

FEDERAL ACQUISITION CIRCULAR

March 9, 2005

Number 2005-01

Federal Acquisition Circular (FAC) 2005-01 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 materials contained in FAC 2005-01 are effective March 9, 2005, except for Items III, V, and VI, which are effective April 8, 2005.

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FAC 2005-01 LIST of SUBJECTS

<u>Item</u>	<u>Subject</u>	<u>Pages</u>
I	Improvements in Contracting for Architect-Engineer Services (Interim)	i
II	Increased Justification and Approval Threshold for DoD, NASA, And Coast Guard (Interim)	i
III	Extension of Authority for Use of Simplified Acquisition Procedures For Certain Commercial Items, Test Program	ii
IV	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (Interim)	ii
V	Nonavailable Articles—Policy	ii and iii
VI	Cost Accounting Standards Administration	iii
VII	Elimination of Certain Subcontract Notification Requirements (Interim)	iii and iv
VIII	Use of FAR Clause 52.244-6, Subcontracts for Commercial Items	iv
IX	Technical Amendments	iv

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FAC 2005-01 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 2005-01 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Improvements in Contracting for Architect-Engineer Services (Interim) (FAR Case 2004-001)

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal Governmentwide task and delivery order contracts must—

- Be performed under the supervision of a licensed professional architect or engineer; and
- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36.6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36.6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section 1427 of the Services Acquisition Reform Act of 2003 (Pub. L. 108-136).

Replacement pages: 2.1-1 and 2.1-2; 8.4-1 thru 8.4-4; 16.5-3 thru 16.5-6; and 36.6-1 and 36.6-2.

Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004-037) (Interim)

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from \$50,000,000 to \$75,000,000. This change implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B) (Public Law 108-375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to \$75 million. In addition to this change, FAR 6.304(a)(3)(ii) is corrected to replace the outdated GS-16 reference with "a grade above GS-15."

Replacement pages: 6.3-5 and 6.3-6.

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program (FAR Case 2004-034)

This final rule amends the Federal Acquisition Regulation (FAR) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5,000,000 (\$10,000,000 for acquisitions in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack). This change implements section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104-106). The statute allows continued reduction of the burden on contracting officers and industry when acquiring commercial items or items treated as commercial items in accordance with 12.102(f)(1).

Replacement pages: 13.5-1 and 13.5-2.

Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004-036) (Interim)

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.10, Small Business Competitiveness Demonstration Program, to add two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to this program. This amendment implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

Replacement pages: 19.5-1 and 19.5-2; 19.10-1 thru 19.10-4; and 52.2-29 thru 52.2-32.

Item V—Nonavailable Articles—Policy (FAR Case 2003-021)

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25.104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the

item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

Replacement pages: 25.1-5 thru 25.1-8; and 25.2-1 and 25.2-2.

**Item VI—Cost Accounting Standards Administration
(FAR Case 1999-025)**

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52.230-6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52.230-7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD(AT&L)DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

Replacement pages: Part 30 TOC pp. 30-1 and 30-2; 30.2-1 thru 30.2-4; 30.6-1 thru 30.6-4 (30.6-5 thru 30.6-8 added); Part 52 TOC pp. 52-5 and 52-6; 52.2-195 and 52.2-196 (52.2-196.1 thru 52.2-196.4 added); and 52.3-19 and 52.3-20.

Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003-024) (Interim)

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44.201-2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

Replacement pages: 44.2-1 and 44.2-2; and 52.2-265 and 52.2-266.

Item VIII—Use of FAR Clause 52.244-6, Subcontracts for Commercial Items (FAR Case 2002-021)

This final rule revises FAR 44.403 by requiring the use of the clause at 52.244-6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

Replacement pages: 44.4-1 and 44.4-2.

Item IX—Technical Amendments

Editorial changes are made at FAR 28.203-3(d), 31.101, 42.203, and 52.225-13(b) in order to update references.

Replacement pages: 28.2-3 and 28.2-4; 31.1-3 and 31.1-4; 42.2-1 and 42.2-2; and 52.2-149 and 52.2-150.

FAC 2005-01 FILING INSTRUCTIONS

NOTE: The FAR is now segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "2.1-1" is page 1 of Subpart 2.1, and "52.2-266" is page 266 of Subpart 52.2.

The following pages reflect changes to the FAR that are effective March 9, 2005:

Remove Pages

2.1-1 and 2.1-2
6.3-5 and 6.3-6
8.4-1 thru 8.4-4
16.5-3 thru 16.5-6
19.5-1 and 19.5-2
19.10-1 thru 19.10-4
28.2-3 and 28.2-4
31.1-3 and 31.1-4
36.6-1 and 36.6-2
42.2-1 and 42.2-2
44.2-1 and 44.2-2
44.4-1 and 44.4-2
52.2-29 thru 52.2-32
52.2-149 and 52.2-150
52.2-265 and 52.2-266

Insert Pages

2.1-1 and 2.1-2
6.3-5 and 6.3-6
8.4-1 thru 8.4-4
16.5-3 thru 16.5-6
19.5-1 and 19.5-2
19.10-1 thru 19.10-4
28.2-3 and 28.2-4
31.1-3 and 31.1-4
36.6-1 and 36.6-2
42.2-1 and 42.2-2
44.2-1 and 44.2-2
44.4-1 and 44.4-2
52.2-29 thru 52.2-32
52.2-149 and 52.2-150
52.2-265 and 52.2-266

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2.000 Scope of part.

(a) This part—

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

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

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

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

Subpart 2.1—Definitions**2.101 Definitions.**

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

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

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

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

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

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

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

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

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

“Advisory and assistance services” means those services provided under contract by nongovernmental sources to sup-

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

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

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

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

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

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

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

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

“Alternate” means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It

adds wording to, deletes wording from, or substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

“Architect-engineer services,” as defined in 40 U.S.C. 1102, means—

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

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

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

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

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

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

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

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

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

“Bundling” means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under sep-

arate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

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

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

(i) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR 16.504(c)); and

(ii) An order placed against an indefinite quantity contract under a—

(A) Federal Supply Schedule contract; or

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

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

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

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

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

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

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

“Claim” means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or inter-

(d) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

6.303-2 Content.

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition.”

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency’s needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer’s knowledge and belief.

(b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government’s minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding \$500,000, the contracting officer’s certification required by 6.303–2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$500,000 but not exceeding \$10,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501 or an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

(3) For a proposed contract over \$10,000,000, but not exceeding \$50,000,000, or, for DoD, NASA, and the Coast Guard, not exceeding \$75,000,000, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over \$50,000,000 or, for DoD, NASA, and the Coast Guard, over \$75,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

(b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

6.305 Availability of the justification.

(a) The justifications required by 6.303-1 and any related information shall be made available for public inspection as required by 10 U.S.C. 2304(f)(4) and 41 U.S.C. 253(f)(4). Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for pub-

lic inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

(b) If a Freedom of Information request is received, contracting officers shall comply with Subpart 24.2.

Subpart 8.4—Federal Supply Schedules

8.401 Definitions.

As used in this subpart—

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

“Multiple Award Schedule (MAS)” means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authority for the MAS program is derived from both Title III of the Administrative Services Act of 1949 (41 U.S.C. 251, et seq.) and Title 40 U.S.C., Public Buildings, Property and Works.

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

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

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

8.402 General.

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

(b) GSA schedule contracts require all schedule contractors to publish an “Authorized Federal Supply Schedule Pricelist” (pricelist). The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number that is on schedule. The schedule contractor is required to provide one copy of its pricelist to any ordering activity upon request. Also, a copy of

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

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

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

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

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

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

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule

have been followed (*e.g.*, publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

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

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

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

8.403 Applicability.

(a) Procedures in this subpart apply to—

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

(2) BPAs established against Federal Supply Schedule contracts.

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

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

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

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

8.404 Use of Federal Supply Schedules.

(a) *General.* Parts 13 (except 13.303-2(c)(3)), 14, 15, and 19 (except for the requirement at 19.202-1(e)(1)(iii)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see 8.405-5). BPAs and orders placed against a MAS, using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)). Therefore, when establishing a BPA (as authorized by 13.303-2(c)(3)), or placing orders under Federal Supply Schedule contracts using the procedures of 8.405, ordering activities shall not seek competition outside of the Federal Supply Schedules or synopses the requirement.

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

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

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

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

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

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

8.405 Ordering procedures for Federal Supply Schedules.

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

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

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

(b) *Orders at or below the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency’s needs. Although not required to solicit from a specific number of schedule contractors, ordering activities should attempt to distribute orders among contractors.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Ordering activities shall place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering activity shall consider reason-

ably available information about the supply or service offered under MAS contracts by surveying the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.405-5). In addition to price, when determining best value, the ordering activity may consider, among other factors, the following:

- (1) Past performance.
- (2) Special features of the supply or service required for effective program performance.
- (3) Trade-in considerations.
- (4) Probable life of the item selected as compared with that of a comparable item.
- (5) Warranty considerations.
- (6) Maintenance availability.
- (7) Environmental and energy efficiency considerations.
- (8) Delivery terms.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the ordering activity shall seek a price reduction. In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a BPA (see 8.405-3), ordering activities shall—

- (1) Review the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review);
- (2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (see 8.404(d)); and
- (3) After seeking price reductions (see 8.405-4), place the order with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

8.405-2 Ordering procedures for services requiring a statement of work.

(a) *General.* Ordering activities shall use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists.

(b) *Statements of Work (SOWs).* All Statements of Work shall include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, special knowledge). To the maximum extent practicable, agency requirements shall be performance-based statements (see Subpart 37.6).

(c) *Request for Quotation procedures.* The ordering activity must provide the Request for Quotation (RFQ), which includes the statement of work and evaluation criteria

(e.g., experience and past performance), to schedule contractors that offer services that will meet the agency's needs. The RFQ may be posted to GSA's electronic RFQ system, e-Buy (see 8.402(d)).

(1) *Orders at, or below, the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. The ordering activity should attempt to distribute orders among contractors.

(2) *For orders exceeding the micro-purchase threshold, but not exceeding the maximum order threshold.*(i) The ordering activity shall develop a statement of work, in accordance with 8.405-2(b).

(ii) The ordering activity shall provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the agency's needs.

(iii) The ordering activity should request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(3) *For proposed orders exceeding the maximum order threshold or when establishing a BPA.* In addition to meeting the requirements of 8.405-2(c)(2), the ordering activity shall—

(i) Provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that will meet the needs of the ordering activity. When determining the appropriate number of additional schedule contractors, the ordering activity may consider, among other factors, the following:

(A) The complexity, scope and estimated value of the requirement.

(B) The market search results.

(ii) Seek price reductions.

(4) The ordering activity shall provide the RFQ (including the statement of work and the evaluation criteria) to any schedule contractor who requests a copy of it.

(d) *Evaluation.* The ordering activity shall evaluate all responses received using the evaluation criteria provided to the schedule contractors. The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Place the order, or establish the BPA, with the schedule contractor that represents the best value (see 8.404(d)). After award, ordering activities should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

8.405-3 Blanket purchase agreements (BPAs).

(a)(1) *Establishment.* Ordering activities may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. BPAs may be established with one or

more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to establish, consider—

- (i) The scope and complexity of the requirement(s);
- (ii) The need to periodically compare multiple technical approaches or prices;
- (iii) The administrative costs of BPAs; and
- (iv) The technical qualifications of the schedule contractor(s).

(2) Establishment of a single BPA, or multiple BPAs, shall be made using the same procedures outlined in 8.405-1 or 8.405-2. BPAs shall address the frequency of ordering, invoicing, discounts, requirements (*e.g.* estimated quantities, work to be performed), delivery locations, and time.

(3) When establishing multiple BPAs, the ordering activity shall specify the procedures for placing orders under the BPAs.

(4) Establishment of a multi-agency BPA against a Federal Supply Schedule contract is permitted if the multi-agency BPA identifies the participating agencies and their estimated requirements at the time the BPA is established.

(b) *Ordering from BPAs*—(1) *Single BPA*. If the ordering activity establishes one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

(2) *Multiple BPAs*. If the ordering activity establishes multiple BPAs, before placing an order exceeding the micro-purchase threshold, the ordering activity shall—

- (i) Forward the requirement, or statement of work and the evaluation criteria, to an appropriate additional number of BPA holders, as established in the BPA ordering procedures; and
- (ii) Evaluate the responses received, make a best value determination (see 8.404(d)), and place the order with the BPA holder that represents the best value.

