has, ☐ has not 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 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.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(10)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: ☐.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—(1) Previous contracts and compliance. The offeror represents that—

(i) If ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) If ☐ has, ☐ has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) If ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) If ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed $150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) If ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: ☐.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.
end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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[List as necessary]

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

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<th>Line Item No.</th>
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[List as necessary]

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

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<th>Line Item No.</th>
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[List as necessary]

(FAC 2005–52) 52.2-33
Section 52.212-3 of the Federal Acquisition Regulation (FAR) provides guidance on certain requirements related to the procurement of goods and services. Here is a summary of the key points:

### Canadian or Israeli End Products:

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

### Other End Products:

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<th>Line Item No.</th>
<th>Country of Origin</th>
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[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

### Certification Regarding Responsibility Matters (Executive Order 12689)

(b) Certification Regarding Responsibility Matters (Executive Order 12689). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

1. Are, have not been, and are not presently debarred, suspended, or proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

2. Have, have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

3. Are, 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.

4. Are, have not, within a three-year period preceding this offer, been indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

5. Have, have not, within a three-year period preceding this offer, been indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

6. Are, have not, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

7. Are, have not, been indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

8. Are, have not, been indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

### List of Products Requiring Contractor Certification as to Trade Agreements—Israeli Trade Act:

- List of necessary products:

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<tr>
<th>Line Item No.</th>
<th>Country of Origin</th>
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### Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126)

The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to

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52.2-34 (FAC 2005–52)
Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

<table>
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<tr>
<th>Listed End Products</th>
<th>Listed Countries of Origin</th>
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(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) ☐ In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) ☐ Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Act. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

[ ] (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror ☐ does ☑ does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) to substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

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

[ ] (2) Certain services as described in FAR 22.1003-4(d)(1). The offeror ☐ does ☑ does not certify that—

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

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

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

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) The offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) Taxpayer Identification Number (TIN).

☐ TIN: ________________________________.

☐ TIN has been applied for.
52.212 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (JUNE 2010)
(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.—(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.
(4) **Discount.** In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) **Overpayments.** If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) **Interest.** (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) **Risk of loss.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **Taxes.** The contract price includes all applicable Federal, State, and local taxes and duties.

(l) **Termination for the Government’s convenience.** The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor’s records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) **Termination for cause.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contrac-
tor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **Title.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) **Warranty.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) **Limitation of liability.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) **Other compliances.** The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.


(s) **Order of precedence.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

1. The schedule of supplies/services.
2. The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
3. The clause at 52.212-5.
4. Addenda to this solicitation or contract, including any license agreements for computer software.
5. Solicitation provisions if this is a solicitation.
6. Other paragraphs of this clause.
7. The Standard Form 1449.
8. Other documents, exhibits, and attachments.
9. The specification.

(t) **Central Contractor Registration (CCR).** (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

2(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer.
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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 (MAY 2011)**

(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)).
(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.]

6. (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)).
<table>
<thead>
<tr>
<th>52.212-5</th>
<th>FEDERAL ACQUISITION REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>(26) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).</td>
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<tr>
<td>(27) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).</td>
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<tr>
<td>(31) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).</td>
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<tr>
<td>(32) 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.)</td>
<td></td>
</tr>
<tr>
<td>(33) (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.)</td>
<td></td>
</tr>
<tr>
<td>(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.)</td>
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</tr>
<tr>
<td>(ii) Alternate I (DEC 2007) of 52.223-16.</td>
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<tr>
<td>(36) 52.223-18, Contractor Policy to Ban Text Messaging While Driving (SEP 2010) (E.O. 13513).</td>
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<td>(iii) Alternate II (JAN 2004) of 52.225-3.</td>
<td></td>
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<tr>
<td>(40) 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).</td>
<td></td>
</tr>
<tr>
<td>(41) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150).</td>
<td></td>
</tr>
<tr>
<td>(42) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).</td>
<td></td>
</tr>
<tr>
<td>(49) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).</td>
<td></td>
</tr>
<tr>
<td>(ii) Alternate I (Apr 2003) of 52.247-64.</td>
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<tr>
<td>(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.]</td>
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</tr>
<tr>
<td>(8) 52.237-11, Accepting and Dispensing of $1 Coin (SEPT 2008) (31 U.S.C. 5112(p)(1)).</td>
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</tbody>
</table>

(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. 110-192, 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).