(3) *BPAs for hourly rate services*. If the BPA is for hourly rate services, the ordering activity shall develop a statement of work for requirements covered by the BPA. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

(c) *Duration of BPAs*. BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.

(d) *Review of BPAs*. (1) The ordering activity that established the BPA shall review it at least once a year to determine whether—

(i) The schedule contract, upon which the BPA was established, is still in effect;

(ii) The BPA still represents the best value (see 8.404(d)); and

(iii) Estimated quantities/amounts have been exceeded and additional price reductions can be obtained.

(2) The ordering activity shall document the results of its review.

8.405-4 Price reductions.

In addition to seeking price reductions before placing an order exceeding the maximum order threshold (see 8.405-1(d)), or in conjunction with the annual BPA review, there may be other reasons to request a price reduction. For example, ordering activities should seek a price reduction when the supply or service is available elsewhere at a lower price, or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of individual orders, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity for a specific order.

8.405-5 Small business.

(a) Although the mandatory preference programs of Part 19 do not apply, orders placed against schedule contracts may be credited toward the ordering activity's small business goals. For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed. Ordering activities should rely on the small business representations made by schedule contractors at the contract level.

(b) Ordering activities may consider socio-economic status when identifying contractor(s) for consideration or competition for award of an order or BPA. At a minimum, ordering activities should consider, if available, at least one small business, veteran-owned small business, service disabled veteran-owned small business, HUBZone small business, women-owned small business, or small disadvantaged business schedule contractor(s). GSA Advantage! and Schedules e-Library at <http://www.gsa.gov/fss> contain information on the small business representations of Schedule contractors.

(c) For orders exceeding the micro-purchase threshold, ordering activities should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

8.405-6 Sole source justification and approval.

Orders placed under Federal Supply Schedules are exempt from the requirements in Part 6. However, ordering activities shall—

orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(2) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(4) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;

(5) The total estimated value of the contract is less than the simplified acquisition threshold; or

(6) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see Subpart 1.7).

(2) *Contracts for advisory and assistance services.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and \$10 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after

the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

16.505 Ordering.

(a) *General.* (1) The contracting officer does not synopsise orders under indefinite-delivery contracts.

(2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

(3) Performance-based work statements must be used to the maximum extent practicable, if the contract or order is for services (see 37.102(a)).

(4) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see 39.103(a)).

(5) Orders may be placed by using any medium specified in the contract.

(6) Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

(7) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.*, a Governmentwide acquisition contract, or multi-agency contract)—

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

(ii) May not be used to circumvent conditions and limitations imposed on the use of funds (*e.g.*, 31 U.S.C. 1501(a)(1)); and

(iii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (see 2.101(b)).

(8) In accordance with section 1427(b) of Public Law 108-136, orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in 2.101, shall—

(i) Be awarded using the procedures at Subpart 36.6; and

(ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.

(9) No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract (10 U.S.C. 2304c(d) and 41 U.S.C. 253j(d)).

(b) *Orders under multiple award contracts*— (1) *Fair opportunity.* (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in Part 6 and the policies in Subpart 15.3 do not apply to the ordering process. However, the contracting officer must—

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) The contracting officer should consider the following when developing the procedures:

(A) (1) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

(4) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

(5) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

(i) Seeking comments from two or more contractors on draft statements of work;

(ii) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (*e.g.*, requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.*, rough estimates), and other considerations as appropriate (*e.g.*, proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.* The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding \$2,500 unless one of the following statutory exceptions applies:

(i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in Subpart 15.4.

(4) *Decision documentation for orders.* The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to

the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(5) *Task-order and delivery-order ombudsman.* The head of the agency shall designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

16.506 Solicitation provisions and contract clauses.

(a) Insert the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at 52.216-20, Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d)(1) Insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its Alternate I.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, use the clause with its Alternate II (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its Alternate III (but see paragraph (d)(5) of this section).

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

(e) Insert the clause at 52.216-22, Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(f) Insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and \$10 million (including all options).

(g) Insert the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and \$10 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

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Subpart 19.5—Set-Asides for Small Business

19.501 General.

(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to all small businesses. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial.

(b) The determination to make a small business set-aside may be unilateral or joint. A unilateral determination is one that is made by the contracting officer. A joint determination is one that is recommended by the Small Business Administration (SBA) procurement center representative and concurred in by the contracting officer.

(c) For acquisitions exceeding the simplified acquisition threshold, the requirement to set aside an acquisition for HUBZone small business concerns (see 19.1305) takes priority over the requirement to set aside the acquisition for small business concerns.

(d) The small business reservation and set-asides requirements at 19.502-2 do not preclude award of a contract to a service-disabled veteran-owned small business concern under Subpart 19.14.

(e) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small business programs. The contracting officer shall document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless a HUBZone or service-disabled veteran-owned small business set-aside or HUBZone or service-disabled veteran-owned small business sole source award is anticipated. If the acquisition is set aside for small business based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.

(f) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative’s security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

(g) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.

(h) All solicitations involving set-asides must specify the applicable small business size standard and NAICS code (see 19.303).

(i) Except as authorized by law, a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price.

19.502 Setting aside acquisitions.

19.502-1 Requirements for setting aside acquisitions.

(a) The contracting officer shall set aside an individual acquisition or class of acquisitions for competition among small businesses when—

(1) It is determined to be in the interest of maintaining or mobilizing the Nation’s full productive capacity, war or national defense programs; or

(2) Assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns; and the circumstances described in 19.502-2 or 19.502-3(a) exist.

(b) This requirement does not apply to purchases of \$2,500 or less (\$15,000 or less for acquisitions as described in 13.201(g)(1)), or purchases from required sources of supply under Part 8 (*e.g.*, Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502-2 Total small business set-asides.

(a) Except for those acquisitions set aside for very small business concerns (see Subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)(1)), but not over \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under Subpart 19.8, Contracting with the Small Business Administration, under 19.1007(c), Solicitations equal to or less than the ESB reserve amount, or under 19.1305, HUBZone set-aside procedures.

(b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of an item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For small business set-asides other than for construction or services, any concern proposing to furnish a product that it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has granted either a waiver or exception to the nonmanufacturer rule (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see 19.102(f)(4) and (5)). In addition, SBA has excepted procurements processed under simplified acquisition procedures (see Part 13), where the anticipated cost of the procurement will not exceed \$25,000, from the nonmanufacturer rule. Waivers permit small businesses to provide any firm's product. The exception permits small businesses to provide any domestic firm's product. In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.

(d) The requirements of this subsection do not apply to acquisitions over \$25,000 during the period when small business set-asides cannot be considered for the designated industry groups (see 19.1007(b)).

19.502-3 Partial set-asides.

(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—

- (1) A total set-aside is not appropriate (see 19.502-2);
- (2) The requirement is severable into two or more economic production runs or reasonable lots;
- (3) One or more small business concerns are expected to have the technical competence and productive capacity to

satisfy the set-aside portion of the requirement at a fair market price;

(4) The acquisition is not subject to simplified acquisition procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.

(c)(1) The contracting officer shall award the non-set-aside portion using normal contracting procedures.

(2)(i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see paragraph (c)(2)(ii) of this section). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.

(ii) If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part of the acquisition shall have first priority with respect to negotiations for the set-aside.

19.502-4 Methods of conducting set-asides.

(a) Total small business set-asides may be conducted by using simplified acquisition procedures (see Part 13), sealed bids (see Part 14), or competitive proposals (see Part 15). Par-

Subpart 19.10—Small Business Competitiveness Demonstration Program

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100-656 (15 U.S.C. 644 note). The program is implemented by a joint OFPP and SBA Policy Directive and Implementation Plan, dated May 25, 1999. The program consists of two major components—

- (a) Unrestricted competition in designated industry groups; and
- (b) Enhanced small business participation in 10 agency targeted industry categories.

19.1002 Definitions.

“Emerging small business,” as used in this subpart, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

“Emerging small business reserve amount,” for the designated groups described in 19.1005, means a threshold established by the Office of Federal Procurement Policy of—

- (1) \$25,000 for construction, refuse systems and related services, non-nuclear ship repair, landscaping and pest control services; and
- (2) \$50,000 for architectural and engineering services.

19.1003 Purpose.

The purpose of the Program is to—

- (a) Assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the designated industry groups listed in section 19.1005.
- (b) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.
- (c) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB’s), and to provide for certain acquisitions to be reserved for ESB participation only. This portion of the program is also limited to the designated industry groups listed in section 19.1005.

19.1004 Participating agencies.

The following agencies have been identified as participants in the demonstration program:
The Department of Agriculture.

- The Department of Defense, except the National Imagery and Mapping Agency.
- The Department of Energy.
- The Department of Health and Human Services.
- The Department of the Interior.
- The Department of Transportation.
- The Department of Veterans Affairs.
- The Environmental Protection Agency.
- The General Services Administration.
- The National Aeronautics and Space Administration.

19.1005 Applicability.

- (a) *Designated industry groups.*

NAICS CODE

NAICS DESCRIPTION

1. CONSTRUCTION (EXCEPT DREDGING)	
SUBSECTOR 236—CONSTRUCTION OF BUILDINGS	
236115	New Single-Family Housing Construction (except Operative Builders)
236116	New Multi-Family Housing Construction (except Operative Builders)
236117	New Housing Operative Builders
236118	Residential Remodelers
236210	Industrial Building Construction
236220	Commercial and Institutional Building Construction
SUBSECTOR 237—HEAVY AND CIVIL ENGINEERING CONSTRUCTION	
237110	Water and Sewer Line and Related Structures Construction
237120	Oil and Gas Pipeline and Related Structures Construction
237130	Power and Communication Line and Related Structures Construction
237210	Land Subdivision
237310	Highway, Street, and Bridge Construction
237990	Other Heavy and Civil Engineering Construction (except dredging)
SUBSECTOR 238—SPECIALTY TRADE CONTRACTORS	
238110	Poured Concrete Foundation and Structure Contractors
238120	Structural Steel and Precast Concrete Contractors
238130	Framing Contractors
238140	Masonry Contractors
238150	Glass and Glazing Contractors
238160	Roofing Contractors
238170	Siding Contractors
238190	Other Foundation, Structure, and Building Exterior Contractors
238210	Electrical Contractors
238220	Plumbing, Heating, and Air-Conditioning Contractors
238290	Other Building Equipment Contractors
238310	Drywall and Insulation Contractors
238320	Painting and Wall Covering Contractors
238330	Flooring Contractors
238340	Tile and Terrazzo Contractors
238350	Finish Carpentry Contractors

NAICS CODE	NAICS DESCRIPTION
238390	Other Building Finishing Contractors
238910	Site Preparation Contractors
238990	All Other Specialty Trade Contractors
2. NON-NUCLEAR SHIP REPAIR	
336611	Ship Building and Repairing
PSC J998	Non-nuclear Ship Repair (East) Ship Repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships east of the 108th meridian
PSC J999	Non-nuclear Ship Repair (West) Ship Repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships west of the 108th meridian
3. ARCHITECTURAL AND ENGINEERING SERVICES (INCLUDING SURVEYING AND MAPPING)	
541310	Architectural Services or
541330	Engineering Services
PSC C111	Administrative and Service Buildings
PSC C112	Airfield, Communication and Missile Facilities
PSC C113	Educational Buildings
PSC C114	Hospital Buildings
PSC C115	Industrial Buildings
PSC C116	Residential Buildings
PSC C117	Warehouse Buildings
PSC C118	Research and Development Facilities
PSC C119	Other Buildings
PSC C121	Conservation and Development
PSC C122	Highways, Roads, Streets, Bridges and Railways
PSC C123	Electric Power Generation (EPG)
PSC C124	Utilities
PSC C129	Other Non-Building Structures
PSC C130	Restoration
PSC C211	Architect-Engineering Services (including landscaping, interior layout, and designing)
PSC C212	Engineering Drafting Services
PSC C213	A&E Inspection Services (non-construction)
PSC C214	A&E Management Engineering Services
PSC C215	A&E Production Engineering Services (including Design and Control, and Building Programming)
PSC C216	Marine Architect and Engineering Services
PSC C219	Other Architect and Engineering Services
541360	Geophysical Surveying and Mapping Services or
541370	Surveying and Mapping (except Geophysical) Services
PSC T002	Cartography Services
PSC T004	Charting Services
PSC T008	Photogrammetry Services
PSC T009	Aerial Photographic Services
PSC T014	Topography Services
PSC R404	Land Surveys, Cadastral Services (non-construction)
4. REFUSE SYSTEMS AND RELATED SERVICES	
562111	Solid Waste Collection or
562119	Other Waste Collection or
562219	Other Nonhazardous Waste Treatment and Disposal

NAICS CODE	NAICS DESCRIPTION
PSC S205	Trash/Garbage Collection Services—including Portable Sanitation Services
5. LANDSCAPING AND PEST CONTROL SERVICES	
561710	Exterminating and Pest Control Services
561730	Landscaping Services

(b) *Targeted industry categories.* Each participating agency, in consultation with the Small Business Administration, designates its own targeted industry categories for enhanced small business participation.

19.1006 Exclusions.

This subpart does not apply to—
 (a) Orders placed against Federal Supply Schedules;
 (b) Contract awards to educational and nonprofit organizations; or
 (c) Contract awards to governmental entities.

19.1007 Procedures.

(a) *General.* (1) All solicitations must include the applicable NAICS code and size standards.

(2) The face of each award made pursuant to the program must contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) *Solicitations greater than the ESB reserve amount.* (1) Solicitations for acquisitions in any of the designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under Subpart 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal.

(2) Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8), the HUBZone Program (see Subpart 19.13), and the Service-Disabled Veteran-Owned Small Business Procurement Program (see Subpart 19.14).

(c) *Solicitations equal to or less than the ESB reserve amount.* (1) Solicitations for acquisitions in the designated industry groups with an estimated value equal to or less than the emerging small business reserve amount must be set aside for ESBs, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESBs that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer must—

(i) For acquisitions \$25,000 or less, proceed in accordance with Subpart 19.5, 19.8, 19.13, or 19.14; or

(ii) For acquisitions greater than \$25,000 and less than or equal to the ESB reserve amount, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer must make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer must cancel the ESB set-aside and proceed in accordance with paragraph (c)(1)(i) or (ii) of this section.

(d) *Expanding small business participation in targeted industry categories.* Each participating agency must develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures must be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to

compete for because of lack of production capacity or capability.

19.1008 Solicitation provisions.

(a) Insert in full text the provision at 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the designated industry groups.

(b) Insert in full text the provision at 52.219-20, Notice of Emerging Small Business Set-Aside, in all solicitations for emerging small businesses in accordance with 19.1007(c).

(c) Insert in full text the provision at 52.219-21, Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of \$25,000.

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Securities and Exchange Commission
 Division of Enforcement
 450 Fifth Street NW
 Washington, DC 20549.

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in paragraph (c)(3)(iii) of this subsection, and located in the United States or its outlying areas. These assets will be accepted at 100 percent of the most current tax assessment value (exclusive of encumbrances) or 75 percent of the properties' unencumbered market value provided a current appraisal is furnished (see 28.203-3).

(5) Irrevocable letters of credit (ILC) issued by a federally insured financial institution in the name of the contracting agency and which identify the agency and solicitation or contract number for which the ILC is provided.

(c) Unacceptable assets include but are not limited to—

- (1) Notes or accounts receivable;
- (2) Foreign securities;
- (3) Real property as follows:

(i) Real property located outside the United States and its outlying areas.

(ii) Real property which is a principal residence of the surety.

(iii) Real property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly.

(iv) Life estates, leasehold estates, or future interests in real property.

(4) Personal property other than that listed in paragraph (b) of this subsection (e.g., jewelry, furs, antiques);

(5) Stocks and bonds of the individual surety in a controlled, affiliated, or closely held concern of the offeror/contractor;

(6) Corporate assets (e.g., plant and equipment);

(7) Speculative assets (e.g., mineral rights);

(8) Letters of credit, except as provided in 28.203-2(b)(5).

28.203-3 Acceptance of real property.

(a) Whenever a bond with a security interest in real property is submitted, the individual surety shall provide—

(1) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This list entitled List of Approved Attorneys, Abstracters, and Title Companies is available from the—

Title Unit, Land Acquisition Section
 Land and Natural Resource Division
 Department of Justice
 Washington, DC 20530.

This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government under paragraph (d) of this subsection;

(2) Evidence of the amount due under any encumbrance shown in the evidence of title;

(3) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice as promulgated by the—

Appraisal Foundation
 1029 Vermont Avenue, NW
 Washington, DC 20005.

(b) Failure to provide evidence that the lien has been properly recorded will render the offeror nonresponsible.

(c) The individual surety is liable for the payment of all administrative costs of the Government, including legal fees, associated with the liquidation of pledged real estate.

(d) The following format, or any document substantially the same, shall be used by the surety and recorded in the local recorder's office when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

LIEN ON REAL ESTATE

I/we agree that this instrument constitutes a lien in the amount of \$ _____ on the property described in this lien. The rights of the United States Government shall take precedence over any subsequent lien or encumbrance until the lien is formally released by a duly authorized representative of the United States. I/we hereby grant the United States the power of sale of subject property, including the right to satisfy its reasonable administrative costs, including legal fees associated with any sale of subject property, in the event of contractor default if I/we otherwise fail to satisfy the underlying () bid guarantee, () performance bond, () or payment bond obligations as an individual surety on solicitation/contract number _____. The lien is upon the real estate now owned by me/us described as follows:

(legal description, street address and other identifying description)

IN WITNESS WHEREOF, I/we have hereunto affixed my/our hand(s) and seal(s) this ___ Day of _____ 20 __.

WITNESS:

_____ (Seal)

_____ (Seal)

I, _____, a Notary Public in and for the (City) _____, (State) _____, do hereby certify that

_____, a party or parties to a certain Agreement bearing the date ____ day of _____ 20 __, and hereunto annexed, personally appeared before me, the said _____ being personally well known to me as the person(s) who executed said lien, and acknowledged the same to be his/her heir act and deed.

GIVEN under my hand and seal this ____ day of ____ 20 __.

Notary Public, State

MY COMMISSION EXPIRES:

28.203-4 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request to the responsible contracting officer. The contracting officer may agree to the substitution of assets upon determining, after consultation with legal counsel, that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations. If acceptable, the substitute assets shall be pledged as provided for in Subpart 28.2.

28.203-5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the Optional Form 90, Release of Lien on Real Property, or Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in paragraphs (a)(1) and (2) of this subsection. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) *Contracts subject to the Miller Act.* The security interest shall be maintained for the later of—

(i) 1 year following final payment;

(ii) Until completion of any warranty period (applicable only to performance bonds); or

(iii) Pending resolution of all claims filed against the payment bond during the 1-year period following final payment.

(2) *Contracts subject to alternative payment protection (28.102-1(b)(1)).* The security interest shall be maintained for the full contract performance period plus one year.

(3) *Other contracts not subject to the Miller Act.* The security interest shall be maintained for 90 days following final payment or until completion of any warranty period (applicable only to performance bonds), whichever is later.

(b) Upon written request, the contracting officer may release the security interest on the individual surety's assets in

support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon written request by the individual surety, the contracting officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the contractor's obligations under its performance bond. Release of the security interest in support of a payment bond must comply with the paragraphs (a)(1) through (3) of this subsection. In making this determination, the contracting officer will give consideration as to whether the unreleased portion of the lien is sufficient to cover the remaining contract obligations, including payments to subcontractors and other potential liabilities. The individual surety shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

28.203-6 Contract clause.

Insert the clause at 52.228-11 in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.

28.203-7 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in Subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of the value of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this subsection shall be included in the Excluded Parties List System. (See 9.404.)

(d) Contracting officers shall not accept the bonds of individual sureties whose names appear in the Excluded Parties List System (see 9.404) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this subsection will also preclude such party from acting as a contractor in accordance with Subpart 9.4.

period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

“Pay-as-you-go cost method” means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

“Pension plan” means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

“Pension plan participant” means any employee or former employee of an employer or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan’s participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer’s pension plan.

“Profit center” means (except for Subparts 31.3 and 31.6) the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

“Projected benefit cost method” means either—

(1) Any of the several actuarial cost methods that distribute the estimated total cost of all of the employees’ prospective benefits over a period of years, usually their working careers; or

(2) A modification of the accrued benefit cost method that considers projected compensation levels.

“Proposal” means any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

“Qualified pension plan” means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

“Self-insurance charge” means a cost which represents the projected average loss under a self-insurance plan.

“Service life” means the period of usefulness of a tangible capital asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

“Spread-gain actuarial cost method” means any of the several projected benefit actuarial cost methods under which actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

“Standard cost” means any cost computed with the use of preestablished measures.

“Tangible capital asset” means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

“Termination of employment gain or loss” means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

“Variance” means the difference between a preestablished measure and an actual measure.

“Weighted average cost” means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.

31.002 Availability of accounting guide.

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors. The pamphlet is available via the Internet at <http://www.dcaa.mil>.

Subpart 31.1—Applicability

31.100 Scope of subpart.

This subpart describes the applicability of the cost principles and procedures in succeeding subparts of this part to various types of contracts and subcontracts. It also describes the need for advance agreements.

31.101 Objectives.

In recognition of differing organizational characteristics, the cost principles and procedures in the succeeding subparts are grouped basically by organizational type; *e.g.*, commercial concerns and educational institutions. The overall objective is to provide that, to the extent practicable, all organizations of similar types doing similar work will follow the same cost principles and procedures. To achieve this uniformity, individual deviations concerning cost principles require advance approval of the agency head or designee. Class deviations for the civilian agencies require advance approval of the Civilian Agency Acquisition Council. Class deviations for the National Aeronautics and Space Administration require advance approval of the Deputy Chief Acquisition Officer. Class deviations for the Department of Defense

require advance approval of the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

31.102 Fixed-price contracts.

The applicable subparts of Part 31 shall be used in the pricing of fixed-price contracts, subcontracts, and modifications to contracts and subcontracts whenever (a) cost analysis is performed, or (b) a fixed-price contract clause requires the determination or negotiation of costs. However, application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

31.103 Contracts with commercial organizations.

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated with organizations other than educational institutions (see 31.104), construction and architect-engineer contracts (see 31.105), State and local governments (see 31.107) and nonprofit organizations (see 31.108) on the basis of cost.

(a) The cost principles and procedures in Subpart 31.2 and agency supplements shall be used in pricing negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed as required by 15.404-1(c).

(b) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 and agency supplements by reference in contracts with commercial organizations as the basis for—

(1) Determining reimbursable costs under—

(i) Cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and

(ii) The cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost (see 16.601(b)(3));

(2) Negotiating indirect cost rates (see Subpart 42.7);

(3) Proposing, negotiating, or determining costs under terminated contracts (see 49.103 and 49.113);

(4) Price revision of fixed-price incentive contracts (see 16.204 and 16.403);

(5) Price redetermination of price redetermination contracts (see 16.205 and 16.206); and

(6) Pricing changes and other contract modifications.

31.104 Contracts with educational institutions.

This category includes all contracts and contract modifications for research and development, training, and other work performed by educational institutions.

(a) The contracting officer shall incorporate the cost principles and procedures in Subpart 31.3 by reference in cost-reimbursement contracts with educational institutions as the basis for—

(1) Determining reimbursable costs under the contracts and cost-reimbursement subcontracts thereunder performed by educational institutions;

(2) Negotiating indirect cost rates; and

(3) Settling costs of cost-reimbursement terminated contracts (see Subpart 49.3 and 49.109-7).

(b) The cost principles in this subpart are to be used as a guide in evaluating costs in connection with negotiating fixed-price contracts and termination settlements.

31.105 Construction and architect-engineer contracts.

(a) This category includes all contracts and contract modifications negotiated on the basis of cost with organizations other than educational institutions (see 31.104), State and local governments (see 31.107), and nonprofit organizations except those exempted under OMB Circular A-122 (see 31.108) for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.

(b) Except as otherwise provided in (d) of this section, the cost principles and procedures in Subpart 31.2 shall be used in the pricing of contracts and contract modifications in this category if cost analysis is performed as required by 15.404-1(c).

(c) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 (as modified by (d) of this section) by reference in contracts in this category as the basis for—

(1) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts thereunder;

(2) Negotiating indirect cost rates;

(3) Proposing, negotiating, or determining costs under terminated contracts;

(4) Price revision of fixed-price incentive contracts; and

(5) Pricing changes and other contract modifications.

(d) Except as otherwise provided in this paragraph (d), the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with Subpart 31.2.

(1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in 31.109, for such items as

Subpart 36.6—Architect-Engineer Services

36.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services, including orders for architect-engineer services under multi-agency contracts (see 16.505(a)(8)).

36.601 Policy.

36.601-1 Public announcement.

The Government shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. (See Pub. L. 92-582, as amended; 40 U.S.C. 541-544.)

36.601-2 Competition.

Acquisition of architect-engineer services in accordance with the procedures in this subpart will constitute a competitive procedure. (See 6.102(d)(1).)