(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.


(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)).


(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—
52.213-1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

**FAST PAYMENT PROCEDURE (MAY 2006)**

(a) General. The Government will pay invoices based on the Contractor’s delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) Responsibility for supplies. (1) Title to the supplies passes to the Government upon delivery to—

   (i) A post office or common carrier for shipment to the specific destination; or

   (ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

   (2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

   (i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

   (ii) Replace, repair, or correct those supplies promptly at the Contractor’s expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

   (c) Preparation of invoice. (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

      (i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

      (ii) Display prominently on the invoice “FAST PAY.” Invoices not prominently marked “FAST PAY” via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

      (2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation charges.

      (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;

         (D) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

   (3) 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)).


   (C) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)).

   (D) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).


   (G) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).


   (I) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).


   (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.
SUBPART 52.2—TEXT OF PROVISIONS AND CLAUSES

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) Certification of invoice. The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) FASTPAY 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)

52.213-4 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) (MAY 2011)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(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).


(2) Listed below are additional clauses that apply:


(ii) 52.223-1, 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 (JAN 2011).

(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.)


   (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.)

   (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, and Wake Island.)


   (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 noncon-
nominally disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) General. (1) Offers are solicited only from EDWOSB concerns. Offers received from concerns that are not EDWOSB concerns will not be considered.

(2) Any award resulting from this solicitation will be made to an EDWOSB concern.

(3) The contracting officer will ensure that the EDWOSB concern has provided all required documents to the WOSB Program Repository. The contract will not be awarded until all required documents are received.

c Agreement. An EDWOSB concern agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the costs of materials).

d Joint Venture. A joint venture may be considered an EDWOSB concern if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The EDWOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and the Online Representations and Certifications Application (ORCA) as an EDWOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating an EDWOSB concern as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB contract performed by the joint venture.

52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

As prescribed in 19.1506, insert the following clause:

NOTICE OF TOTAL SET-ASIDE FOR WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (APR 2011)

(a) Definitions. “Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) General. (1) Offers are solicited only from WOSBs. Offers received from concerns that are not WOSBs shall not be considered.

(2) Any award resulting from this solicitation will be made to a WOSB.

(3) The contracting officer will ensure that the WOSB has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

c Agreement. A WOSB agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;
(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials); and

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).

(d) Joint Venture. A joint venture may be considered a WOSB if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The WOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and the Online Representations and Certifications Application (ORCA) as a WOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating a WOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.

(4) The joint venture must perform the applicable percentage of work required in accordance with paragraph (c) above; and

(5) The procuring activity executes the contract in the name of the WOSB or joint venture.

(e) Nonmanufacturer. A WOSB that is a non-manufacturer, as defined in 13 CFR 121.406(b) or 19.102(f), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)
52.223-1 Biobased Product Certification.

As prescribed in 23.406(a), insert the following provision:

BIODETACHED PRODUCT CERTIFICATION (DEC 2007)

As required by the Farm Security and Rural Investment Act of 2002 and the Energy Policy Act of 2005 (7 U.S.C. 8102(c)(3)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 2902, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

As prescribed in 23.406(b), insert the following clause:

AFFIRMATIVE PROCUREMENT OF BIODETACHED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 2902.10 et seq.). For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at [http://www.usda.gov/biopreferred].

(End of clause)

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) “Hazardous material,” as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

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<thead>
<tr>
<th>Material</th>
<th>Identification No.</th>
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(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government’s rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
(ii) Obtain medical treatment for those affected by the material; and
(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate I (July 1995). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

52.223-4 Recovered Material Certification.
As prescribed in 23.406(c), insert the following provision:

RECOVERED MATERIAL CERTIFICATION (MAY 2008)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

(End of provision)

52.223-5 Pollution Prevention and Right-to-Know Information.
As prescribed in 23.1005, insert the following clause:

POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)

(a) Definitions. As used in this clause—

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

(End of clause)

Alternate I (May 2011). As prescribed in 23.1005(b), add the following paragraph (c)(7) to the basic clause:

(c)(7) The environmental management system as described in section 3(b) of E.O. 13423 and 2(j) of E.O. 13514.