36.601-3 Applicable contracting procedures.

(a) For facility design contracts, the statement of work shall require that the architect-engineer specify, in the construction design specifications, use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also shall require the architect-engineer to consider energy conservation, pollution prevention, and waste reduction to the maximum extent practicable in developing the construction design specifications.

(b) Sources for contracts for architect-engineer services shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in Parts 13, 14, and 15 of this regulation.

(c) When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in Parts 13, 14, or 15.

(d) Other than “incidental services” as specified in the definition of architect-engineer services in 2.101 and in 36.601-4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to Parts 13, 14, and 15.

36.601-4 Implementation.

(a) Contracting officers should consider the following services to be “architect-engineer services” subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15.

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

36.602 Selection of firms for architect-engineer contracts.

36.602-1 Selection criteria.

(a) Agencies shall evaluate each potential contractor in terms of its—

(1) Professional qualifications necessary for satisfactory performance of required services;

(2) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;

(3) Capacity to accomplish the work in the required time;

(4) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(5) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(6) Acceptability under other appropriate evaluation criteria.

(b) When the use of design competition is approved by the agency head or a designee, agencies may evaluate firms on the basis of their conceptual design of the project. Design competition may be used when—

(1) Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual national significance;

(2) Sufficient time is available for the production and evaluation of conceptual designs; and

(3) The design competition, with its costs, will substantially benefit the project.

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts, the relative utility of alternative methods and feasible ways to prescribe the use of recovered materials and achieve waste reduction and energy-efficiency in facility design (see Part 23).

36.602-2 Evaluation boards.

(a) When acquiring architect-engineer services, an agency shall provide for one or more permanent or ad hoc architect-engineer evaluation boards (which may include preselection boards when authorized by agency regulations) to be composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters. Members shall be appointed from among highly qualified professional employees of the agency or other agencies, and if authorized by agency procedure, private practitioners of architecture, engineering, or related professions. One Government member of each board shall be designated as the chairperson.

(b) No firm shall be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding agency's evaluation board.

36.602-3 Evaluation board functions.

Under the general direction of the head of the contracting activity, an evaluation board shall perform the following functions:

(a) Review the current data files on eligible firms and responses to a public notice concerning the particular project (see 36.604).

(b) Evaluate the firms in accordance with the criteria in 36.602-1.

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services.

(d) Prepare a selection report for the agency head or other designated selection authority recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report shall include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based.

36.602-4 Selection authority.

(a) The final selection decision shall be made by the agency head or a designated selection authority.

(b) The selection authority shall review the recommendations of the evaluation board and shall, with the advice of appropriate technical and staff representatives, make the final selection. This final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work. If the firm listed as the most preferred is not the firm recommended as the most highly qualified by the evaluation board, the selection authority shall provide for the contract file a written explanation of the reason for the preference. All firms on the final selection list are considered "selected firms" with which the contracting officer may negotiate in accordance with 36.606.

(c) The selection authority shall not add firms to the selection report. If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the selection authority shall record the reasons and return the report through channels to the evaluation board for appropriate revision.

(d) The board shall be promptly informed of the final selection.

36.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the simplified acquisition threshold. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 shall be followed.

(a) *Selection by the board.* The board shall review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report shall serve as the final selection list and shall be provided directly to the contracting officer. The report shall serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.

(b) *Selection by the chairperson of the board.* When the board decides that formal action by the board is not necessary

Subpart 42.2—Contract Administration Services

42.201 Contract administration responsibilities.

(a) For each contract assigned for administration, the contract administration office (CAO) (see 2.101) shall—

(1) Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for the functions specifically withheld;

(2) Perform the functions listed in 42.302(b) only when and to the extent specifically authorized by the contracting officer; and

(3) Request supporting contract administration under 42.202(e) and (f) when it is required.

(b) The Defense Contract Management Agency and other agencies offer a wide variety of contract administration and support services.

42.202 Assignment of contract administration.

(a) *Delegating functions.* As provided in agency procedures, contracting officers may delegate contract administration or specialized support services, either through interagency agreements or by direct request to the cognizant CAO listed in the Federal Directory of Contract Administration Services Components. The delegation should include—

(1) The name and address of the CAO designated to perform the administration (this information also shall be entered in the contract);

(2) Any special instructions, including any functions withheld or any specific authorization to perform functions listed in 42.302(b);

(3) A copy of the contract to be administered; and

(4) Copies of all contracting agency regulations or directives that are—

(i) Incorporated into the contract by reference; or

(ii) Otherwise necessary to administer the contract, unless copies have been provided previously.

(b) *Special instructions.* As necessary, the contracting officer also shall advise the contractor (and other activities as appropriate) of any functions withheld from or additional functions delegated to the CAO.

(c) *Delegating additional functions.* For individual contracts or groups of contracts, the contracting office may delegate to the CAO functions not listed in 42.302, provided that—

(1) Prior coordination with the CAO ensures the availability of required resources;

(2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and

(3) The delegation does not require the CAO to undertake new or follow-on acquisitions.

(d) *Rescinding functions.* The contracting officer at the requesting agency may rescind or recall a delegation to administer a contract or perform a contract administration function, except for functions pertaining to cost accounting standards and negotiation of forward pricing rates and indirect cost rates (also see 42.003). The requesting agency must coordinate with the ACO to establish a reasonable transition period prior to rescinding or recalling the delegation.

(e) *Secondary delegations of contract administration.* (1) A CAO that has been delegated administration of a contract under paragraph (a) or (c) of this section, or a contracting office retaining contract administration, may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall—

(i) Be in writing;

(ii) Clearly state the specific functions to be performed; and

(iii) Be accompanied by a copy of pertinent contractual and other necessary documents.

(2) The prime contractor is responsible for managing its subcontracts. The CAO's review of subcontracts is normally limited to evaluating the prime contractor's management of the subcontracts (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless—

(i) The Government otherwise would incur undue cost;

(ii) Successful completion of the prime contract is threatened; or

(iii) It is authorized under paragraph (f) of this section or elsewhere in this regulation.

(f) *Special surveillance.* For major system acquisitions (see Part 34), the contracting officer may designate certain high risk or critical subsystems or components for special surveillance in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner consistent with the policy of requesting that the cognizant CAO perform contract administration functions at a contractor's facility (see 42.002).

(g) *Refusing delegation of contract administration.* An agency may decline a request for contract administration services on a case-by-case basis if resources of the agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.203 Contract administration services directory.

The Defense Contract Management Agency (DCMA) maintains the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMA and other agency offices that offer contract administration services within designated geo-

graphic areas and at specified contractor plants. Federal agencies may access it on the Internet at <http://www.dcmamail.com>. For additional information contact—

Defense Contract Management Agency
ATTN: DCMA-DSL
6350 Walker Lane
Alexandria, VA 22310-3226.

Subpart 44.2—Consent to Subcontracts

44.201 Consent and advance notification requirements.

44.201-1 Consent requirements.

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause of the contract. The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance. These can be subcontracts for critical systems, subsystems, components, or services. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime contract for airframes).

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, for—

- (1) Cost-reimbursement, time-and-materials, or labor-hour subcontracts; and
- (2) Fixed-price subcontracts that exceed—

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(c) Consent may be required for subcontracts under prime contracts for architect-engineer services.

(d) The contracting officer's written authorization for the contractor to purchase from Government sources (see Part 51) constitutes consent.

44.201-2 Advance notification requirements.

Under cost-reimbursement contracts, the contractor is required by statute to notify the contracting officer as follows:

(a) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, 10 U.S.C. 2306 requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(b) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, 41 U.S.C. 254(b) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

44.202 Contracting officer's evaluation.

44.202-1 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) is responsible for consent to subcontracts, except when the contracting officer retains the contract for administration or withholds the consent responsibility from delegation to the ACO. In such cases, the contract administration office should assist the contracting office in its evaluation as requested.

(b) The contracting officer responsible for consent shall review the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

(c) Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clause at 52.244-2. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall identify those subcontracts in paragraph (k) of the clause at 52.244-2.

44.202-2 Considerations.

(a) The contracting officer responsible for consent must, at a minimum, review the request and supporting data and consider the following:

(1) Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any (see 15.407-2)?

(2) Is the subcontract for special test equipment or facilities that are available from Government sources (see Subpart 45.3)?

(3) Is the selection of the particular supplies, equipment, or services technically justified?

(4) Has the contractor complied with the prime contract requirements regarding—

(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns (see Part 19); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or

Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)) (see Part 8)?

(5) Was adequate price competition obtained or its absence properly justified?

(6) Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?

(7) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

(8) Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certifications?

(9) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

(10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-furnished facilities?

(11) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

(12) Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?

(13) Is the proposed subcontractor in the Excluded Parties List System (see Subpart 9.4)?

(b) Particularly careful and thorough consideration under paragraph (a) of this section is necessary when—

(1) The prime contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a non-competitive basis, at prices that appear unreasonable, or at prices higher than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

44.203 Consent limitations.

(a) The contracting officer's consent to a subcontract or approval of the contractor's purchasing system does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) Contracting officers shall not consent to—

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations of 15.404-4(c)(4)(i);

(2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(3) Subcontracts obligating the contracting officer to deal directly with the subcontractor;

(4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or

(5) Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts (contracting officers should follow the principles of 16.103(c)).

(c) Contracting officers should not refuse consent to a subcontract merely because it contains a clause giving the subcontractor the right of indirect appeal to an agency board of contract appeals if the subcontractor is affected by a dispute between the Government and the prime contractor. Indirect appeal means assertion by the subcontractor of the prime contractor's right to appeal or the prosecution of an appeal by the prime contractor on the subcontractor's behalf. The clause may also provide that the prime contractor and subcontractor shall be equally bound by the contracting officer's or board's decision. The clause may not attempt to obligate the contracting officer or the appeals board to decide questions that do not arise between the Government and the prime contractor or that are not cognizable under the clause at 52.233-1, Disputes.

44.204 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.244-2, Subcontracts, in solicitations and contracts when contemplating—

(i) A cost-reimbursement contract;

(ii) A letter contract that exceeds the simplified acquisition threshold;

(iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;

(iv) A time-and-materials contract that exceeds the simplified acquisition threshold; or

(v) A labor-hour contract that exceeds the simplified acquisition threshold.

(2) If a cost-reimbursement contract is contemplated—

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate I; or

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate II.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Public Law 103-355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term “subcontract” has the same meaning as defined in Part 12.

44.402 Policy requirements.

(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:

(1) Be required to incorporate commercial items or non-developmental items as components of items delivered to the Government; and

(2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are fur-

nishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244-6 are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at 52.244-6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

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

- (1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
- (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

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

Technical and past performance, when combined, are _____ *[Contracting Officer state, in accordance with FAR 15.304, the relative importance of all other evaluation factors, when combined, when compared to price.]*

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

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before

the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

52.212-3 Offeror Representations and Certifications—Commercial Items.

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

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—
COMMERCIAL ITEMS (MAR 2005)

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

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

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

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

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

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

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

(1) Means a small business concern—

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

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

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

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

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

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

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

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

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

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

(b) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) *Taxpayer Identification Number (TIN)*.

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(5) *Common parent*.

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:
Name _____.
TIN _____.

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

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

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

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

NOTE: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) *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.

(7) *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:

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. *[Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]*

(i) *[Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).]* The offeror represents as part of its offer that it is, is not an emerging small business.

(ii) *[Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).]* Offeror represents as follows:

(A) Offeror’s number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror’s average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees	Average Annual Gross Revenues
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51–100	<input type="checkbox"/> \$1,000,001–\$2 million
<input type="checkbox"/> 101–250	<input type="checkbox"/> \$2,000,001–\$3.5 million
<input type="checkbox"/> 251–500	<input type="checkbox"/> \$3,500,001–\$5 million
<input type="checkbox"/> 501–750	<input type="checkbox"/> \$5,000,001–\$10 million
<input type="checkbox"/> 751–1,000	<input type="checkbox"/> \$10,000,001–\$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(9) *[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) It 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 data-

base maintained by the Small Business Administration (PRO-Net), 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) It 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)(9)(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: _____.]*

(10) *HUBZone 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—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. *[The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.]* Each HUBZone small business concern participating in the 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) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

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

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

(i) It 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) It 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 \$100,000.) 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.

(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 end product and that 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. The terms “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:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[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 the offeror has considered components of unknown origin to have been mined,

produced, or manufactured outside the United States. The terms “component,” “domestic end product,” “end product,” “foreign 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 end products of Australia, Canada, Chile, Mexico, or Singapore, or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

End Products of Australia, Canada, Chile, Mexico, or Singapore or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

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

(2) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (JAN 2004).* If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

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

Canadian End Products:

Line Item No.

Item 2:

Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of clause)

Alternate I (Jan 2005). As prescribed in 25.1102(c)(3), delete the definition of “designated country construction material” from the definitions in paragraph (a) of the basic clause, add the following definition of “Australian, Chilean, or Moroccan construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Australian, Chilean, or Moroccan construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of Australia, Chile, or Morocco; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Chile, or Morocco into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for WTO GPA country and Australian, Chilean, and Moroccan, least developed country, and Caribbean Basin country construction materials.

(2) The Contractor shall use only domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

**52.225-12 Notice of Buy American Act Requirement—
Construction Materials under Trade Agreements.**

As prescribed in 25.1102(d)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—
CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
(JAN 2005)

(a) *Definitions.* “Construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this pro-

vision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (May 2002). As prescribed in 25.1102(d)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11.

Alternate II (Jan 2005). As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* “Australian, Chilean, or Moroccan construction material,” “Caribbean Basin country construction material,” “construction material,” “domestic construction material,” “foreign construction material,” “least developed country construction material,” and “WTO GPA country construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, and the offeror shall be required to furnish such domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

52.225-13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (DEC 2003)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at <http://www.epls.arnet.gov/News.html>. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR Chapter V and/or on OFAC’s website at <http://www.treas.gov/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.225-14 Inconsistency between English Version and Translation of Contract.

As prescribed at 25.1103(b), insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

52.225-15 Sanctioned European Union Country End Products.

As prescribed in 25.1103(c), insert the following clause:

SANCTIONED EUROPEAN UNION COUNTRY END PRODUCTS (FEB 2000)

(a) *Definitions.* As used in this clause—
“Sanctioned European Union country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; 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 sanctioned EU member state 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

Officer's written consent before placing the following subcontracts:

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting—
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any

subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

Alternate I (Mar 2005). As prescribed in 44.204(a)(2)(i), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) Unless the Contractor maintains an approved purchasing system, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

Alternate II (Mar 2005). As prescribed in 44.204(a)(2)(ii), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

52.244-3 [Reserved]

52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND
CONSULTANTS (ARCHITECT-ENGINEER SERVICES)
(AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(c), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

52.244-6 Subcontracts for Commercial Items.

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2004)

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

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. App. 1241 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 flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

FAC 2005-01 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR final rule amendments that are effective **April 8, 2005**. Please do not file prior to this effective date.

Remove Pages

13.5-1 and 13.5-2

25.1-5 thru 25.1-8
25.2-1 and 25.2-2

Part 30 TOC

pp. 30-1 and 30-2
30.1-1 and 30.1-2
30.2-1 thru 30.2-4
30.6-1 thru 30.6-4

Part 52 TOC

pp. 52-5 and 52-6
52.2-195 and 52.2-196
52.3-19 and 52.3-20

Insert Pages

13.5-1 and 13.5-2

25.1-5 thru 25.1-8
25.2-1 and 25.2-2

Part 30 TOC

pp. 30-1 and 30-2
30.1-1 and 30.1-2
30.2-1 thru 30.2-4
30.6-1 thru 30.6-8

Part 52 TOC

pp. 52-5 and 52-6
52.2-195 thru 52.2-196.4
52.3-19 and 52.3-20

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Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5 million (\$10 million for acquisitions as described in 13.500(e)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities must employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of Part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in Subpart 12.3.

(d) The authority to issue solicitations under this subpart expires on January 1, 2008. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.

(e) Under 41 U.S.C. 428a, the simplified acquisition procedures authorized by this test program may be used for acquisitions that do not exceed \$10 million when—

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

13.501 Special documentation requirements.

(a) *Sole source acquisitions.* (1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in Part 6. However, contracting officers must—

(i) Conduct sole source acquisitions, as defined in 2.101, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section; and

(ii) Prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).

(2) Justifications and approvals are required under this subpart only for sole source acquisitions.

(i) For a proposed contract exceeding \$100,000, but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(ii) For a proposed contract exceeding \$500,000, but not exceeding \$10,000,000, the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iii) For a proposed contract exceeding \$10,000,000 but not exceeding \$50,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iv) For a proposed contract exceeding \$50,000,000 the official described in 6.304(a)(4) must approve the justification and approval. This authority is not delegable except as provided in 6.304(a)(4).

(b) *Contract file documentation.* The contract file must include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR Subpart 13.5 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

* * * * *

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(b) The Buy American Act applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product unless it meets the component test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a foreign end product are listed at 25.103. The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another. Evaluation procedures and examples are provided in Subpart 25.5.

25.102 Policy.

Except as provided in 25.103, acquire only domestic end products for public use inside the United States.

25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American Act:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability.* The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations.* (i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American Act provision and clause are included in the solicitation (see 25.1101(a), 25.1101(b), or 25.1102);

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in 1.201-1, in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations.* (i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the non-availability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201-1, in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

(c) *Unreasonable cost.* The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.105 and Subpart 25.5.

(d) *Resale.* The contracting officer may purchase foreign end products specifically for commissary resale.

25.104 Nonavailable articles.

(a) The following articles have been determined to be non-available in accordance with 25.103(b)(1)(i):

Acetylene, black.

Agar, bulk.

Anise.

Antimony, as metal or oxide.

Asbestos, amosite, chrysotile, and crocidolite.

Bamboo shoots.

Bananas.

Bauxite.

Beef, corned, canned.

Beef extract.

Bephenium hydroxynapthoate.

Bismuth.

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films;

not printed in the United States and for which domestic editions are not available.

Brazil nuts, unroasted
 Cadmium, ores and flue dust.
 Calcium cyanamide.
 Capers.
 Cashew nuts.
 Castor beans and castor oil.
 Chalk, English.
 Chestnuts.
 Chicle.
 Chrome ore or chromite.
 Cinchona bark.
 Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
 Cocoa beans.
 Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
 Coffee, raw or green bean.
 Colchicine alkaloid, raw.
 Copra.
 Cork, wood or bark and waste.
 Cover glass, microscope slide.
 Crane rail (85-pound per foot).
 Cryolite, natural.
 Dammar gum.
 Diamonds, industrial, stones and abrasives.
 Emetine, bulk.
 Ergot, crude.
 Erythrityl tetranitrate.
 Fair linen, altar.
 Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
 Goat and kidskins.
 Goat hair canvas.
 Grapefruit sections, canned.
 Graphite, natural, crystalline, crucible grade.
 Hand file sets (Swiss pattern).
 Handsewing needles.
 Hemp yarn.
 Hog bristles for brushes.
 Hyoscine, bulk.
 Ipecac, root.
 Iodine, crude.
 Kaurigum.
 Lac.
 Leather, sheepskin, hair type.
 Lavender oil.
 Manganese.
 Menthol, natural bulk.
 Mica.
 Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building

systems during construction or repair and alteration of real property).

Modacrylic fur ruff.
 Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
 Nitroguanidine (also known as picrite).
 Nux vomica, crude.
 Oiticica oil.
 Olive oil.
 Olives (green), pitted or unpitted, or stuffed, in bulk.
 Opium, crude.
 Oranges, mandarin, canned.
 Petroleum, crude oil, unfinished oils, and finished products.
 Pine needle oil.
 Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
 Pyrethrum flowers.
 Quartz crystals.
 Quebracho.
 Quinidine.
 Quinine.
 Rabbit fur felt.
 Radium salts, source and special nuclear materials.
 Rosettes.
 Rubber, crude and latex.
 Rutile.
 Santonin, crude.
 Secretin.
 Shellac.
 Silk, raw and unmanufactured.
 Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
 Spices and herbs, in bulk.
 Sugars, raw.
 Swords and scabbards.
 Talc, block, steatite.
 Tantalum.
 Tapioca flour and cassava.
 Tartar, crude; tartaric acid and cream of tartar in bulk.
 Tea in bulk.
 Thread, metallic (gold).
 Thyme oil.
 Tin in bars, blocks, and pigs.
 Triprolidine hydrochloride.
 Tungsten.
 Vanilla beans.
 Venom, cobra.
 Water chestnuts.
 Wax, carnauba.
 Wire glass.

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

(b) This list will be published in the *Federal Register* for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502).

25.105 Determining reasonableness of cost.

(a) The contracting officer—

(1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and

(2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under Subpart 25.4.

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(1) 6 percent, if the lowest domestic offer is from a large business concern; or

(2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see Subpart 19.5).

(c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at Subpart 25.5.)

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Subpart 25.2—Buy American Act— Construction Materials

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a - 10d) and Executive Order 10582, December 17, 1954. It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Policy.

Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may acquire foreign construction materials without regard to the restrictions of the Buy American Act:

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.103(b)(1) also apply if any of those articles are acquired as construction materials.

(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.204.

(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain foreign construction materials may be used, the contracting officer must list the excepted materials in the contract. The agency must make the findings justifying the exception available for public inspection.

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$6,725,000 or more, see Subpart 25.4.

25.203 Preaward determinations.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either

52.225-10 or 52.225-12, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225-9 or 52.225-11, whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at 52.225-9, paragraph (b)(2), or 52.225-11, paragraph (b)(3), or covered by the WTO GPA or a Free Trade Agreement (paragraph (b)(2) of 52.225-11), must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless the head of the agency specifies a higher percentage, the contracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(2) of 52.225-9, or paragraph (b)(3) of 52.225-11), the contracting officer must add the excepted materials to the list in the contract clause.

25.205 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225-9 or 52.225-11 and/or other readily available information.

(c) If a determination, under 25.202(a), is made after contract award that an exception to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.

25.206 Noncompliance.

The contracting officer must—

- (a) Review allegations of Buy American Act violations;
- (b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and
- (c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:
 - (1) Process a determination concerning the inapplicability of the Buy American Act in accordance with 25.205.
 - (2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with Subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

Sec.

30.000 Scope of part.

30.001 Definitions.

Subpart 30.1—General

30.101 Cost Accounting Standards.

30.102 Cost Accounting Standards Board Publication.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

30.201-1 CAS applicability.

30.201-2 Types of CAS coverage.

30.201-3 Solicitation provisions.

30.201-4 Contract clauses.

30.201-5 Waiver.

30.201-6 Findings.

30.201-7 Cognizant Federal agency responsibilities.

30.202 Disclosure requirements.

30.202-1 General requirements.

30.202-2 Impracticality of submission.

30.202-3 Amendments and revisions.

30.202-4 Privileged and confidential information.

30.202-5 Filing Disclosure Statements.

30.202-6 Responsibilities.

30.202-7 Determinations.

30.202-8 Subcontractor Disclosure Statements.

**Subpart 30.3—CAS Rules and Regulations
[Reserved]**

**Subpart 30.4—Cost Accounting Standards
[Reserved]**

**Subpart 30.5—Cost Accounting Standards for
Educational Institutions [Reserved]**

Subpart 30.6—CAS Administration

30.601 Responsibility.

30.602 Materiality.

30.603 Changes to disclosed or established cost accounting practices.

30.603-1 Required changes.

30.603-2 Unilateral and desirable changes.

30.604 Processing changes to disclosed or established cost accounting practices.

30.605 Processing noncompliances.

30.606 Resolving cost impacts.

30.607 Subcontract administration.

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30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)) to negotiated contracts and subcontracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 48 CFR 9903.201-1(b) (FAR Appendix) for these and other exemptions).

30.001 Definitions.

As used in this part—

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to Cost Accounting Standards (CAS) rules and regulations for which a contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the contracting officer assigned by the cognizant Federal agency to administer CAS.

“Desirable change” means a unilateral change to a contractor’s established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at 16.202, 16.203 (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (Subpart 16.6).

“Flexibly-priced contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at 16.203-1(a)(2), 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (Subpart 16.6).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

“Required change” means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

Subpart 30.1—General**30.101 Cost Accounting Standards.**

(a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) Contracts that refer to this Part 30 for the purpose of applying the policies, procedures, standards and regulations promulgated by the CASB pursuant to Public Law 100-679, shall be deemed to refer to the CAS, and any other regulations promulgated by the CASB (see 48 CFR Chapter 99), all of which are hereby incorporated in this Part 30.

(c) The Appendix to the FAR loose-leaf edition contains—

(1) Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations Recodified by the Cost Accounting Standards Board at 48 CFR Chapter 99; and

(2) The following preambles:

(i) Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board.

(ii) Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board.

(iii) Part III—Preambles Published under the FAR System.

(d) The preambles are not regulatory but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history.