Alternate II (May 2011). As prescribed in 23.1005(c), add the following paragraph (c)(7) to the basic clause. If Alternate I is also prescribed, renumber paragraph (c)(7) as paragraph (c)(8).

(c)(7) The facility compliance audits as described in section 3(c) of E.O. 13423.

52.223-6 Drug-Free Workplace.
As prescribed in 23.505, insert the following clause:

DRUG-FREE WORKPLACE (MAY 2001)

(a) Definitions. As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

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

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor’s policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is

52.223-7 Notice of Radioactive Materials.

As prescribed in 23.602, insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, * _______ days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive

(FAC 2005–52) 52.2-135
FEDERAL ACQUISITION REGULATION

52.223-9

Estimate of Percentage of Recovered Material Content for EPA-Designated Items.

As prescribed in 23.406(d), insert the following clause:

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)

(a) Definitions. As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to ____________________________

[Contracting Officer complete in accordance with agency procedures].

(End of clause)

52.223-10 Waste Reduction Program.

As prescribed in 23.705(a), insert the following clause:

WASTE REDUCTION PROGRAM (MAY 2011)

(a) Definitions. As used in this clause—

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

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

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the
52.223-11 Ozone-Depleting Substances.
As prescribed in 23.804(a), insert the following clause:

OZONE-DEPLETING SUBSTANCES (MAY 2001)
(a) Definition. “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—
(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
(2) Class II, including, but not limited to, hydrochlorofluorocarbons.
(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j(b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:
WARNING
Contains (or manufactured with, if applicable) *_______, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.
* The Contractor shall insert the name of the substance(s).

(End of clause)

52.223-12 Refrigeration Equipment and Air Conditioners.
As prescribed in 23.804(b), insert the following clause:

REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)
The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

52.223-13 [Reserved]

52.223-14 [Reserved]

52.223-15 Energy Efficiency in Energy-Consuming Products.
As prescribed in 23.206, insert the following clause:

ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)
(a) Definition. As used in this clause—
“Energy-efficient product”— (1) Means a product that—
(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.
(2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).
(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—
(1) Delivered;
(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
(3) Furnished by the Contractor for use by the Government;
(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
(2) Otherwise approved in writing by the Contracting Officer.
(d) Information about these products is available for—
(1) ENERGY STAR® at http://www.energystar.gov/products; and
(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

(End of clause)

52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.
As prescribed in 23.705(b)(1), insert the following clause:

IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)
(a) Definitions. As used in this clause—
“Computer monitor” means a video display unit used with a computer.
“Desktop computer” means a computer designed for use on a desk or table.
“Notebook computer” means a portable-style or laptop-style computer system.
“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal
computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see www.epeat.net.  

(End of clause)

**Alternate I (Dec 2007).** As prescribed in 23.705(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the 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.**

As prescribed in 23.406(e), insert the following clause:

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

(b) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, http://www.epa.gov/cpg/. The list of EPA-designated items is available at http://www.epa.gov/cpg/products.htm.

(End of clause)

52.223-18  **Contractor Policy to Ban Text Messaging While Driving.**

As prescribed in 23.1105, insert the following clause:

CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010)

(a) Definitions. As used in this clause—

"Driving"— (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009.

(c) The Contractor should—

1. Adopt and enforce policies that ban text messaging while driving—
   (i) Company-owned or -rented vehicles or Government-owned vehicles; or
   (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

2. Conduct initiatives in a manner commensurate with the size of the business, such as—
   (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
   (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of clause)

52.223-19  **Compliance with Environmental Management Systems.**

As prescribed in 23.903, insert the following clause:

COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)

The Contractor’s work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary
for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

(End of clause)

52.224-1 Privacy Act Notification.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

52.224-2 Privacy Act.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this paragraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) “Operation of a system of records,” as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) “Record,” as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) “System of records on individuals,” as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

52.225-1 Buy American Act—Supplies.