30.102 Cost Accounting Standards Board Publication.

Copies of the CASB Standards and Regulations are printed in Title 48 of the *Code of Federal Regulations*, Chapter 99, and may be obtained by writing the—

Superintendent of Documents
US Government Printing Office
Washington, DC 20402

or by calling the Washington, DC, ordering desk at (202) 512-1800.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

Title 48 CFR 9903.201-1 (FAR Appendix) describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with 48 CFR 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR 9903.201-2 (FAR Appendix).

30.201-1 CAS applicability.

See 48 CFR 9903.201-1 (FAR Appendix).

30.201-2 Types of CAS coverage.

See 48 CFR 9903.201-2 (FAR Appendix).

30.201-3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR 9903.201 (FAR Appendix).

(b) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall insert the basic provision set forth at 52.230-1 with its Alternate I, unless the contract is to be performed by a Federally Funded Research and Development Center (FFRDC) (see 48 CFR 9903.201-2(c)(5) (FAR Appendix)), or the provision at 48 CFR 9903.201-2(c)(6) (FAR Appendix) applies.

(c) Insert the provision at FAR 52.230-7, Proposal Disclosure—Cost Accounting Practice Changes, in solicitations for contracts subject to CAS as specified in 48 CFR 9903.201 (FAR Appendix).

30.201-4 Contract clauses.

(a) *Cost accounting standards.* (1) The contracting officer shall insert the clause at FAR 52.230-2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR 9903.201-1 (FAR Appendix)), the contract is subject to modified coverage (see 48 CFR 9903.201-2 (FAR Appendix)), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at FAR 52.230-2 requires the contractor to comply with all CAS specified in 48 CFR 9904 (FAR Appendix), to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

(b) *Disclosure and consistency of cost accounting practices.* (1) Insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$500,000, but less than \$50 million, and the offeror certifies it is eligible for and

elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at FAR 52.230-3 requires the contractor to comply with 48 CFR 9904.401, 9904.402, 9904.405, and 9904.406 (FAR Appendix) to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

(c) *Consistency in cost accounting practices.* The contracting officer shall insert the clause at FAR 52.230-4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 48 CFR 9903.201-1(b)(12) (FAR Appendix)).

(d) *Administration of cost accounting standards.* (1) The contracting officer shall insert the clause at FAR 52.230-6, Administration of Cost Accounting Standards, in contracts containing any of the clauses prescribed in paragraphs (a), (b), or (e) of this subsection.

(2) The clause at FAR 52.230-6 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

(e) *Cost accounting standards—educational institutions.* (1) The contracting officer shall insert the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 48 CFR 9903.201-1 (FAR Appendix)), the contract is to be performed by an FFRDC (see 48 CFR 9903.201-2(c)(5) (FAR Appendix)), or the provision at 48 CFR 9903.201-2(c)(6) (FAR Appendix) applies.

(2) The clause at FAR 52.230-5 requires the educational institution to comply with all CAS specified in 48 CFR 9905 (FAR Appendix), to disclose actual cost accounting practices as required by 48 CFR 9903.202-1(f) (FAR Appendix), and to follow disclosed and established cost accounting practices consistently.

30.201-5 Waiver.

(a) The head of the agency—

(1) May waive the applicability of CAS for a particular contract or subcontract under the conditions listed in paragraph (b) of this subsection; and

(2) Must not delegate this waiver authority to any official in the agency below the senior contract policymaking level.

(b) The head of the agency may grant a waiver when one of the following conditions exists:

(1) The contract or subcontract value is less than \$15,000,000, and the head of the agency determines, in writing, that the segment of the contractor or subcontractor that will perform the contract or subcontract—

(i) Is primarily engaged in the sale of commercial items; and

(ii) Has no contracts or subcontracts that are subject to CAS.

(2) The head of the agency determines that exceptional circumstances exist whereby a waiver of CAS is necessary to meet the needs of the agency. Exceptional circumstances exist only when the benefits to be derived from waiving the CAS outweigh the risk associated with the waiver. The determination that exceptional circumstances exist must—

(i) Be set forth in writing; and

(ii) Include a statement of the specific circumstances that justify granting the waiver.

(c) When one of the conditions in paragraph (b) of this subsection exists, the request for waiver should include the following:

(1) The amount of the proposed award.

(2) A description of the contract or subcontract type (e.g., firm-fixed-price, cost-reimbursement).

(3) Whether the segment(s) that will perform the contract or subcontract has CAS-covered contracts or subcontracts.

(4) A description of the item(s) being procured.

(5) When the contractor or subcontractor will not accept the contract or subcontract if CAS applies, a statement to that effect.

(6) Whether cost or pricing data will be obtained, and if so, a discussion of how the data will be used in negotiating the contract or subcontract price.

(7) The benefits to the Government of waiving CAS.

(8) The potential risk to the Government of waiving CAS.

(9) The date by which the waiver is needed.

(10) Any other information that may be useful in evaluating the request.

(d) When neither of the conditions in paragraph (b) of this subsection exists, the waiver request must be prepared in accordance with 48 CFR 9903.201-5(e) (FAR Appendix) and submitted to the CAS Board.

(e) Each agency must report any waivers granted under paragraph (a) of this subsection to the CAS Board, on a fiscal year basis, not later than 90 days after the close of the Government's fiscal year.

30.201-6 Findings.

See 48 CFR 9903.201-6 (FAR Appendix).

30.201-7 Cognizant Federal agency responsibilities.

See 48 CFR 9903.201-7 (FAR Appendix).

30.202 Disclosure requirements.

30.202-1 General requirements.

See 48 CFR 9903.202-1 (FAR Appendix).

30.202-2 Impracticality of submission.

See 48 CFR 9903.202-2 (FAR Appendix).

30.202-3 Amendments and revisions.

See 48 CFR 9903.202-3 (FAR Appendix).

30.202-4 Privileged and confidential information.

See 48 CFR 9903.202-4 (FAR Appendix).

30.202-5 Filing Disclosure Statements.

See 48 CFR 9903.202-5 (FAR Appendix).

30.202-6 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are submitted. (Also see 48 CFR 9903.201-3 and 9903.202 (FAR Appendix).)

(b) The contracting officer shall not award a CAS-covered contract until the cognizant Federal agency official (CFAO) has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the agency head, on a nondelegable basis, authorizes award without obtaining submission of the required Disclosure Statement (see 48 CFR 9903.202-2). In this event, the contractor shall submit the required Disclosure Statement and the CFAO shall make a determination of adequacy as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The CFAO is responsible for issuing determinations of adequacy and compliance of the Disclosure Statement.

30.202-7 Determinations.

(a) *Adequacy determination.* (1) As prescribed by 48 CFR 9903.202-6 (FAR Appendix), the auditor shall—

(i) Conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete; and
(ii) Report the results to the CFAO.

(2) The CFAO shall determine if the Disclosure Statement adequately describes the contractor's cost accounting practices. Also, the CFAO shall—

(i) If the Disclosure Statement is adequate, notify the contractor in writing, and provide a copy to the auditor with a copy to the contracting officer if the proposal triggers sub-

mission of a Disclosure Statement. The notice of adequacy shall state that—

(A) The disclosed practices are adequately described and the CFAO currently is not aware of any additional practices that should be disclosed;

(B) The notice is not a determination that all cost accounting practices were disclosed; and

(C) The contractor shall not consider a disclosed practice, by virtue of such disclosure, an approved practice for estimating proposals or accumulating and reporting contract and subcontract cost data; or

(ii) If the Disclosure Statement is inadequate, notify the contractor of the inadequacies and request a revised Disclosure Statement.

(3) Generally, the CFAO should furnish the contractor notification of adequacy or inadequacy within 30 days after the CFAO receives the Disclosure Statement.

(b) *Compliance determination.* (1) After the notification of adequacy, the auditor shall—

(i) Conduct a detailed compliance review to ascertain whether or not the disclosed practices comply with CAS and Part 31, as applicable; and

(ii) Advise the CFAO of the results.

(2) The CFAO shall make a determination of compliance or take action regarding a report of alleged noncompliance in accordance with 30.605(b). Such action should include requesting a revised Disclosure Statement that corrects the CAS noncompliance. Noncompliances with Part 31 shall be processed separately.

30.202-8 Subcontractor Disclosure Statements.

(a) When the Government requires determinations of adequacy of subcontractor disclosure statements, the CFAO for the subcontractor shall provide this determination to the CFAO for the contractor or next higher-tier subcontractor. The higher-tier CFAO shall not change the determination of the lower-tier CFAO.

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR 9903.202-2 (FAR Appendix).

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Subpart 30.6—CAS Administration

30.601 Responsibility.

(a) The CFAO shall perform CAS administration for all contracts and subcontracts in a business unit, even when the contracting officer retains other administration functions. The CFAO shall make all CAS-related required determinations and findings (see Subpart 1.7) for all CAS-covered contracts and subcontracts, including—

(1) Whether a change in cost accounting practice or noncompliance has occurred; and

(2) If a change in cost accounting practice or noncompliance has occurred, how any resulting cost impacts are resolved.

(b) Within 30 days after the award of any new contract subject to CAS, the contracting officer making the award shall request the CFAO to perform administration for CAS matters (see Subpart 42.2). For subcontract awards, the contractor awarding the subcontract must follow the procedures at 52.230-6(b).

30.602 Materiality.

(a) In determining materiality, the CFAO shall use the criteria in 48 CFR 9903.305 (FAR Appendix).

(b) A CFAO determination of materiality—

(1) May be made before or after a general dollar magnitude proposal has been submitted, depending on the particular facts and circumstances; and

(2) Shall be based on adequate documentation.

(c) When the CFAO determines the cost impact is immaterial, the CFAO shall—

(1) Make no contract adjustments and conclude the cost impact process;

(2) Document the rationale for the determination; and

(3) In the case of noncompliance issues, inform the contractor that—

(i) The noncompliance should be corrected; and

(ii) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the cost impact become material in the future.

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall adjust the contract or use another suitable method (see 30.606).

30.603 Changes to disclosed or established cost accounting practices.

30.603-1 Required changes.

(a) *General.* Offerors shall state whether or not the award of a contract would require a change to an established cost accounting practice affecting existing contracts and subcon-

tracts (see 52.230-1). The contracting officer shall notify the CFAO if the offeror states that a change in cost accounting practice would be required.

(b) *CFAO responsibilities.* Prior to making an equitable adjustment under the applicable paragraph(s) that address a required change at 52.230-2, Cost Accounting Standards; 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or 52.230-5, Cost Accounting Standards—Educational Institution, the CFAO shall determine that—

(1) The cost accounting practice change is required to comply with a CAS, or a modification or interpretation thereof, that subsequently became applicable to one or more contracts or subcontracts; or

(2) The former cost accounting practice was in compliance with applicable CAS and the change is necessary to remain in compliance.

(c) *Notice and proposal preparation.* (1) When the award of a contract would require a change to an established cost accounting practice, the provision at 52.230-7, Proposal Disclosure—Cost Accounting Practice Changes, requires the offeror to—

(i) Prepare the contract pricing proposal in response to the solicitation using the changed cost accounting practice for the period of performance for which the practice will be used; and

(ii) Submit a description of the changed cost accounting practice to the contracting officer and the CFAO as pricing support for the proposal.

(2) When a change is required to remain in compliance (for reasons other than a contract award) or to comply with a new or modified standard, the clause at 52.230-6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor written statement that the cost impact of the change is immaterial.

(d) *Equitable adjustments for new or modified standards.* (1) Required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard (see 52.230-2, 52.230-3, or 52.230-5).

(2) When a contractor elects to implement a required change to comply with a new or modified standard prior to the applicability date of the standard, the CFAO shall administer the change as a unilateral change (see 30.603-2). Contractors shall not receive an equitable adjustment that will result in increased costs in the aggregate to the Government prior to the applicability date unless the CFAO determines that the unilateral change is a desirable change.

30.603-2 Unilateral and desirable changes.

(a) *Unilateral changes.* (1) The contractor may unilaterally change its disclosed or established cost accounting practices, but the Government shall not pay any increased cost, in the aggregate, as a result of the unilateral change.

(2) Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing a unilateral change at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine that—

(i) The contemplated contract price or cost adjustments will protect the Government from the payment of the estimated increased costs, in the aggregate; and

(ii) The net effect of the contemplated adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate.

(b) *Desirable changes.* (1) Prior to taking action under the applicable paragraph(s) addressing a desirable change at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine the change is a desirable change and not detrimental to the interests of the Government.

(2) Until the CFAO has determined a change to a cost accounting practice is a desirable change, the change is a unilateral change.

(3) Some factors to consider in determining if a change is desirable include, but are not limited to, whether—

(i) The contractor must change the cost accounting practices it uses for Government contract and subcontract costing purposes to remain in compliance with the provisions of Part 31;

(ii) The contractor is initiating management actions directly associated with the change that will result in cost savings for segments with CAS-covered contracts and subcontracts over a period for which forward pricing rates are developed or 5 years, whichever is shorter, and the cost savings are reflected in the forward pricing rates; and

(iii) Funds are available if the determination would necessitate an upward adjustment of contract cost or price.

(c) *Notice and proposal preparation.* (1) When a contractor makes a unilateral change, the clause at 52.230-6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor written statement that the cost impact of the change is immaterial.

(2) If a contractor implements the change in cost accounting practice without submitting the notice as required in paragraph (c)(1) of this subsection, the CFAO may determine the change a failure to follow a cost accounting practice consistently and process it as a noncompliance in accordance with 30.605.

(d) *Retroactive changes.* (1) If a contractor requests that a unilateral change be retroactive, the contractor shall submit supporting rationale.

(2) The CFAO shall promptly evaluate the contractor's request and shall, as soon as practical, notify the contractor in writing whether the request is or is not approved.

(3) The CFAO shall not approve a date for the retroactive change that is before the beginning of the contractor's fiscal year in which the request is made.

(e) *Contractor accounting changes due to external restructuring activities.* The requirements for contract price and cost adjustments do not apply to compliant cost accounting practice changes that are directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325. However, the disclosure requirements in 52.230-6(b) shall be followed.

30.604 Processing changes to disclosed or established cost accounting practices.

(a) *Scope.* This section applies to required, unilateral, and desirable changes in cost accounting practices.

(b) *Procedures.* Upon receipt of the contractor's notification and description of the change in cost accounting practice, the CFAO, with the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance. The CFAO shall—

(1) If the description of the change is both adequate and compliant, notify the contractor in writing and—

(i) For required or unilateral changes (except those requested to be determined desirable changes), request the contractor submit a general dollar magnitude (GDM) proposal by a specified date, unless the CFAO determines the cost impact is immaterial; or

(ii) For unilateral changes that the contractor requests to be determined desirable changes, inform the contractor that the request shall include supporting rationale and—

(A) For any request based on the criteria in 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; or

(B) For any request other than those based on the criteria in 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change;

(2) If the description of the change is inadequate, request a revised description of the new cost accounting practice; and

(3) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(c) *Evaluating requests for desirable changes.* (1) When a contractor requests a unilateral change be determined a

desirable change, the CFAO shall promptly evaluate the contractor's request and, as soon as practical, notify the contractor in writing whether the change is a desirable change or the request is denied.

(2) If the CFAO determines the change is a desirable change, the CFAO shall negotiate any cost or price adjustments that may be needed to resolve the cost impact (see 30.606).

(3) If the request is denied, the change is a unilateral change and shall be processed accordingly.

(d) *General dollar magnitude proposal.* The GDM proposal—

(1) Provides information to the CFAO on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous cost accounting practice;

(2) Assists the CFAO in determining whether individual contract price or cost adjustments are required; and

(3) The contractor may submit a detailed cost-impact (DCI) proposal in lieu of a GDM proposal provided the DCI proposal is in accordance with paragraph (g) of this section.

(e) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts.

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) A general dollar magnitude estimate of the total increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts;

and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(f) *General dollar magnitude proposal evaluation.* The CFAO, with the assistance of the auditor, shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall notify the contractor in writing and conclude the cost-impact process with no contract adjustments. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request that the contractor submit a revised GDM proposal by a specified date with specific additional data needed to resolve the cost impact (*e.g.*, an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in cost accumulations); or

(2) Request that the contractor submit a DCI proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(g) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) Shall show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts exceeding a specified amount; and

(ii) Estimate the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (g)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the requirements at paragraphs (e)(3)(i) and (ii) of this section; and

(4) When requested by the CFAO, shall identify all affected contracts and subcontracts.

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year(s) in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated costs to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government.

(ii) Determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government.

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated.

(iv) Calculate the increased cost to the Government in the aggregate.

(4) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(i) *Remedies.* If the contractor does not submit the accounting change description or the proposals required in paragraph (d) or (g) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall—

(1) With the assistance of the auditor, estimate the general dollar magnitude of the cost impact on affected CAS-covered contracts and subcontracts; and

(2) Take one or both of the following actions:

(i) Withhold an amount not to exceed 10 percent of each subsequent payment related to the contractor's CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact), until the contractor furnishes the required information.

(ii) Issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

30.605 Processing noncompliances.

(a) *General.* Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing

noncompliance at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine that—

(1) The contemplated contract price or cost adjustments will protect the Government from the payment of increased costs, in the aggregate;

(2) The net effect of the contemplated contract price or cost adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate;

(3) The net effect of any invoice adjustments made to correct an estimating noncompliance will not result in the recovery of more than the increased costs paid by the Government, in the aggregate; and

(4) The net effect of any interim and final voucher billing adjustments made to correct a cost accumulation noncompliance will not result in the recovery of more than the increased cost paid by the Government, in the aggregate.

(b) *Notice and determination.* (1) Within 15 days of receiving a report of alleged noncompliance from the auditor, the CFAO shall—

(i) Notify the auditor that the CFAO disagrees with the alleged noncompliance; or

(ii) Issue a notice of potential noncompliance to the contractor and provide a copy to the auditor.

(2) The notice of potential noncompliance shall—

(i) Notify the contractor in writing of the exact nature of the noncompliance; and

(ii) Allow the contractor 60 days or other mutually agreeable date to—

(A) Agree or submit reasons why the contractor considers the existing practices to be in compliance; and

(B) Submit rationale to support any written statement that the cost impact of the noncompliance is immaterial.

(3) The CFAO shall—

(i) If applicable, review the reasons why the contractor considers the existing practices to be compliant or the cost impact to be immaterial;

(ii) Make a determination of compliance or noncompliance consistent with 1.704; and

(iii) Notify the contractor and the auditor in writing of the determination of compliance or noncompliance and the basis for the determination.

(4) If the CFAO makes a determination of noncompliance, the CFAO shall follow the procedures in paragraphs (c) through (h) of this section, as appropriate, unless the CFAO also determines the cost impact is immaterial. If immaterial, the CFAO shall—

(i) Inform the contractor in writing that—

(A) The noncompliance should be corrected; and

(B) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and

(ii) Conclude the cost-impact process with no contract adjustments.

(c) *Correcting noncompliances.* (1) The clause at 52.230-6 requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance within 60 days after the earlier of—

(i) Agreement with the CFAO that there is a noncompliance; or

(ii) Notification by the CFAO of a determination of noncompliance.

(2) The CFAO, with the assistance of the auditor, should review the proposed change to correct the noncompliance concurrently for adequacy and compliance (see 30.202-7). The CFAO shall—

(i) When the description of the change is both adequate and compliant—

(A) Notify the contractor in writing;

(B) Request that the contractor submit by a specified date a general dollar magnitude (GDM) proposal, unless the CFAO determines the cost impact is immaterial; and

(C) Follow the procedures at paragraph (b)(4) of this section if the CFAO determines the cost impact is immaterial.

(ii) If the description of the change is inadequate, request a revised description of the new cost accounting practice; or

(iii) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(d) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in contract and subcontract price or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts affected by the noncompliance.

(ii) When the noncompliance involves cost accumulation, the change in indirect rates multiplied by the applicable base for flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in contract and subcontract prices and cost accumulations;

(3) The contractor may submit a DCI proposal in lieu of a GDM proposal provided the DCI proposal is in accordance with paragraph (f) of this section.

(4) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) The total increase or decrease in contract and subcontract prices and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance

may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments for fixed-price and flexibly-priced contracts made by the Government during the period of noncompliance; and

(5) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(e) *General dollar magnitude proposal evaluation.* The CFAO shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall follow the requirements in paragraph (b)(4) of this section. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request the contractor submit a revised GDM proposal by a specified date, with specific additional data needed to resolve the cost impact (*e.g.*, an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in contract and subcontract price and cost accumulations); or

(2) Request that the contractor submit a DCI proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(f) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section.

(2) Shall show the increase or decrease in price and cost accumulations, as applicable for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (f)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the information in paragraph (d)(4) of this section; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(g) *Interest.* The CFAO shall—

(1) Separately identify interest on any increased cost paid, in the aggregate, as a result of the noncompliance;

(2) Compute interest from the date of overpayment to the date of repayment using the rate specified in 26 U.S.C. 6621(a)(2).

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect cost rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the contractor used a compliant practice, the difference is decreased cost to the Government;

(4) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice) the difference is decreased cost to the Government;

(5) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the contractor used a compliant practice; and

(6) Calculate the increased cost to the Government in the aggregate.

(i) *Remedies.* If the contractor does not correct the noncompliance or submit the proposal required in paragraph (d) or (f)

of this section within the specified time, or any extension granted by the CFAO, the CFAO shall follow the procedures at 30.604(i).

30.606 Resolving cost impacts.

(a) *General.* (1) The CFAO shall coordinate with the affected contracting officers before negotiating and resolving the cost impact when the estimated cost impact on any of their contracts is at least \$100,000. However, the CFAO has the sole authority for negotiating and resolving the cost impact.

(2) The CFAO may resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method.

(3) In resolving the cost impact, the CFAO—

(i) Shall not combine the cost impacts of any of the following:

(A) A required change and a unilateral change.

(B) A required change and a noncompliance.

(C) A desirable change and a unilateral change.

(D) A desirable change and a noncompliance.

(ii) Shall not combine the cost impacts of any of the following unless all of the cost impacts are increased costs to Government:

(A) One or more unilateral changes.

(B) One or more noncompliances.

(C) Unilateral changes and noncompliances; and

(iii) May consider the cost impacts of a unilateral change affecting two or more segments to be a single change if—

(A) The change affects the flow of costs between segments; or

(B) Implements a common cost accounting practice for two or more segments.

(4) For desirable changes, the CFAO should consider the estimated cost impact of associated management actions on contract costs in resolving the cost impact.

(b) *Negotiations.* The CFAO shall—

(1) Negotiate and resolve the cost impact on behalf of all Government agencies; and

(2) At the conclusion of negotiations, prepare a negotiation memorandum and send copies to the auditor and affected contracting officers.

(c) *Contract adjustments.* (1) The CFAO may adjust some or all contracts with a material cost impact, subject to the provisions in paragraphs (c)(2) through (c)(6) of this section.

(2) In selecting the contract or contracts to be adjusted, the CFAO should assure, to the maximum extent practical and subject to the provisions in paragraphs (c)(3) through (c)(6) of this section, that the adjustments reflect a *pro rata* share of the cost impact based on the ratio of the cost impact of each Executive agency to the total cost impact.

(3) For unilateral changes and noncompliances, the CFAO shall—

(i) To the maximum extent practical, not adjust the price upward for fixed-price contracts;

(ii) If contract adjustments are made, preclude payment of aggregate increased costs by taking one or both of the following actions:

(A) Reduce the contract price on fixed-price contracts.

(B) Disallow costs on flexibly-priced contracts; and

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including contract cost ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments on affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a unilateral change shall not be increased (48 CFR 9903.201-6(b)).

(4) For noncompliances that involve estimating costs, the CFAO—

(i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;

(ii) Shall, if contract adjustments are made, preclude payment of aggregate increased costs by reducing the contract price on fixed-price contracts;

(iii) May, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a noncompliance that involves estimating costs shall not be increased (48 CFR 9903.201-6(d));

(iv) Shall require the contractor to correct the non-compliance, *i.e.*, ensure that compliant cost accounting practices will now be utilized to estimate proposed contract costs; and

(v) Shall require the contractor to adjust any invoices that were paid based on noncompliant contract prices to reflect the adjusted contract prices, after any contract price adjustments are made to resolve the noncompliance.

(5) For noncompliances that involve cost accumulation, the CFAO—

(i) Shall require the contractor to—

(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected contracts to reflect compliant contract cost accumulations; and

(B) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to

reflect the difference between the costs paid using the non-compliant practice and the costs that should have been paid using the compliant practice; or

(ii) Shall adjust contract prices. In adjusting contract prices, the CFAO shall preclude payment of aggregate increased costs by disallowing costs on flexibly-priced contracts.

(A) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a noncompliance that involves cost accumulation shall not be increased (48 CFR 9903.201-6(d)).