As prescribed in 25.1101(a)(1), insert the following clause:

BUY AMERICAN ACT—SUPPLIES (FEB 2009)

(a) Definitions

“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 at 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.

“Component” means an article, material, or supply incorporated directly into an end product.
“Cost of components” means—

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

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

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

(End of clause)

BUY AMERICAN ACT CERTIFICATE (FEB 2009)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(b) Foreign End Products:

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[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT.

As prescribed in 25.1101(b)(1)(i), insert the following clause:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (JUNE 2009)

(a) Definitions. As used in this clause—

“Bahrainian, Moroccan, Omani, or Peruvian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, or Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(End of clause)
“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 at 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.

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

“Cost of components” means—
(1) An unmanufactured end product mined or produced in the United States;
(2) An end product manufactured in the United States, if—
   (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
   (ii) The end product is a COTS item.
(3) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(4) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—
(1) An unmanufactured end product mined or produced in the United States;
(2) An end product manufactured in the United States, if—
   (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
   (ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

“Free Trade Agreement country” means Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore.

“Free Trade Agreement country end product” means an article that—
(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Isreali end product” means an article that—
(1) Is wholly the growth, product, or manufacture of Israel; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) Components of foreign origin. Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) Delivery of end products. The Buy American Act (41 U.S.C. 10a-10d) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (See 12.505(a)(1)). In addition, the Contracting Officer has determined that FTAs (except the Bahrain, Moroccan, Oman, and Peru FTAs) and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israel Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Free Trade Agreement country end product (other than a Bahrainian, Moroccan, Omani, or Peruvian end product) or an Israeli end product, then the Contractor shall supply a Free Trade Agreement country end product (other than a Bahrainian, Moroccan, Omani, or Peruvian end product), an Israeli end product or, at the Contractor’s option, a domestic end product.

Alternate I (Jan 2004). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(FAC 2005–52) 52.2-139
“Canadian end product” means an article that—

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

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

(c) Delivery of end products. The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

Alternate II (Jan 2004). As prescribed in 25.1101(b)(1)(iii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

“Canadian end product” means an article that—

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

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

(c) Delivery of end products. The Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

As prescribed in 25.1101(b)(2)(i), insert the following provision:

**BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT CERTIFICATE (JUNE 2009)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements–Israeli Trade Act.”

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements–Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products:

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<tr>
<th>LINE ITEM NO.</th>
<th>COUNTRY OF ORIGIN</th>
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[List as necessary]

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements–Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

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[List as necessary]
The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

Alternate I (Jan 2004). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

[List as necessary]

Alternate II (Jan 2004). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian or Israeli End Products:

[LIST AS NECESSARY]

52.225-5 Trade Agreements.

As prescribed in 25.1101(c)(1), insert the following clause:

TRADE AGREEMENTS (AUG 2009)

(a) Definitions. As used in this clause—

“Caribbean Basin country end product”—

(1) Means an article that—

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

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

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

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

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

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

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

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

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at http://www.usitc.gov/tata/hts/. In particular, see the following:

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

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

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

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

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

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Sal-
(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Least developed country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.
### Provision and Clause Matrix

#### Key:

**Type of Contract:**

- *P or C* = Provision or Clause
- *IBR* = Is Incorporation by Reference Authorized? (See FAR 52.102)
- *UCF* = Uniform Contract Format Section, when Applicable
- *FP SUP* = Fixed-Price Supply
- *CR SUP* = Cost-Reimbursement Supply
- *FP R&D* = Fixed-Price Research & Development
- *CR R&D* = Cost Reimbursement Research & Development
- *FP SVC* = Fixed-Price Service
- *CR SVC* = Cost Reimbursement Service
- *FP CON* = Fixed-Price Construction
- *CR CON* = Cost Reimbursement Construction
- *T&M LH* = Time & Material/Labor Hours
- *LMV* = Leasing of Motor Vehicles
- *COM SVC* = Communication Services