(B) Shall require the contractor to—

(1) Correct contract cost accumulations in the contractor's cost accounting records to reflect the contract price adjustments; and

(2) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the contract price adjustments.

(6) When contract adjustments are made, the CFAO shall—

(i) Execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments (see 42.302(a)(11)(iv)); or

(ii) When the CFAO and contractor do not agree on the amount of the cost impact or the contract adjustments, issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s).

(d) *Alternate methods.* (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method and the contracting parties agree on the use of that alternate method.

(2) The CFAO may not use an alternate method for contracts when application of the alternate method to contracts would result in—

(i) An under recovery of monies by the Government (*e.g.*, due to cost overruns); or

(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.

(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO shall—

(i) Apply such exclusion only to the determination of final indirect cost rates (see 42.705); and

(ii) Adjust the exclusion to reflect the Government participation rate for flexibly-priced contracts and subcontracts. For example, if there are aggregate increased costs to

the Government of \$100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly-priced contracts and subcontracts, the contractor shall exclude \$200,000 from the indirect cost pool ($\$100,000/50\% = \$200,000$).

30.607 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the

CFAO for the subcontractor shall furnish a copy of the negotiation memorandum or the determination to the CFAO for the contractor of the next higher-tier subcontractor. The CFAO of the contractor or the next higher-tier subcontractor shall not change the determination of the CFAO for the lower-tier subcontractor. If the subcontractor refuses to submit a GDM or DCI proposal, remedies are made at the prime contractor level.

* * * * *

FEDERAL ACQUISITION REGULATION

52.227-11 Patent Rights—Retention by the Contractor (Short Form).	52.230-2 Cost Accounting Standards.
52.227-12 Patent Rights—Retention by the Contractor (Long Form).	52.230-3 Disclosure and Consistency of Cost Accounting Practices.
52.227-13 Patent Rights—Acquisition by the Government.	52.230-4 Consistency in Cost Accounting Practices.
52.227-14 Rights in Data—General.	52.230-5 Cost Accounting Standards—Educational Institution.
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	52.230-6 Administration of Cost Accounting Standards.
52.227-16 Additional Data Requirements.	52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.
52.227-17 Rights in Data—Special Works.	52.231 [Reserved]
52.227-18 Rights in Data—Existing Works.	52.232-1 Payments.
52.227-19 Commercial Computer Software—Restricted Rights.	52.232-2 Payments under Fixed-Price Research and Development Contracts.
52.227-20 Rights in Data—SBIR Program.	52.232-3 Payments under Personal Services Contracts.
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.
52.227-22 Major System—Minimum Rights.	52.232-5 Payments under Fixed-Price Construction Contracts.
52.227-23 Rights to Proposal Data (Technical).	52.232-6 Payment under Communication Service Contracts with Common Carriers.
52.228-1 Bid Guarantee.	52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.
52.228-2 Additional Bond Security.	52.232-8 Discounts for Prompt Payment.
52.228-3 Workers' Compensation Insurance (Defense Base Act).	52.232-9 Limitation on Withholding of Payments.
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.
52.228-5 Insurance—Work on a Government Installation.	52.232-11 Extras.
52.228-6 [Reserved]	52.232-12 Advance Payments.
52.228-7 Insurance—Liability to Third Persons.	52.232-13 Notice of Progress Payments.
52.228-8 Liability and Insurance—Leased Motor Vehicles.	52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.
52.228-9 Cargo Insurance.	52.232-15 Progress Payments Not Included.
52.228-10 Vehicular and General Public Liability Insurance.	52.232-16 Progress Payments.
52.228-11 Pledges of Assets.	52.232-17 Interest.
52.228-12 Prospective Subcontractor Requests for Bonds.	52.232-18 Availability of Funds.
52.228-13 Alternative Payment Protections.	52.232-19 Availability of Funds for the Next Fiscal Year.
52.228-14 Irrevocable Letter of Credit.	52.232-20 Limitation of Cost.
52.228-15 Performance and Payment Bonds—Construction.	52.232-21 Limitation of Cost (Facilities).
52.228-16 Performance and Payment Bonds—Other Than Construction.	52.232-22 Limitation of Funds.
52.229-1 State and Local Taxes.	52.232-23 Assignment of Claims.
52.229-2 North Carolina State and Local Sales and Use Tax.	52.232-24 Prohibition of Assignment of Claims.
52.229-3 Federal, State, and Local Taxes.	52.232-25 Prompt Payment.
52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).	52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.
52.229-5 [Reserved]	52.232-27 Prompt Payment for Construction Contracts.
52.229-6 Taxes—Foreign Fixed-Price Contracts.	52.232-28 Invitation to Propose Performance-Based Payments.
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	52.232-29 Terms for Financing of Purchases of Commercial Items.
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	52.232-30 Installment Payments for Commercial Items.
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	52.232-31 Invitation to Propose Financing Terms.
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.	52.232-32 Performance-Based Payments.
52.230-1 Cost Accounting Standards Notices and Certification.	52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.

52.232-34	Payment by Electronic Funds Transfer—Other than Central Contractor Registration.	52.237-5	Payment by Contractor to Government.
52.232-35	Designation of Office for Government Receipt of Electronic Funds Transfer Information.	52.237-6	Incremental Payment by Contractor to Government.
52.232-36	Payment by Third Party.	52.237-7	Indemnification and Medical Liability Insurance.
52.232-37	Multiple Payment Arrangements.	52.237-8	Restriction on Severance Payments to Foreign Nationals.
52.232-38	Submission of Electronic Funds Transfer Information with Offer.	52.237-9	Waiver of Limitation on Severance Payments to Foreign Nationals.
52.233-1	Disputes.	52.237-10	Identification of Uncompensated Overtime.
52.233-2	Service of Protest.	52.238	[Reserved]
52.233-3	Protest after Award.	52.239-1	Privacy or Security Safeguards.
52.233-4	Applicable Law for Breach of Contract Claim.	52.240	[Reserved]
52.234-1	Industrial Resources Developed Under Defense Production Act Title III.	52.241	Utility Services Provisions and Clauses.
52.235	[Reserved]	52.241-1	Electric Service Territory Compliance Representation.
52.236-1	Performance of Work by the Contractor.	52.241-2	Order of Precedence—Utilities.
52.236-2	Differing Site Conditions.	52.241-3	Scope and Duration of Contract.
52.236-3	Site Investigation and Conditions Affecting the Work.	52.241-4	Change in Class of Service.
52.236-4	Physical Data.	52.241-5	Contractor's Facilities.
52.236-5	Material and Workmanship.	52.241-6	Service Provisions.
52.236-6	Superintendence by the Contractor.	52.241-7	Change in Rates or Terms and Conditions of Service for Regulated Services.
52.236-7	Permits and Responsibilities.	52.241-8	Change in Rates or Terms and Conditions of Service for Unregulated Services.
52.236-8	Other Contracts.	52.241-9	Connection Charge.
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	52.241-10	Termination Liability.
52.236-10	Operations and Storage Areas.	52.241-11	Multiple Service Locations.
52.236-11	Use and Possession Prior to Completion.	52.241-12	Nonrefundable, Nonrecurring Service Charge.
52.236-12	Cleaning Up.	52.241-13	Capital Credits.
52.236-13	Accident Prevention.	52.242-1	Notice of Intent to Disallow Costs.
52.236-14	Availability and Use of Utility Services.	52.242-2	Production Progress Reports.
52.236-15	Schedules for Construction Contracts.	52.242-3	Penalties for Unallowable Costs.
52.236-16	Quantity Surveys.	52.242-4	Certification of Final Indirect Costs.
52.236-17	Layout of Work.	52.242-5	[Reserved]
52.236-18	Work Oversight in Cost-Reimbursement Construction Contracts.	52.242-6	[Reserved]
52.236-19	Organization and Direction of the Work.	52.242-7	[Reserved]
52.236-20	[Reserved]	52.242-8	[Reserved]
52.236-21	Specifications and Drawings for Construction.	52.242-9	[Reserved]
52.236-22	Design Within Funding Limitations.	52.242-10	F.o.b. Origin—Government Bills of Lading or Prepaid Postage.
52.236-23	Responsibility of the Architect-Engineer Contractor.	52.242-11	F.o.b. Origin—Government Bills of Lading or Indicia Mail.
52.236-24	Work Oversight in Architect-Engineer Contracts.	52.242-12	Report of Shipment (REPSHIP).
52.236-25	Requirements for Registration of Designers.	52.242-13	Bankruptcy.
52.236-26	Preconstruction Conference.	52.242-14	Suspension of Work.
52.236-27	Site Visit (Construction).	52.242-15	Stop-Work Order.
52.236-28	Preparation of Proposals—Construction.	52.242-16	Stop-Work Order—Facilities.
52.237-1	Site Visit.	52.242-17	Government Delay of Work.
52.237-2	Protection of Government Buildings, Equipment, and Vegetation.	52.243-1	Changes—Fixed-Price.
52.237-3	Continuity of Services.	52.243-2	Changes—Cost-Reimbursement.
52.237-4	Payment by Government to Contractor.	52.243-3	Changes—Time-and-Materials or Labor-Hours.
		52.243-4	Changes.

ment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

52.230-6 Administration of Cost Accounting Standards.

As prescribed in 30.201-4(d)(1), insert the following clause:

ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 2005)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

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

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the

Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

“Flexibly-priced contracts and subcontracts means”—

(1) Fixed-price contracts and subcontracts described 16.203-1(a)(2) at FAR 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

“Required change” means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts;

and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230-3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.

As prescribed in 30.201-3(c), insert the following provision:

PROPOSAL DISCLOSURE—COST ACCOUNTING PRACTICE
CHANGES (APR 2005)

The offeror shall check “yes” below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

Yes No

If the offeror checked “Yes” above, the offeror shall—

(1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of provision)

52.231 [Reserved]

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PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-3 Workers' Compensation Insurance (Defense Base Act).	28.309(a)	C	Yes	I					A	A	A	A	A				A						
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309(b)	C	Yes	I					A	A	A	A	A				A						
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	A		A		A		A	A		A	A	A	A		A				
52.228-7 Insurance—Liability to Third Persons.	28.311-1	C	Yes	I		A		A		A				A			A	A					
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I										R								A	
52.228-9 Cargo Insurance.	28.313(a)	C	Yes	I																	A	A	
52.228-10 Vehicular and General Public Liability Insurance.	28.313(b)	C	Yes	I																	A		
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I						A	A	A				A							
52.228-13 Alternative Payment Protections.	28.102-3(b)	C	Yes	I						A	A	A				A							
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-15 Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I						A	A					A							
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A		A	A	A	A		A	
Alternate I	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A		A	A	A	A		A	
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																		A	
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I									A	A									
Alternate I	29.401-2	C	Yes	I					A	A													
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).	29.401-3	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A	A		
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A			
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A			

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																				
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.	29.401-4(b)	C	Yes	I		A		A		A		A	A	A	A	A	A	A	A			
52.230-1 Cost Accounting Standards Notices and Certification.	30.201-3	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
Alternate I	30.201-3(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
52.230-2 Cost Accounting Standards.	30.201-4(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
52.230-3 Disclosure and Consistency of Cost Accounting Practices.	30.201-4(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
52.230-4 Consistency in Cost Accounting Practices.	30.201-4(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
52.230-5 Cost Accounting Standards—Educational Institution.	30.301-4(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
52.230-6 Administration of Cost Accounting Standards.	30.201-4(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.	30.201-3(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R				R						A						A	A
52.232-2 Payments under Fixed-Price Research and Development Contracts.	32.111(a)(2)	C	Yes	I			R															
52.232-3 Payments under Personal Service Contracts.	32.111(a)(3)	c	Yes	I					a	a												
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.	32.111(a)(4)	C	Yes	I																R	A	
52.232-5 Payments under Fixed-Price Construction Contracts.	32.111(a)(5)	C	Yes								R											
52.232-6 Payment under Communication Service Contracts with Common Carriers.	32.111(a)(6)	C	Yes	I										A							A	
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.	32.111(b)	C	Yes	I									A									
Alternate I	32.111(b)	C	Yes	I									A									
Alternate II	32.111(b)	C	Yes	I									A									
52.232-8 Discounts for Prompt Payment.	32.111(e)(1)	C	Yes	I	A				A				A	A							A	
52.232-9 Limitation on Withholding of Payments.	32.111(e)(2)	C	Yes	I	A	A	A	A	A	A			A	A								
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.	32.111(d)(1)	C	Yes														A					
52.232-11 Extras.	32.111(d)(2)	C	Yes	I	A				A					A						A	A	A