**Contract Purpose:**

- *R* = Required
- *O* = Optional
- *✓* = Revision

**DDR** = Dismantling, Demolition, or Removal of Improvements

**A&E** = Architect-Engineering

**FAC** = Facilities

**IND DEL** = Indefinite Delivery

**TRN** = Transportation

**SAP** = Simplified Acquisition Procedures (excluding micro-purchase)

**CI** = Commercial Items

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#### Provision or Clause

<table>
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<tr>
<th>Provision or Clause</th>
<th>Prescribed In</th>
<th>P or C</th>
<th>IBR</th>
<th>UCF</th>
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<td>19.309(a)(1)</td>
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<td>19.1309(a)</td>
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<td>52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.</td>
<td>19.1309(b)</td>
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<td>19.1407</td>
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<td>52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.</td>
<td>22.305</td>
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<td>22.407(h)</td>
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<td>52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).</td>
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<td>52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.</td>
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<td>22.1705(a)</td>
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<td>52.222-54 Employment Eligibility Verification.</td>
<td>22.1803</td>
<td>C  Yes I A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A</td>
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<tr>
<td>52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.</td>
<td>23.406(b)</td>
<td>C  Yes I A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A</td>
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<tr>
<td>Provision or Clause</td>
<td>Prescribed in</td>
<td>PROC</td>
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<tr>
<td>52.223-3 Hazardous Material Identification and Material Safety Data.</td>
<td>23.303</td>
<td>C</td>
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<tr>
<td>Alternate I</td>
<td>23.303(b)</td>
<td>C</td>
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<tr>
<td>52.223-4 Recovered Material Certification.</td>
<td>23.406(c)</td>
<td>P</td>
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<tr>
<td>52.223-5 Pollution Prevention and Right-to-Know Information.</td>
<td>23.1005</td>
<td>C</td>
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<tr>
<td>Alternate I</td>
<td>23.1005(b)</td>
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<td>Alternate II</td>
<td>23.1005(c)</td>
<td>C</td>
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<tr>
<td>52.223-6 Drug-Free Workplace.</td>
<td>23.505</td>
<td>C</td>
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<tr>
<td>52.223-7 Notice of Radiactive Materials.</td>
<td>23.602</td>
<td>C</td>
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<tr>
<td>52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.</td>
<td>23.406(d)</td>
<td>C</td>
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<tr>
<td>Alternate I</td>
<td>23.406(d)</td>
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<tr>
<td>52.223-10 Waste Reduction Program.</td>
<td>23.705(a)✓</td>
<td>C</td>
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<tr>
<td>52.223-11 Ozone-Depleting Substances.</td>
<td>23.804(a)</td>
<td>C</td>
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<tr>
<td>52.223-12 Refrigeration Equipment and Air Conditioners.</td>
<td>23.804(b)</td>
<td>C</td>
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<tr>
<td>52.223-15 Energy Efficiency in Energy-Consuming Products.</td>
<td>23.206</td>
<td>C</td>
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<tr>
<td>52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.</td>
<td>23.705(b)(1)✓</td>
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<td>Alternate I</td>
<td>23.705(b)(2)✓</td>
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<tr>
<td>52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts.</td>
<td>23.406(c)</td>
<td>C</td>
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<tr>
<td>52.223-18 Contractor Policy to Ban Text Messaging While Driving</td>
<td>23.1105</td>
<td>C</td>
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<td>52.223-19 Compliance with Environmental Management Systems.</td>
<td>23.903</td>
<td>C</td>
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<td>52.224-1 Privacy Act Notification.</td>
<td>24.104(a)</td>
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<tr>
<td>52.224-2 Privacy Act.</td>
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<tr>
<td>52.225-1 Buy American Act—Supplies.</td>
<td>25.1101(a)(1)</td>
<td>C</td>
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<td>52.225-2 Buy American Act Certificate.</td>
<td>25.1101(a)(2)</td>
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<td>52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.</td>
<td>25.1101(b)(1)</td>
<td>C</td>
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<td>Alternate I</td>
<td>25.1101(b)(1)(ii)</td>
<td>C</td>
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<tr>
<td>Alternate II</td>
<td>25.1101(b)(1)(iii)</td>
<td>C</td>
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Standard Form 1449

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Optional Form 347

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